

HOUSE OF LORDS

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35th REPORT

SELECT COMMITTEE ON
THE EUROPEAN UNION

REVIEW OF SCRUTINY OF EUROPEAN
LEGISLATION – SPECIAL REPORT

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THIRTY-FIFTH REPORT

5 NOVEMBER 2002

By the Select Committee appointed to consider European Union documents and other matters relating to the European Union.

ORDERED TO REPORT

REVIEW OF SCRUTINY OF EUROPEAN LEGISLATION

1. This report updates the House on the work being undertaken by the European Union Committee in carrying out the recommendation, made by the Leader's Group on Working Practices of the House and subsequently endorsed by the Procedure Committee and the House¹ that the European Union Committee conducts a review of the House's scrutiny of European legislation.

2. The Committee has heard evidence from a number of witnesses, including the Leaders of the political parties in the House of Lords; the Chairman of the House of Commons European Scrutiny Committee; and the Chairman of the European Affairs Committee of the Danish Parliament. Written evidence has also been taken. The Committee has deliberated on the issues raised in the Review, and the views of our six Sub-Committees have been sought. The Committee intends to publish a substantive report, together with all the evidence received, as soon as possible in the new session of Parliament.

3. That report will cover the questions which the Committee has set itself to address during the review. The questions on which we sought evidence are given below. We stress that these are the questions being addressed, not decisions or recommendations at this stage.

QUESTIONS UNDER CONSIDERATION

Scrutiny

- 1) What is the purpose of national parliamentary scrutiny of EU legislation?
- 2) At what stage in the European policy-making and legislation cycle is input from a national parliamentary scrutiny committee such as ours most effective?
 - Should we aim to comment on policy "upstream" at an early stage of formulation (e.g. Green and White Papers) or at a later stage when legislative texts are being negotiated?
 - What are the complications where co-decision and conciliation are involved?
- 3) Are we doing too little scrutiny of documents or too much?
 - Are any documents deposited that need not be?
 - Is the sift process effective?
 - Should we monitor more closely the application of subsidiarity as part of our scrutiny work?
- 4) How effective is the current Scrutiny Reserve Resolution?
 - What are the arguments for and against a Scrutiny Reserve which is more formally binding on the Government? Can we learn any lessons from the Danish system of mandating and how does this in practice operate?
 - Are there any particular deficiencies in the existing text? Is it robust enough to deal with the growing practice of "provisional agreements" on which we have reported separately?
- 5) Is sufficient time allowed for national parliamentary scrutiny?

¹ Report from the Group on Working Practices of the House (HL Paper 111, 29 April 2002); Procedure Committee's 5th Report (HL paper 148, 10 July 2002); HL Deb. 24 July 2002.

- What practical steps can be taken to improve the flow of information and documents?
- What can be done about those cases where insufficient time is available? Should HMG conduct more systematic monitoring of late deposit, and of scrutiny overrides?
- Are the Government's Explanatory Memoranda (EMs) in the form required for effective scrutiny and what can be done to ensure timely deposit of EMs?

Our Working Methods

6) Given the likely future priorities of the Union, is the balance of work between the Sub-Committees right? In particular, are any adjustments necessary following reforms agreed at Seville?

7) Do our Sub-Committees operate in the most effective way?

- Is the balance of effort spent on scrutiny of "documents" and "other matters relating to the European Union" appropriate?
- Is it appropriate that the same members conduct both full inquiries and other scrutiny work, and if so how can we best plan our work to give time for both activities?
- Given the other demands on members' time, do we make best use of this valuable resource?
- Do the Sub-Committees get the right evidence in inquiries and in particular do all the relevant parties have the chance to contribute?
- Is appropriate specialist advice available?

8) Is there sufficient emphasis on follow-up of previous work? In addition to the existing monitoring of Council activity, do we need to devise any new procedures for scrutiny of the Council of Ministers and in particular to match our timetable with that of the Council? Will proposed changes in the parliamentary year affect our scrutiny work?

9) In what areas can the Select Committee best add value to the work of the Sub-Committees?

- How useful and effective are the sessions with Ambassadors at the start of each Presidency and with the Minister for Europe after each European Council?
- Do our reports on these sessions assist the House?

Co-operation with other Scrutineers

10) What are the opportunities for co-operation (including joint evidence sessions) with the Commons in order to improve scrutiny? How can we ensure that the two Houses effectively complement each other and avoid unnecessary duplication of effort?

11) What can we learn from the work of other national parliamentary scrutiny committees? What steps can be taken to improve collective scrutiny by national parliaments?

12) How can we most effectively co-operate with MEPs?

Impact of our Work

13) What kind of output from our Committee has most impact?

- What notice does the House take of our work? In addition to the set-piece debates, what steps can be taken to encourage Members of the House to "mainstream" our work more into the House's broader consideration of EU matters e.g. via Question Time?
- What are the arguments for and against long-running inquiries leading to substantial reports; and shorter reports more obviously focussed on a limited point or points of policy in a particular area? How in practice can a short Report actually be produced?
- How effective is Correspondence with Ministers?
- How can we measure the impact of our work on the Government, the Commission, the European Parliament and other Member States' Governments and Parliaments?

Areas where additional scrutiny could be undertaken

14) The Committee deals only exceptionally with legislation made under the Comitology procedure. Should we do so more often and if so what are the implications for our other work? If it is not for us, who else should be doing this work and can we assist them?

15) Our scrutiny work also does not directly cover the implementation of EU law. Should the Government's EMs make their implementation strategy clear? Is scrutiny of implementation work we should be undertaking (and if so what are the implications for our other work?) If not, who should be doing it and how can we assist them?

APPENDIX

Membership of the Committee

Baroness Billingham
Viscount Bledisloe
Lord Brabazon of Tara (Chairman)
Lord Brennan
Lord Brooke of Alverthorpe
Viscount Brookeborough
Lord Cavendish of Furness
Lord Grenfell
Baroness Harris of Richmond
Lord Jopling
Lord Lamont of Lerwick
Baroness Maddock
Baroness Park of Monmouth
Lord Scott of Foscote
The Earl of Selborne
Baroness Stern
Lord Tomlinson
Lord Williams of Elvel
Lord Williamson of Horton