

HOUSE OF LORDS

SESSION 2002–03

1st REPORT

SELECT COMMITTEE ON  
THE EUROPEAN UNION

REVIEW OF SCRUTINY OF  
EUROPEAN LEGISLATION

WITH EVIDENCE

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# FIRST REPORT

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3 DECEMBER 2002

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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

### Box 1 Abstract

Scrutiny of EU legislation is of constitutional importance.

A review of how this House performs such scrutiny is timely now both because of the work of the Convention on the Future of Europe and because of pressure from within the House for such a review.

This Report examines the way our Committee, and the House, scrutinise EU legislation and draws comparisons with other ways of conducting such scrutiny.

We do not recommend the adoption of a Danish system of a committee mandating Ministers.

We do recommend strengthening the scrutiny process, including new means of scrutiny of the EC budget; of subsidiary legislation under the comitology procedure; and of the implementation of EU law. We make recommendations to improve our own methods of working, and the way the House deals with European affairs.

We also identify a number of areas where we will conduct further reviews, including of subsidiarity; of the Convention's ideas on the role of national parliaments; of the number and areas of responsibility of our own Sub-Committees; and of the provision of information to the public.

### PART 1: INTRODUCTION

1. Why is there a need for a report on the effectiveness of parliamentary scrutiny of the European Union? Those who govern the European Union need to be subject to scrutiny and held to account for their actions. The national parliaments of the Member States have a central role in such scrutiny and accordingly have a duty to ensure that their scrutiny of European affairs is purposeful and effective.

2. The House of Lords has for many years played a role in scrutinising European legislation, primarily through our Committee<sup>1</sup> and its predecessors and has always taken a wide view of its scrutiny role<sup>2</sup>. There has been a continuous process of development in our work to ensure that we keep pace with changes in the European Union. Hence we have on several occasions in the past addressed many of the questions covered in this report<sup>3</sup>. A specific review of scrutiny is nevertheless timely now because examination of the role of national parliaments is being undertaken by the Convention on the Future of Europe ("the Convention"), which appointed a working group on the subject<sup>4</sup>. While we do

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<sup>1</sup> Our membership is in Appendix 1.

<sup>2</sup> Appendix 3 sets out in some detail how our Committee currently operates.

<sup>3</sup> See for example: "1996 Inter-Governmental Conference" (21st Report Session 1994-95, HL Paper 105); "Enhancing Parliamentary Scrutiny of the Third Pillar" (6th Report Session 1997-98, HL Paper 25); "Delegation of Powers to the Commission: Reforming Comitology" (3rd Report Session 1998-99, HL Paper 23); "Special Report" [which deals with the re-appointment of the Committee under new terms of reference] (7 December 1999, HL Paper 12 Session 1999-2000) "A Second Parliamentary Chamber for Europe – An unreal solution to some real problems" (7th report session 2001-02, HL Paper 48); "The Scrutiny of European Union Business – Provisional Agreement in the Council of Ministers" (23rd Report Session 2001-02, HL Paper 135); "The Scrutiny of European Union Business – The Commission's Annual Work Programme" (25th Report Session 2001-02, HL Paper 141); and "The Convention on the Future of Europe" (30th Report Session 2001-02, HL Paper 163).

<sup>4</sup> Working Group IV on the Role of National Parliaments. The Group's final report is available on the Convention's website <http://european-convention.eu.int> as document CONV 353/02 (WG IV 17).

not seek here to duplicate the work being undertaken in the Convention, we hope that this review will be a contribution to that work.

3. The formal impetus for this report, however, was the recommendation, made as part of a wider review of the House's working methods undertaken by the "Leader's Group" and the Procedure Committee,<sup>5</sup> that we should review the European scrutiny work of the House<sup>6</sup>. This report delivers on that recommendation, although we do not confine our consideration to the limited issues addressed by the Leader's Group<sup>7</sup>.

4. This report cannot, however, cover in detail all the issues raised in our review. In some places we therefore merely raise a question rather than seek to provide a definitive answer. Outstanding matters will be the subject of further consideration in due course. We will in particular scrutinise in more detail over the current months several key topics on which the Convention's Working Groups are issuing reports. These include a wide range of matters, many pertinent to this review:

- The role of the national parliaments
- Subsidiarity
- The Charter of Fundamental Rights
- A single legal personality
- Complementary competencies
- Economic governance
- External action
- Defence
- Simplification
- Freedom, security and justice
- A social Europe.

5. We have taken evidence as part of this review. The questions we asked our witnesses are listed in Appendix 2 along with a list of those who sent responses, all of which are published with this report. We thank all those who assisted us. References in this report in the form of (Q 00) and (p 00) are to questions and pages of oral and written evidence.

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<sup>5</sup> The report from the Group, chaired by the Leader of the House, Lord Williams of Mostyn, appointed to consider how the working practices of the House can be improved, and to make recommendations (HL Paper 111 Session 2001-02), called for a review of the scrutiny of EU legislation. The Procedure Committee (5th Report Session 2001-02, HL Paper 148) and the House (HL Deb. 24 July 2002 col. 371) approved our suggestion that we conduct this review and inform them, and the Liaison Committee, of the result. We gave written evidence to the Leader's Group, which is available in the Library, although all the principal points reappear in this report to ensure their wider circulation.

<sup>6</sup> The Leader's Group called for a "review of the House's scrutiny of European Legislation". We take this to be a review not only of the work of the European Union Committee but also of the House's scrutiny of European legislation in a more general sense.

<sup>7</sup> The Group's Report makes reference to a number of suggestions that might be considered in such a review. We have considered all of these, along with other pertinent issues. The report from the Leader's Group also mentions by name a number of Members who, in the debate held on our report on the Second Chamber (HL Deb. 11 February 2002 col.885), made suggestions that might be covered by the review. We agreed not to be limited to considering just the matters raised in that debate.

## PART 2: WHAT IS SCRUTINY?

## WHAT IS MEANT BY “NATIONAL PARLIAMENTARY SCRUTINY” OF THE EU?

6. The question at the centre of this review is: What is the purpose of national parliamentary scrutiny of the European Union, its policies and its legislation; and how can such scrutiny be strengthened? We begin by explaining our understanding of the phrase “national parliamentary scrutiny”. Much of this report is concerned with the United Kingdom, and with the House of Lords in particular, but we have learned lessons from elsewhere and many of our recommendations may be more widely applicable than just to the work of this House. As we are looking at national parliamentary scrutiny, we do not consider in this report how the European Parliament operates, although the overlap between their work and ours is covered where necessary. As we are looking at parliamentary scrutiny, this report will cover scrutiny both by a committee such as ours and by the House itself.

7. By way of introduction, we should also clarify what we mean by scrutiny in this context. There is a constitutionally important distinction between the making of EU legislation and the making of domestic legislation. In the case of domestic legislation, Parliament makes the law, except where it has delegated to others the power to do so. In the case of European legislation, national parliaments have little direct input. EU legislation is made by the Council of Ministers (comprising ministers drawn from the Member States), often in co-decision with the European Parliament; or by the Commission under delegated powers (“comitology”, on which we say more in paragraphs 87–91 below). National parliaments are not involved. The work of scrutiny has been very different in the case of EU legislation from the work of scrutiny of domestic legislation. This report accordingly makes recommendations for enhancing the scrutiny of EU legislation.

8. We have interpreted the word “scrutiny” in its broadest sense, namely a process of examination and analysis of the proposals and actions of those responsible for government, with a view to ensuring they are accountable to Parliament for their actions. This part of the report considers three models of scrutiny: ours; that of the House of Commons European Scrutiny Committee; and the Danish model. The word “scrutiny” does, however, have a particular meaning in the context in which we operate. For the purposes of clarity we should stress that scrutiny in this report is not merely the internal procedure by which our Committee and its Sub-Committees consider specific EU documents. That is an important part of scrutiny, and we consider it critically and in some detail in this report, but scrutiny is a much broader concept<sup>8</sup>.

## WHAT IS THE PURPOSE OF NATIONAL PARLIAMENTARY SCRUTINY OF EU LEGISLATION?

9. Dr Adam Cygan, Lecturer in Law, Leicester University, stressed that scrutiny was “substitute sovereignty” (p 51). Lord Howell of Guildford, official Conservative opposition spokesman on Foreign and Commonwealth Affairs in the House of Lords, similarly stressed that scrutiny was central to the proper exercise of power (Q 42). Dr Caroline Jackson, MEP, Chairman, European Parliament Committee on the Environment, Consumer Protection and Public Health, noted a second purpose in our scrutiny work: the gathering together of “a detailed compendium of views” in our reports was of value (p 60). Dr Cygan agreed that our reports, drawn up by an “unrivalled body of experts” with the time to devote to the task, provided the House “with a comprehensive up-to-date analysis of EU activity, including detailed reports on specific legislative proposals” (p 51).

10. The Leader of the House, Lord Williams of Mostyn, combined these two ideas in stressing that, as EU legislation grew in importance, it deserved more vigorous and rigorous scrutiny, and more explanation (Q 4). Lord Howell of Guildford too argued that Parliament needed a “greater influence” over decisions taken at EU level to help bridge the gap which challenged the democratic legitimacy of the Union (Q 42). Baroness Williams of Crosby (Leader of the Liberal Democrats in the House of Lords) noted that scrutiny served two purposes: to hold Ministers to account and to ensure that citizens were aware of the impact of EU legislation. It was of constitutional importance to do so (Q 158).

11. The European Scrutiny Committee in the House of Commons has recently set out a definition of the purpose of the scrutiny system in their House:

“To ensure that members are informed of EU proposals likely to affect the United Kingdom, to provide a source of information and analysis for the public, and to ensure that the House and the European Scrutiny Committee, and through them other organisations and

<sup>8</sup> Our Committee publishes, through TSO, a fortnightly document entitled “Progress of Scrutiny” which lists all EU documents recently considered and sets out in the most basic factual terms what the state of play is on each. This document is freely available to Members of the House, and publicly available from TSO and on the internet at [www.parliament.uk](http://www.parliament.uk).

individuals, have opportunities to make Ministers aware of their views on EU proposals, seek to influence Ministers and hold Ministers to account<sup>9</sup>.

12. **While we note the Commons’ Committee’s definition of the purpose of national parliamentary scrutiny of EU legislation, we also underline the constitutional importance of such scrutiny.** It is an inevitable and desirable consequence of the principle of the separation of powers, on which modern national democratic constitutions are founded, that it is for the legislature, not the executive, to have constitutional responsibility for legislation. Parliament can delegate power to make legislation and, in the case of domestic subordinate legislation, retains control over Ministers exercising that power. Parliament can, ultimately, vote down such legislation, even though this power is rarely used. The situation with European legislation is very different. Once European regulations, directives and decisions have been through the law-making processes enshrined in the Treaties (which to varying degrees involve the Commission, the European Parliament and national government ministers operating in the Council), it is in practice too late for national parliaments to seek to reverse them, even if the EU instrument in question has to be given effect in the United Kingdom by means of domestic primary or secondary legislation. Thus Professor Neil MacCormick MEP emphasised that scrutiny was required before EU legislation was passed, as it would be directly binding on the United Kingdom (p 62).

13. **We accordingly stress that national parliamentary scrutiny of EU legislation has a clear constitutional purpose. Scrutiny at an early stage is therefore essential and must be as effective as possible.** To that end, scrutiny should include:

- The accumulation, presentation and summary of relevant material, including information, statistics, explanation and analysis.
- The provision of information to the House and to the public as a contribution to transparency.
- Drawing the attention of the House, the Government, European institutions and the public to significant matters contained within that information and in particular making recommendations—“focusing the debate”.
- Contributing to the law-making process by detailed analysis of draft texts, by exposing difficulties and proposing amendments.
- An examination of the Government and its role in agreeing European legislation and, as part of that process, compelling the Government not only to think through what it is doing or has done but sometimes to account for it.
- An examination of the Commission and the policies it formulates.

### THREE WAYS OF DOING SCRUTINY

#### *Introduction*

14. This section of our report explains how we currently operate. We also set out how the House of Commons and the Danish Parliament (the Folketing) perform scrutiny through their respective committees. We have chosen to examine the House of Commons in particular because some have argued that our work should be combined with, or operate more closely with, theirs. We have examined the Danish model because it has been held up in the House as one which the UK might wish to emulate. A very brief account of the parliamentary scrutiny systems of the national parliaments in the other Member States appears in Appendix 4.

#### *The House of Lords model*

15. These paragraphs summarise our current working methods. More details are given in Appendix 3. We operate under the terms of a ‘**Scrutiny Reserve Resolution**’ passed by the House, which is intended to ensure that Ministers do not agree to EU legislation in Council unless our scrutiny is complete. The full text of the Reserve also appears in Appendix 3.

16. The House has appointed us “to consider European Union documents and other matters relating to the European Union”. The documents are **deposited** in Parliament by the Government along with an **Explanatory Memorandum**, prepared by the relevant Department, which sets out the Government’s view on a number of key areas, including the policy implications of the proposal and the timetable for its consideration in Council. Each week when the House is sitting—and as required during Recesses—the Chairman of our Committee performs a **sift** of the deposited documents (see paragraph 56 below).

<sup>9</sup> “European Scrutiny in the Commons” 30th report, Session 2001-02, HC 152, paragraph 25.

Since its inception,<sup>10</sup> the Committee has delegated to the Chairman the task of conducting a first sift of all the documents formally deposited for scrutiny. The Chairman examines each document and its Explanatory Memorandum and decides whether it should be referred to one or more of the **Sub-Committees** for examination or cleared from scrutiny. About a quarter of all the EU documents deposited in Parliament are sifted to our Sub-Committees.

17. The Sub-Committees which examine documents are each responsible for a number of policy areas in which their members have expertise. A Sub-Committee can deal with each document referred to it in a number of different ways:

- clear it from scrutiny with no further action (for example, after noting the contents);
- clear it from scrutiny but write to the Minister expressing particular points of view;
- retain it under scrutiny and write to the Minister: correspondence continues until the Sub-Committee is satisfied and clears the document from scrutiny;
- retain it under scrutiny and call for evidence on it, which can in turn lead to correspondence with the Minister; or a short report; or a full analysis of the issues in a substantial report sometimes leading to debate in the House: all reports receive a written Government response.

18. Key features of our system are:

- the Government's Explanatory Memorandum, on which we rely as a major source of information;
- the sift, which focuses attention on significant documents, although Sub-Committees are not precluded from following up issues in documents which have been cleared by the sift and they do occasionally do so;
- the flexibility provided by a range of options for handling documents;
- the ability to maintain the Scrutiny Reserve until the process is completed: Ministers can override the Reserve but must give an explanation when they do so;
- the ability to secure a Government response, sometimes by way of a debate which has the effect of concluding the scrutiny process and lifting the Reserve;
- the ability to scrutinise "other matters" under our terms of reference, including matters on which no document is available;
- Scrutiny of Council activity is also becoming more important (in addition to scrutiny of the Commission) as activity increases under the Second and Third Pillars (Common Foreign and Security Policy; and Justice and Home Affairs).

19. It should, however, be understood that our system does not require the Government to agree with our views before the Reserve is lifted: the requirement is merely that the process of scrutiny is complete. Nor does our system require a Minister to secure a mandate from Parliament before negotiating a position in Council.

#### *The House of Commons model*

20. The European Scrutiny Committee in the House of Commons operates on the basis of a similar Scrutiny Reserve Resolution to that which applies in the Lords. The Committee receives the same Explanatory Memoranda and the same documents for consideration. There are, however, a number of significant differences in what they do with them:

- the Committee's purpose is not to examine the merits of documents but to report to the House whether they are legally or politically important and so worthy of a debate, which would normally take place in a European Standing Committee or, occasionally, on the floor of the Commons;
- it follows that there is no sift of documents—all are considered by the Committee;
- it also follows that there are no specialist Sub-Committees looking at particular policy areas, although the Committee does have the power (rarely used) to refer documents formally to departmental Select Committees;

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<sup>10</sup> As recommended by the 2nd report of the Select Committee on Procedures for Scrutiny of Proposals for European Instruments (Paper 194, 25 July 1973) paragraph 118. This is the Maybray-King Committee, whose reports led to the establishment of this Committee almost 30 years ago.

- the Committee corresponds with Ministers as we do, and occasionally makes substantive reports on topics such as Democracy and Accountability in the EU and the Role of National Parliaments, or European Scrutiny in the Commons<sup>11</sup>.

#### *The Danish model*

21. As part of this inquiry, we have heard evidence on how the Danish Folketing's European Affairs Committee conducts its work. We chose to hear a presentation from Denmark on this occasion because the Danish system has been cited as a model in the House<sup>12</sup>.

22. Mr Claus Larsen-Jensen, Chairman of the Folketing's European Affairs Committee, explained that his Committee gave a mandate to Ministers before every Council on the basis of hearings with civil society, NGOs, institutions and companies, etc. He said that Ministers then knew that, in a country of coalition governments, they had a majority behind them in their Parliament. There was, however, still a lack of understanding among other committees in his parliament that EU policy was not foreign but domestic. There was a need for more involvement in the co-decision process. The transmission of papers by the Commission direct to national parliaments—at the same time as sent to governments—would help, as would enhanced contacts with MEPs. Overall, the aim was to exert influence throughout the decision-making process (Q 87).

23. He stressed that Ministers sought a mandate “that is as wide as possible” to ensure that there was no problem in feeling “bound” in negotiations (Q 93). The mandate was usually given, because Ministers worked hard to present proposals the Committee would accept but, very occasionally, a Minister had to seek clarification from the Committee or its Chairman (Q 94). Since 1983 there had been no examples of a Minister trying to “cheat” the Committee over the content of a mandate (Q 96). He argued that mandating did not provide a block on negotiating or slow down the legislative process: it was about being a politically mature democracy giving the Minister room to negotiate (Q 118).

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<sup>11</sup> HC 152-xxxiii-I and HC 152-xxx, Session 2001-02.

<sup>12</sup> Lord Howell of Guildford in the debate on our Second Chamber report (HL Deb. 11 February 2002, col. 934).

## PART 3: EFFECTIVE SCRUTINY

AT WHAT STAGE IN THE EUROPEAN POLICY-MAKING AND LEGISLATIVE CYCLE IS INPUT FROM A NATIONAL PARLIAMENTARY SCRUTINY COMMITTEE SUCH AS OURS MOST EFFECTIVE?

24. The Leader's Group called for a review of "the appropriate balance between the scrutiny of general policy and that of specific legislative proposals". This is an interesting distinction and one of which the Committee and the six Sub-Committees, which conduct most of the substantive scrutiny work, are always aware.

25. The question can perhaps be better posed as: at what stage in the cycle of European policy-making and legislation can scrutiny committees have most impact on those formulating policy? Should we aim to comment on general policy "upstream" at an early stage of formulation (e.g. Green and White Papers) or at a later stage when specific legislative texts are being proposed and subsequently negotiated, or both? In addition, should we consider policy areas where there are as yet no documents?

26. Most of our witnesses advanced the view that we can have most impact at an early stage in the process<sup>13</sup>. The Leader of the House, Lord Williams of Mostyn, suggested we should intervene at a very early stage, before decisions were set in stone and while sufficient time was available. There would then be "an opportunity for a genuine dialogue" between Parliament and the Government at a time when "the dynamic...is almost qualitatively different" (QQ 5-8). Lord Howell of Guildford urged more scrutiny before texts started being formed, as well as at the implementation stage (Q 56). Jimmy Hood MP, Chairman of the Commons European Scrutiny Committee, put it succinctly: "The earlier you can get in, the better" (Q 133).

27. Commissioner Michel Barnier (Commissioner with particularly responsibility for relations with national parliaments) said he saw "an enhanced opportunity" for our input at the stage of consultation in policy development, i.e. at the pre-legislative consultation stage of Green and White Papers and communications, of which the Commission was intending to make greater use. The European Policy Centre (EPC) too urged us to work at pre-adoption stage, while Professor Neil MacCormick MEP suggested our work should take place "as early as possible", i.e. at Green Paper stage when Commission proposals first come forward (p 62).

28. Dr Cygan thought it the "strength" of our scrutiny process that we were able to conduct diverse inquiries on all aspects of EU law and policy, which avoided the Committee merely undertaking the "mechanical scrutiny of legislation". This in turn allowed us to be proactive as well as reactive. He too accordingly argued that we should always move up-stream in the legislative process, both to counter the limitations of the Scrutiny Reserve (on which we say more in paragraphs 64-74 below) and to help us to avoid problems of timing. Our familiarity with policy issues would provide the Government with important questions to raise in Council (p 52). Baroness Williams of Crosby drew parallels with pre-legislative scrutiny and thought a legislature most effective when conveying views before the Government's "pride" committed them to a particular position (Q 160).

29. **The issue identified here is whether we should aim to report more on legislative proposals or on early discussion documents. We have always believed that inquiries of both kinds can be of value.** The practice of our Sub-Committees has varied according to the subjects involved but there are advantages in choosing as the subjects for our major inquiries proposals at an early stage, not least because the opportunity for significant influence on policy is reduced once proposals come close to final decision and governments are therefore less likely to be persuaded to change their minds. This is particularly important for Sub-Committee C in dealing with Second Pillar matters (Foreign Policy and Defence), on which there are very few texts but much inter-governmental discussion.

30. **We accordingly endorse the near unanimous view of our witnesses that we should aim to work at the earliest possible stage in the policy-making cycle. It is then that we stand the best chance of influencing policy. One particular method by which we can look upstream is by examination of the Commission's Annual Work Programme, on which we have this year begun to report<sup>14</sup>.** Commissioner Barnier noted this development (p 49) and we are pleased that the Convention is actively discussing scrutiny of the Programme. The Commons European Scrutiny Committee is also pressing for the Council's strategic plan to be submitted by governments to national parliaments for consultation<sup>15</sup>. **We will consider the suggestion for national parliamentary scrutiny of the Council's strategic agenda.** We also propose (paragraphs 77-82 below) the scrutiny of the EC Budget at an early stage.

<sup>13</sup> Maybray-King (see n 10 above) came to a similar conclusion (1st Report (paper 67, 8 March 1973) paragraph 2).

<sup>14</sup> Report cited in n.3 above.

<sup>15</sup> Report as cited in n.11 above (152-xxxiii) paragraphs 65, 139-140.

31. Lord Howell of Guildford called for the Commission and Council to make more information directly available to national parliaments, and in better time (Q 57). We welcome this suggestion and also **call on the Government to undertake always to draw to the Committee's attention any matters under discussion or consideration by the Commission which might merit detailed scrutiny when a proposal comes forward. Such an early warning system would greatly assist us.**

#### *Co-decision and Conciliation*

32. Under the co-decision procedure, after the Commission has adopted a proposal it is examined by the European Parliament (EP) and the Council of Ministers (the Council). If they both agree on its content, the proposal is accepted. If they do not reach agreement, the Council will adopt a common position. The EP then has three months to approve, amend, reject or take no action on the common position. If the EP approves or takes no action on the common position, the Council can adopt it as a legislative act. If the EP rejects the common position by an absolute majority, the proposal falls. If the EP amends the common position by an absolute majority, the Council has three months to examine the amendments (the Commission too gives an opinion on the amendments). If it agrees with them, the proposal is adopted. If the Council does not approve all the EP's amendments, a Conciliation Committee is convened. The Committee is made up of 15 members of the Council or their representatives, and 15 representatives from the EP. The Committee has six weeks to draw up a 'joint text'. If the joint text is approved by the EP and the Council, the measure is adopted. If the Conciliation Committee cannot reach agreement, or if their joint text is not approved by the EP or the Council, the act is deemed not to have been adopted.

33. The co-decision procedure is significant because a number of major legislative initiatives are adopted under it. Mr Larsen-Jensen suggested his Committee faced problems in the time allowed for these procedures—there was not enough “space for the involvement of the democratic process”. There ought to be greater co-operation with the EP at first reading stage (QQ 95, 110). There are clearly practical difficulties in carrying out scrutiny when conciliation is engaged. We have accordingly considered how our Parliament might perform scrutiny when conciliation is underway, and how effective that scrutiny might be.

34. Dr Cygan told us that there was no time built into the co-decision procedure for national parliamentary scrutiny and that the final text agreed after the co-decision procedure can often differ from that submitted for national parliamentary scrutiny at the start of the legislative process. Ministers can invoke a parliamentary scrutiny reserve but, in his view, would often be reluctant to discuss changes, particularly at the end of a Presidency (p 52). Professor Neil MacCormick MEP noted that it would be possible for national parliaments to make representations to their national ministers on the basis of scrutiny carried out on earlier versions of the text (pp 62–63). Dr Caroline Jackson MEP wanted to see more documents made public so that scrutiny would be enhanced (p 61).

35. Our ability to perform effective scrutiny during the co-decision and conciliation process is clearly affected by timetables which are outside the control of national parliaments. The speed with which proposals can move, the limited number of people involved, and the fact that negotiations often take place behind closed doors all complicate the process from our point of view. The substantial number of proposals going to conciliation is a strong argument for extra scrutiny. **We accordingly urge the Convention to consider a revision of the co-decision procedure to allow a greater opportunity for national parliamentary scrutiny. Our proposal for the Convention's consideration is that, when conciliation is triggered, the relevant documents (from the Commission, Parliament and the Council) should be issued publicly and submitted to national parliaments, which would have four weeks to consider them before the Conciliation Committee can meet.** We make this proposal in the spirit of better informing those directly involved in the co-decision process. We do not intend that the procedures are delayed or that national parliaments play a direct role in the passage of the legislation which is being negotiated by others. **In the meantime, we would welcome proposals from our Government to ensure better provision of information on matters subject to the co-decision procedure at its various stages.**

#### IS SUFFICIENT TIME ALLOWED FOR NATIONAL PARLIAMENTARY SCRUTINY?

36. Under Protocol IX to the Amsterdam Treaty national parliaments have six weeks to scrutinise proposed legislation. The text of the Protocol states:

“A six-week period shall elapse between a legislative proposal or a proposal for a measure to be adopted under Title VI of the Treaty on European Union being made available in all languages to the European Parliament and the Council by the Commission and the date when it is placed on a Council agenda for decision ... subject to exceptions on grounds of urgency, the reasons for which shall be stated in the act or common position”.

37. In the United Kingdom, the first stage in the scrutiny process is the deposit of the document in Parliament by the Government, followed by the Explanatory Memorandum originating from the relevant government department.

38. Effective scrutiny depends to a large extent on the right documents being deposited at the right time. The pace of the legislative process in the Union has accelerated and can sometimes be extremely fast. There have even been occasions when the government departments on whom we rely to furnish EMs on documents have been caught out by the speed of events, particularly towards the end of the six month rolling presidency. We accordingly watch closely for any lapses by the Government or the Council secretariat. Problems of delay are now much less frequent and much less severe than they once were and we compliment all those who continue to work hard to this end. The electronic transmission of documents from Brussels to the FCO in London has helped enormously (see Q 12).

39. Where the Select Committee or one of its Sub-Committees thinks it necessary to do so, we do have the flexibility in our procedures to pursue proposals at speed, and at short notice. This is particularly true where we are following up previous scrutiny, or an earlier report. The recent consideration, both by the Select Committee and by Sub-Committee E, of the European Arrest Warrant<sup>16</sup> is a case in point. The Select Committee discussed the matter on a Tuesday: the Sub-Committee heard from the Minister the next day and wrote a letter the following day. The transcripts of the evidence and the letter were published the following week as a report which was debated on the Monday of the week after that. Speedy scrutiny was much assisted by the willingness of Ministers to make themselves available.

40. The Convention's Working Group on National Parliaments is nevertheless considering proposals<sup>17</sup> for even greater efficiency including:

- Ensuring greater openness in the Council;
- The avoidance by the Council and its Working Groups of any form of preliminary agreement on a proposal during the six week period;
- The simultaneous transmission to national parliaments as well as national governments of both legislative documents and Commission proposals;
- Reviewing the time limits in the Protocol.

We will consider the output of the Working Group in a separate report.

41. Baroness Williams of Crosby thought greater openness in the Council was an essential element of scrutiny because without it, a scrutiny committee could not be sure that Ministers had acted on their conclusions (Q 158). **We have previously endorsed greater openness in the Council<sup>18</sup> and note that this will facilitate faster scrutiny by national parliaments. We note that abolishing the six monthly cycle of presidencies could help scrutiny by avoiding an "end of term" rush to decision, provided that other artificial deadlines are not built in.**

42. **To assist efficient scrutiny we will, where a proposal is moving quickly through the legislative cycle, more regularly ask government officials to be available at short notice to assist the Committee in matters of explanation and elucidation.** This should help to avoid the unnecessary maintenance of a scrutiny reserve just because of a lack of basic information.

#### THE SCRUTINY PROCESS

43. This section of the report considers the process by which documents are deposited, sifted and examined and concludes by reviewing the Scrutiny Reserve Resolution under which we operate.

#### *The Government's Explanatory Memoranda*

44. The Government's Explanatory Memoranda (EMs) are central to effective scrutiny. We have considered whether they are in the appropriate form.

45. A standard EM will include information on the following:

- The legal base
- Scrutiny history

<sup>16</sup> See our Report – 16th Report Session 2001-02, HL Paper 89.

<sup>17</sup> See n.4 above.

<sup>18</sup> See our report on the Convention cited in n.3 above.

- Policy implications
- Cost assessment
- Timetable.

46. Jimmy Hood MP thought that the Government could give more details of information they had received from the Commission and which lay behind their own policy views (Q 145). We questioned the Government on whether there could be more information on the devolution implications; on the Government's implementation strategy; and on the potential cost of a proposal. Mr Michael Roberts, Head of Division, European Secretariat, Cabinet Office, told us that the Government was pressing the Commission to make greater use of *fiches d'impact* (cost assessments). He offered us further information on what could be added on the Government's implementation strategy but thought that the initial EM might be at too early a stage, not least given the need to consult the devolved executives, although he suggested we might write to pursue particular cases (QQ 12–17).

47. In a subsequent letter (printed on p 9 below) the Leader of the House argued that the Government could not do more to set out in detail in an EM whether primary or secondary legislation was intended for implementation in a particular case. **In spite of this explanation, and the Leader's emphasis on the Government's willingness to provide more information, we find it disappointing that Ministers might be prepared to agree laws in Council without having determined how they are to be implemented in the UK.** We note the Leader of the House's intention to provide the Government's best assessment of their implementation strategy. **We nevertheless recommend that the Government's proposals to implement a particular piece of legislation be set out in more detail in the initial EM. The fullest possible explanation needs to be given on the implementation of EU legislation on matters concerned with Justice and Home Affairs. More generally, the EM should as a matter of course state whether primary or secondary legislation is envisaged and if the latter, under which power. An indication should be given of the factors which lay behind the decision. Furthermore, where the powers in section 2(2) of the European Communities Act 1972 are intended to be used, the Government should indicate whether the affirmative or negative procedure is envisaged and the reasons why.**

48. **We also recommend that EMs give fuller information on the devolution implications of a proposal; on any proposed creation or extension of the powers of a comitology committee<sup>19</sup>; and a fuller account of the policy implications for the UK. There should also be a section on any potential human rights issues. The Government should consider making a formal statement as is now issued on primary legislation, that, in the view of the Minister signing the EM, a proposal is compatible with the provisions of the Human Rights Act 1998.**

49. We are also concerned that some categories of document can be accompanied by a short-form EM without a ministerial signature ("unsigned EMs"). Requiring a ministerial signature is at least a minimum guarantee that a Minister will read the material, or perhaps ask for clarification. Without that, proposals can come forward seen only by officials, which weakens democratic accountability. **We accordingly expect all EMs—which are after all the Minister's evidence to Parliament—to be signed. Those categories of document currently subject to an unsigned EM should instead be accompanied by a short form EM, as at present, but with a signature.**

#### *Which documents are deposited?*

50. Over a thousand documents are deposited before Parliament each year. Categories of proposal which are to be subject to scrutiny are governed primarily by the terms of the Scrutiny Reserve Resolution<sup>20</sup>. The Committee and the Government on occasion also agree on what is expected of the Government, for example by the making and acceptance of recommendations in a report such as this. The two Houses aim to keep in step in ensuring that the Government deposits the right documents for scrutiny. The Commons Committee has noted that there are some categories of documents which are rarely or never thought to be of legal or political importance and as a consequence their Committee has for some years agreed, for example, that transfers between budget lines need not be the subject of a formal deposit and explanatory memorandum. The Treasury instead sends a consolidated list of these documents, under the cover of a single EM, every quarter. **We support the consolidation of all transfers of appropriations into a single consolidated report.**

<sup>19</sup> For more details on the comitology procedure see paragraph 87–91 below.

<sup>20</sup> The full text of the resolution as agreed on 6 December 1999 is printed in Appendix 3. Before that date, the Commons Resolution (dating from 1980) had been held to apply to this House. The Government in its relations with the Committee at that time operated as if a provision applied in this House similar to that which applied in the House of Commons (see our Special Report cited in n.3 above).

51. The Commons Committee has now proposed<sup>21</sup> to streamline further the deposit of documents by no longer requiring the deposit of certain categories of documents provided that regular lists of such documents are produced and that Ministers keep the Committee informed of any broader issues or general developments arising so that the Committee can require the deposit of any individual document at any time. The categories of document for which the House of Commons Committee has proposed this new procedure are:

- 1) Community positions on rules of procedure for various Councils and Committees, including those established under Association Agreements;
- 2) Proposals to extend Common Positions imposing sanctions (without making substantive changes) in pursuance of UN Security Council resolutions;
- 3) Proposals for making minor changes to lists of people or organisations subject to restrictive provisions in existing measures;
- 4) Draft Council decisions relating to decisions already made in Association Councils or Committees;
- 5) Reappointment of members to EU organisations;
- 6) Documents on anti-dumping measures.

52. The Commons Committee has invited us to consider agreeing that these documents be no longer deposited. **We agree that documents in the categories 1–5 set out in the preceding paragraph need not be deposited, although we would wish to see the same arrangements made to keep us informed as are proposed by the House of Commons.** In this context, we note that the Leader of the House floated the idea of an Annual Review by the Government on the operation of such a new system (Q 12). **We would, however, wish to see anti-dumping documents still deposited as they may have implications for UK industry.**

53. The Leader of the House also suggested (Q 18) that three further categories of document be no longer deposited. These are:

- Proposals for legislation concerning the administration of Community tariff quotas;
- Requests for derogations from customs duties, under the 6th VAT Directive;
- Commission opinions on EP second reading amendments.

54. Lord Williams suggested that these represented about sixty documents per year. **We agree with the Leader of the House that the first of these categories of documents, because they almost never raise matters of significance, need no longer be deposited, subject to the same provisions for review. We would accordingly invite our sister Committee in the Commons to agree that these documents be added to their list of documents that do not need to be deposited.** The second category, however, are matters on which we do pursue issues; and the third relates to our recommendation on co-decision (see paragraph 35 above), so as a consequence of that recommendation we wish them still to be deposited.

### *The Sift*

55. As explained above (paragraph 16), our Chairman conducts a sift of the documents deposited. Jimmy Hood MP, albeit talking of his own Committee's processes and not ours, said pithily: "you have to be selective to be effective" (Q 142). Dr Cygan noted that when our Committee was established it had been envisaged about 5 per cent of documents being sifted for examination but in recent years the figure had been 15–25 per cent. His view was, however, that the sift process generally worked well and that it was difficult to envisage a viable substitute. He stressed, however, that the provision of the EM was crucial to the process. He thought that Sub-Committee Chairmen might provide a second filter (pp 51–52). Lord Pearson of Rannoch, on the other hand, argued that the Committee itself should review the sift each week (p 63).

56. In conducting the sift, the Chairman receives advice from both the Clerks and the Legal Adviser. This advice is designed to ensure both that new documents of significance are sifted to the relevant Sub-Committee; and that documents where the Sub-Committees have had a past interest, or have a continuing interest, in a subject are also sifted. Hence, the Sub-Committees are already involved in the process.

57. **It is our view that the sift process generally works well.** The purpose of the sift is to ensure that the time of members of the Sub-Committees is spent on those issues which merit their attention and

<sup>21</sup> In their report on Scrutiny (see n.11 above) paragraph 111.

to which they can add value. There is very little point in summoning a group of Members to the House merely to endorse a list of those documents on which they would have nothing to say. We note that previous reviews of our work<sup>22</sup> have reinforced the importance of the sift process and that **a Sub-Committee is not precluded from examining a document cleared on the sift.**

58. The sift system also allows some documents to be cleared from scrutiny even at times, such as the Recess, when it is not normally convenient for Committees to meet<sup>23</sup>. **We stress, however, that the provision of proper Explanatory Memoranda is absolutely essential to the effective functioning of the sift system and we have made suggestions for improvements in this area** (see paragraphs 47–49 above).

59. Further to our recommendations on co-decision (paragraph 35 above), **we will examine the criteria currently used for sifting documents to Sub-Committees at late stages in the legislative cycle.**

### *The Scrutiny Reserve*

60. The Scrutiny Reserve Resolution is set out in full in Appendix 3. In summary, the purpose of the Reserve is to ensure that Ministers do not agree to EU legislation in Council unless we have completed scrutiny (including by way of a debate in the House where that is required). It is important to stress here that the Reserve is not a device requiring Ministers to agree with the Committee. Hence a proposal which we have considered, to which we have strong objections, but on which we have completed scrutiny, would not be subject to a reserve. Any proposal which we are still considering, however, even if we have no objection to it, remains subject to a reserve.

61. Dr Cygan thought that the Resolution provided both our House and the Commons “with a minimum guarantee that they could carry out the terms of their standing orders and influence the Minister”. He nevertheless recognised that “while domestic parliamentary scrutiny remains outside the legislative loop there will always be occasions when the Scrutiny Reserve Resolution will not fulfil its objectives”. There was a need for a balanced operation of the reserve and a recognition that scrutiny does not stop when the reserve itself is lifted. He called for parliamentary scrutiny reserves to be expressly covered within the Treaties (pp 52, 54–55).

62. The Leader of the House noted that the scrutiny reserve provided a structural and extremely important internal discipline on the Government. He compared the Reserve with the work of the Delegated Powers and Regulatory Reform Committee: that Committee had no power to bind the Government to amend domestic United Kingdom legislation but the Government would be very reluctant to ignore its views. He noted that there had only been 80 cases where the Government overridden a United Kingdom scrutiny reserve out of 1300 documents deposited in 2001: 56 of these had been because of the parliamentary recess (QQ 9–11)<sup>24</sup>.

**63. For the scrutiny reserve to be working “properly”, the Committee should not maintain the reserve unnecessarily: to do so would weaken the Government’s negotiating position and devalue the Reserve. But it is also essential that the Government does not override it without good cause. It is accordingly essential that HMG ensure that documents are deposited in good time. We take this extremely seriously and regularly follow up delays with Ministers. We can then ensure that our procedures of sift and examination operate efficiently.**

### STRENGTHENING THE SCRUTINY RESERVE

#### *Is the present Reserve adequate?*

64. Dr Cygan argued that the Government’s responsibility to the House and to the Committee to provide documents on time should be formalised within the Scrutiny Reserve Resolution to ensure that the Council could not agree something until the Committee had had at least a minimum time to consider it (p 54).

65. There are, however, those who argue more strongly that the present reserve is inadequate. Lord Stoddart of Swindon told us that parliamentary scrutiny would not be effective unless ministers’ actions were expressly authorised by a vote (p 64). Lord Howell of Guildford, Conservative front bench spokesman in the Lords on Foreign Affairs, has called for European scrutiny to be made “mandatory

<sup>22</sup> For example, the Report from the Select Committee on the Committee Work of the House, chaired by Earl Jellicoe (HL Paper 35, Session 1991-92, paragraph. 140).

<sup>23</sup> During the last summer recess, for example, our then Chairman conducted two sifts.

<sup>24</sup> A number of these cases, however, would have been documents such as Commission reports, or would have been amended versions of proposals already cleared, or would have been when only the Commons Committee maintained a reserve.

and legal”<sup>25</sup>. In evidence, he explained that this was part of a broader initiative to reassert the influence of Parliament. As part of that, Parliament should set an example of involvement in EU decisions and mandate or bind Ministers “except in the most rigidly defined circumstances”. He stressed that there would always be exclusions and exceptions but they should be “very narrow and...most assiduously agreed” (Q44). While legislation might well be required to achieve this, he hoped that a committee operating under such a system would remain independent of Government control (QQ46–7).

66. The Leader of the House, however, suggested that a binding scrutiny reserve resolution would be too rigid. It would not allow sufficient flexibility to Ministers in negotiations and could on occasion preclude them from securing a deal in the United Kingdom’s best interest. He suggested that any mandatory reserve would always in fact be subject to caveats and in his view the present system, properly observed, was almost that (Q10).

67. In the Commons, the European Scrutiny Committee has the power to recommend a debate in a Standing Committee or on the floor of the House. Jimmy Hood MP told us that a negative vote in Standing Committee would not prevent the Government acting but a negative vote on the floor would be “very difficult” for the Government (QQ 123–127).

#### *A Mandate?*

68. The Danish Parliament’s European Affairs Committee has the power to mandate Ministers before they go to Council (see paragraph 22 above). Some of our witnesses, however, questioned the effectiveness of the Danish model. Dr Caroline Jackson MEP noted that the Danish Parliament could not bind MEPs, who played an important part in the conciliation procedure (p 61). Lord Inglewood MEP did not think that a mandated system would work in the United Kingdom. There was a danger that the national negotiating position would be given away and there would be complications if the two Houses could not agree (p 59). Dr Cygan also questioned whether a mandatory system would work in the United Kingdom, where accountability of ministers always resided in the Chamber and not the Committee; where scrutiny was usually conducted *post facto*; and where, under the devolution settlement, accountability was split (p 52). Jimmy Hood MP noted that the Danes had coalition governments whereas the United Kingdom had majority governments; and if a committee had power over a government, that government would have power over the committee—which would mean the executive taking control of the scrutiny process (Q 134).

69. We have considered the Danish model and can see its superficial attraction. The idea that Ministers cannot negotiate on behalf of the United Kingdom without a specific mandate from our Committee is attractive. We can see also merits in the argument that a Minister going forward to negotiation supported by our Committee is in a much stronger position to take the national view. We can also see that a cynic might doubt how a system based on scrutiny rather than control could effectively guarantee parliamentary democracy. A mandatory system would appear to remove the comfort of the safety zone which the Government currently enjoys in their freedom to negotiate after our scrutiny.

70. **We have nevertheless concluded that a mandatory scrutiny system would not work under UK circumstances.** The Danish political environment is very different from ours, with almost permanent coalition governments. We agree with the arguments set out in paragraph 68 above: there are dangers in giving so much power to our Committee or indeed to its Chairman. This could lead to the Government wishing to secure both the majority on the Committee, and that the chair was filled by somebody amenable. There are also dangers in taking power away from the House as a whole. Furthermore, a mandatory system would only work if a new mechanism were found to allow all the relevant UK parliamentary bodies to come to a single view. Overall, in a system such as the European Union, requiring agreement in negotiation between representatives of the Member States, there must always be flexibility and room for manoeuvre.

#### ALTERNATIVE WAYS OF STRENGTHENING THE RESERVE

##### *New procedures*

71. Baroness Williams of Crosby thought the scrutiny reserve should be “sacred” during the six week period provided by the Amsterdam Protocol<sup>26</sup> and capable of being overridden only by a positive vote of the House. After the six weeks any overrides should be explained to the House (QQ 178–9). We agree. To this end we propose a modification to the scrutiny reserve procedure modelled on the system

<sup>25</sup> See n.12 above.

<sup>26</sup> Under Protocol IX to the Amsterdam Treaty, national parliaments have six weeks for scrutiny between the adoption of a proposal by the Commission and its agreement in the Council.

which operates in France<sup>27</sup>. **We propose that, in order to maintain effective parliamentary scrutiny of EU legislation, our Committee have the right to require that the Government secure a positive resolution from the House as a whole in order to lift a scrutiny reserve which is being maintained by our Committee because of significant outstanding policy concerns. We do not envisage this power being exercised other than exceptionally.**

72. We note that Jimmy Hood MP supported such a procedure (Q 137). We also note the suggestion from the Leader of the House that any procedure of this kind would be less inconvenient for the Government where it has a majority (Q 10). We nevertheless consider that such a power would be a useful addition to the scrutiny system in a House such as ours, where the present Government (and indeed the present Conservative opposition) do not have a majority and the two main parties are therefore required to seek a broad consensus in securing victory in a division. **We also propose that this new procedure, as an ultimate weapon of last resort, could only be used when triggered by a decision of the Select Committee acting on a recommendation from one of the policy Sub-Committees.**

73. There are new procedures within Government to flag dossiers where an override might be triggered (Q 13). Under present practice Ministers must, whenever the scrutiny reserve is overridden, send an immediate and full explanation to the Committee in writing. This provides a very public and pressing obligation on Ministers to explain themselves if the reserve is overridden. Ministers are expected, where possible, to write in advance of overriding scrutiny but in any event must do so within two days of the relevant Council. Our practice will be that any such ministerial letter will be considered by the relevant Sub-Committee who need to take a formal decision to clear the document from scrutiny. It is particularly important for documents where the Minister warns in advance that the reserve might be overridden to be sifted to the relevant Sub-Committee, both to examine the validity of the reasons given and to allow scrutiny in case the reserve is not in the event overridden.

**74. As an enhancement of the scrutiny process, however, we recommend that, in those cases where a Minister has overridden a reserve, the Minister should come to Parliament and give an explanation by way of Ministerial Statement.**

#### *Provisional Agreement*

75. We have recently reported<sup>28</sup> on the practice of Ministers seeking to obtain “provisional agreement” in the Council. Our report was debated in the House. The Scrutiny Reserve Resolution needs to be updated to take account of the practice of the Council. **We accordingly recommend that the Resolution should be amended to make clear that the term "agreement" (which a Minister must not give before scrutiny is cleared) includes all forms of agreement, including provisional agreements and other similar practices such as the adoption of “a general approach”.**

#### *Should HMG conduct more systematic monitoring of late deposit, and of scrutiny overrides?*

76. Monitoring of scrutiny overrides has not been systematically reported to Parliament. It has happened in the past in response to a Written Question but should happen as a matter of routine. **We recommend a review, co-ordinated by the Cabinet Office and taking place say every six months, of those cases when the scrutiny reserve has been overridden and giving the reasons why. This information should be reported to Parliament.**

#### ADDITIONAL SCRUTINY

##### *Scrutiny of EU financial affairs*

77. Sub-Committee A of our Committee has been examining how we can improve our scrutiny of EU financial affairs (see the memorandum from the Sub-Committee in Appendix 5). The Sub-Committee examined the way in which it scrutinises three elements of European financial affairs. First, the negotiations that formulate the annual Budget of the European Communities; secondly, the multi-annual financial framework that fixes the ceilings for spending in each category within the Budget; and thirdly, the key spending decisions that frequently determine how money is spent up to the ceiling in each category in the annual Budget.

78. The decisions on the total level of EU expenditure are of paramount importance and must remain the focus of concentrated scrutiny. **Sub-Committee A will continue to consider in detail any changes to the overarching legal framework within which the annual Budget is set. The major spending**

<sup>27</sup> See Appendix 4.

<sup>28</sup> See n.3 above.

**decisions will also remain a focus of rigorous scrutiny for all of our Sub-Committees. The Sub-Committees will continue to scrutinise in detail proposals for legislation that have budgetary implications and will follow closely negotiations on such proposals at Council meetings.**

79. Scrutiny of the annual Budget can be complicated and time consuming. Sub-Committee A's scrutiny of the Budget should not distract it from other inquiries on topics that have large budgetary implications. The Sub-Committee should focus its efforts on particularly significant stages and developments in the annual Budget process. The key event for the Sub-Committee should be scrutiny of the Commission's Preliminary Draft Budget before the establishment of the Draft Budget by the Budget Council in July, as this meeting sets the main features of the Budget for the following year.

**80. Sub-Committee A will therefore take oral evidence from the Government on an annual basis before the first reading of the Budget in the Budget Council and thereafter we will publish a short report.** Publication of a report at this juncture in the Budget-making process would also inform the House of negotiations at an early stage and would introduce an element of parliamentary scrutiny where little currently exists in this House. By adopting this focused approach at an appropriate time in the annual Budget process, the Committee would aim to contribute to greater accountability, openness and transparency. We intend that the scrutiny process be constructive for all concerned. **To enable the Sub-Committee to conduct a productive evidence session at this early stage in the annual cycle, we call on the Government to submit an EM on the Commission's Overview document of the Preliminary Draft Budget at the earliest possible opportunity, preferably by the middle of May.**

81. There is a huge amount of documentation on the annual Budget that has to be deposited in Parliament. The flow of large numbers of documents relating to the annual Budget, together with the accompanying EMs and Ministerial letters, is inefficient and produces a confusing and bureaucratic picture of the Budget-making process and of scrutiny generally. Furthermore, duplication can occur when the Sub-Committee considers each separate stage of the Budgetary making process. There is great scope for streamlining the flow of documents on the annual Budget to Parliament, in order to produce a more efficient procedure that is focused on the key stages where our scrutiny work can have an influence on the Government.

82. Once the Sub-Committee has scrutinised the Preliminary Draft Budget in detail, the important thing is then for the Committee to be informed of the major developments in the fast-moving Budget negotiations as soon as possible. **In practice, this would mean the Government quickly updating the Committee by Ministerial letter after the various stages of the annual Budget cycle rather than waiting to draft an EM once they have received the official translated texts.** It would be helpful if, after the first reading in Council, the first reading in the European Parliament and after the second readings in the Council and the European Parliament, the Government informed the Committee of developments by Ministerial letter rather than in an EM. Once ready, the documents themselves should still be deposited in Parliament, in order to maintain a complete record of each EC Budget. We have also recommended (see paragraph 50 above) that **all transfers of appropriations should be recorded in the consolidated report rather than deposited separately.** This reform would streamline the present bureaucratic system of reporting transfers to the Committee and would provide a more efficient procedure so that Members can concentrate their scrutiny on the major financial decisions.

### *Subsidiarity*

83. The principle of subsidiarity, introduced into the Treaties by the Treaty of Maastricht, is intended to ensure that action takes place at EU level only if the Union is really able to act more effectively than the Member States individually. Subsidiarity is a significant theme in the Convention, which set up a Working Group on the issue. This group has considered proposals for subsidiarity to be better monitored during the legislative process including proposals designed to allow national parliaments to act rapidly and effectively, and perhaps collectively, should they consider that a legislative proposal does not comply with the principle of subsidiarity. At present subsidiarity is only monitored by the Court of Justice after the adoption of legislative acts (and not on any systematic basis). Our own scrutiny of individual proposals, however, does already take account of whether they accord with the principle of subsidiarity.

84. The Working Group submitted its conclusions to the Convention's plenary session on 3 and 4 October 2002<sup>29</sup>. The Group proposed four main reforms for improving the monitoring and application of subsidiarity:

- i) an early warning system should be set up to enable national parliaments to consider whether Commission legislative proposals conform to the principle of subsidiarity;

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<sup>29</sup> Working Group I on Subsidiarity (Final Report CONV 286/02). See n. 4 above.

- ii) national parliaments should have the right to appeal to the European Court of Justice after the adoption of legislative acts in cases of violation of the principle of subsidiarity;
- iii) the Committee of the Regions may appeal to the European Court of Justice, on the same grounds, in areas of its competence; and
- iv) the Commission should be obliged to attach a ‘subsidiarity sheet’ to its legislative proposals to provide a clearer assessment of the application of the principle of subsidiarity.

85. We have considered whether we should monitor subsidiarity issues more closely, in addition to the work we already undertake. We note that the House of Commons European Scrutiny Committee has called for a mechanism to allow national parliaments to register concerns<sup>30</sup>. We also note that any role for national parliaments in the area would require specialist expertise—which in our case is provided by our Sub-Committees. **We propose to examine in more detail in a separate report the proposals on subsidiarity emerging from the Convention.**

#### *Follow-up of our work*

86. Dr Caroline Jackson MEP suggested that we needed to spend more time on hard-hitting follow-up reports, especially where initial legislative proposals had changed during the later stages such as conciliation. She particularly drew attention to the need for scrutiny where costs had been incurred following amendments agreed with the European Parliament (p 61). Lord Stoddart of Swindon suggested a more general review of items of European legislation, to see whether it was still required (p 64). Baroness Williams suggested that follow-up work should be published both six months and a year after each of our reports to assess their impact (Q 164). **We will seek to devote the necessary time and resources to following up our previous work. This could take the form of periodic reviews of our recommendations before proposals are implemented. The suggestion for a general review of European legislation, however, is not one we can usefully undertake, without a major disruption of our scrutiny work.** Our Sub-Committees do, however, consider existing law when examining new proposals.

#### *Comitology*

87. Our Committee deals only exceptionally with legislation made under the comitology procedure, although we have considered the comitology process itself in some detail in a previous report<sup>31</sup> which our Government has described as very valuable (Q39). Under the general heading of comitology we refer to subsidiary legislation made, normally by the European Commission after consulting the Member States or other interested parties, in regulatory, management or advisory committees.

88. The European Policy Centre has suggested that it is time for these issues to be revisited (p 51). Mr Larsen-Jensen noted that there was no overview of what was going on under the comitology procedure (Q 105). Baroness Williams of Crosby suggested each of our Sub-Committees should look at one comitology issue each month after a sifting process by the Chairman (Q 163). While we note that the Government is doing more to ensure proper parliamentary scrutiny of these kinds of legislation (Q 39), we consider that a more in depth review will be required as the Convention continues its work. The legislation passed under comitology procedures may or may not be good legislation but the fact that so much can be made in such a way, unseen and unscrutinised, clearly in our view contributes to a lack of accountability in the European Union.

89. We already perform two important functions in scrutinising comitology decisions. First, a few such documents are deposited for scrutiny in the normal way, on those occasions when they are referred back to the Council. Secondly, **in examining new proposals for EU legislation we can examine whether they appropriately delegate legislative power, and we undertake to do so most keenly.**

90. Neither of these functions, however, tackles the argument that there is a lack of scrutiny of a vast amount of existing comitology legislation. Following our 1998 report, the Government agreed to submit to Parliament comitology legislation that was politically or practically important. We are surprised that they have not done so on any occasion. **We accordingly propose that the Government review the importance of EU subsidiary legislation, and what its significance is in practice, and inform the Committee on a regular basis of any significant proposals.** We need to be satisfied that the Government will in fact submit significant texts for scrutiny before discussion in comitology committee.

<sup>30</sup> See n.11 above (HC 152 – xxx iii – I, paragraphs 131–135).

<sup>31</sup> See n. 3 above.

**Box 2***Comitology*

Comitology is concerned with the procedures which must be followed where the Commission is given the power to adopt legislation (normally known as “implementing measures”). It is mostly a system of procedures involving committees, made up of representatives of the Member States and chaired by the Commission, whereby the Member States can exercise some degree of control over powers to adopt implementing measures delegated to the Commission by the legislator (either the Council, or the Council and European Parliament).

“Implementing measures” include:

- decisions on the detailed implementation of the Community laws;
- decisions on managing Community policies (e.g. how much to spend on what etc.);
- technical adaptation or updating of legislation.

The basis for the delegation of implementing powers to the Commission is the third indent of Article 202 of the Treaty of the European Community. Some implementing powers do not derive from Article 202, and comitology does not apply in these cases (e.g. under the common commercial policy and under the competition rules). But most do, and since the 1960s individual directives and regulations (referred to as basic instruments) have given rise to over 250 comitology committees. The principles and rules under which these committees operate were to a large extent codified in the 1987 Comitology Decision.

The 1987 Decision has been repealed, and a new Decision (1999/468/EC) has come into force. Although the Member State representatives who attend committees thought the old decision worked well enough, the system as a whole provoked controversy because:

- the procedures – five of them – were bewilderingly complex, and choosing which one of them to use led to huge inter-institutional rows;
- they were also opaque, the committees and Commission taking thousands of decisions out of the public eye. Shrouded in secrecy, comitology got itself a bad name;
- the European Parliament, empowered by co-decision, became resentful at being cut out of comitology procedure.

A declaration attached to the Amsterdam treaty called for a new comitology Decision. The 1999 Decision seeks to make comitology simpler and more open and to give the European Parliament some involvement in the process.

*Source: FCO (Published in the Committee’s 14th Report Session 2000–01 (HL Paper 79), Box 8*

**91. We also propose that the Convention considers whether the European Parliament’s procedures in this area could be strengthened** by setting up an equivalent of our committees which scrutinise Statutory Instruments, including both the Joint Committee on Statutory Instruments and the proposed new committee on the merits of Statutory Instruments; by strengthening the work of their existing committees in scrutinising comitology legislation; and by giving consideration to a procedure analogous to our negative and affirmative resolution procedure. This would supplement the Parliament’s existing power to express a view on comitology legislation arising out of legislative instruments adopted under the co-decision procedure.

*Implementation of EU Law*

92. Our scrutiny work does not cover directly the implementation of EU law. We have accordingly considered whether scrutiny of implementation is work that we should undertake, and if so what are the implications for our other work. We also considered how else the House might be able to scrutinise these matters. Lord Howell of Guildford urged greater scrutiny at implementation stage (Q 56). The European Policy Centre too suggested that we should look at the implementation of EU law, not least to ensure that there was not gold-plating<sup>32</sup> (p 51). Lord Inglewood MEP supported greater examination of transposition of EU law (p 58).

93. Dr Caroline Jackson MEP was critical of our efforts in examining the potential costs and practical problems of implementation of EU law and cited specific examples of where our reports could

<sup>32</sup> Gold-plating is a term used when the Government, in implementing an EU law, is thought to be imposing obligations greater than those actually required in order to implement that EU law.

have been more hard-hitting, and could have sounded a louder alarm on how prepared local government was for implementation and the costs that would follow. She noted that the Government was bringing forward cost impact assessments and that the Commission was obliged to do so too. She suggested that our Committees should question the Commission when these estimates varied (p 61). Mr Larsen-Jensen noted that the French did spend time scrutinising how EU legislation was implemented in France but in his parliament that was a matter for specialised committees making legislation (Q 104). Baroness Williams of Crosby suggested that we should monitor “gold-plating” in one or two specific areas (Q 166).

94. We agree that there is a need to be more alert to the potential implications of the implementation of EU law in this country. We have accordingly called for the Government to do more to tell Parliament what their strategy will be for implementing EU law. We have also called on the Government to explain more fully its reasons when deciding whether to implement by primary or secondary legislation (see paragraphs 47–48 above).

**95. As for our own scrutiny, we will ensure that every report takes into account an analysis of the cost and impact assessments, based on scrutiny of figures from the Government and the Commission when they are available and giving a clear statement when they are not.** This will, however, require us to commission additional advice, as it is not work we ourselves could undertake without detracting from our existing scrutiny. **Such work would be greatly enhanced if the European Parliament was obliged to produce such a cost analysis of the effect of its own proposed amendments to EU law and we call on those responsible for Treaty amendment to ensure that such a procedure is introduced. We will also continue on occasion to examine the working of extant EU legislation, for example in anticipation of reviews required under the Directives themselves<sup>33</sup>.**

96. As far as the House itself is concerned, we would not wish to call on the Government to introduce more European legislation by primary rather than secondary legislation. Instead we would hope that the UK Parliament would do more to scrutinise the delegated legislation by which European law is implemented. We note that, where EU legislation is implemented by primary legislation, the full Parliamentary scrutiny process comes into play. This will include not only consideration by the two Houses but also by specialised committees such as the Joint Committee on Human Rights. **Scrutiny of secondary legislation implementing EU legislation, however, is weak and needs to be strengthened.**

97. To this end, **we first note that the Delegated Powers and Regulatory Reform Committee does where appropriate consider, in assessing whether the delegation of power is appropriate, whether that power could be used to implement EU law<sup>34</sup>.** We recommend that, in addition, **the scrutiny of delegated legislation implementing EU law be a key task of the House’s proposed new committee on Statutory Instruments. We would hope that the new committee would, wherever possible, analyse implementing instruments against concerns expressed during our own consideration of the European instrument. We will do all we can to assist the new committee, including making Sub-Committee Chairmen available to give evidence where necessary.** The new committee could also, as suggested by Lord Howell of Guildford, invite the views of MEPs on whether any gold-plating had taken place (Q 73). We draw the new Committee’s attention to the evidence we received from the Corporation of London concerning the need for better scrutiny of secondary legislation implementing EU law, especially in the field of financial services (p 49–50).

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<sup>33</sup> For example, in November 1989 the European Communities Committee reported on the draft of Directive 90/313/EEC on Freedom of Access to Information on the Environment (ECC 1st Report, 1989-90, HL Paper 2); in 1996 the then Sub-Committee C (Environment, Public Health and Education) decided to revisit the subject and to report on experience with the Directive, to inform the report which the UK Government (along with other Member States) was required to submit to the Commission by the end of 1996 under Article 8 of the Directive (ECC 1st Report, 1996-97, *Freedom of Access to Information on the Environment*, HL Paper 9). Subsequently the Committee scrutinised the Commission’s proposals for amendment of the Directive in the light of the reviews by Member States and was content to clear them, having been satisfied that they substantially met the recommendations of its 1996 Report.

<sup>34</sup> See for example that Committee’s 7th report session 2001-02 on the Anti-Terrorism, Crime and Security Bill (HL paper 45 paragraphs 4–13).

## PART 4: OUR WORKING METHODS

## INTRODUCTION

98. The Select Committee currently has six Sub-Committees, which scrutinise particular policy areas and present draft reports to the Select Committee, which in turn agrees reports and presents them to the House. This part of our report considers the balance of work between the Sub-Committees, and between the Select Committee and the Sub-Committees. We also examine whether scrutiny of the Council of Ministers is adequate. We conclude this part by examining our relationship with other scrutineers, including the House of Commons, other national parliaments and the European Parliament.

## SUB-COMMITTEE STRUCTURE

99. We have always kept under review the balance of work between our Sub-Committees and the number of Sub-Committees has varied over the years. As part of this review, we have considered whether the present balance of work between the Sub-Committees is right, given the likely future priorities of the Union and the adjustments to the formations of the Council of Ministers agreed at the European Council in Seville. An alternative model would be to match the 23 Directorates General in the Commission and the similar number of EP Committees. Tables 1 and 2 set out the present structure and compare it both with the structure of the Council of Ministers and the United Kingdom Government Departments.

*The current Sub-Committees are:*

- A – Economic and Financial Affairs, Trade and External Relations.
- B – Energy, Industry and Transport.
- C – Common Foreign and Security Policy.
- D – Environment, Agriculture, Public Health and Consumer Protection.
- E – Law and Institutions.
- F – Social Affairs, Education and Home Affairs.

**Table 1: Distribution of Competencies**

<b>Council of Ministers</b>	<b>EU Sub-Committee</b>	<b>UK Government Depart</b>
General Affairs and External Relations	A, E, C	Foreign and Commonwealth Office; Dept. for International Development; Ministry of Defence
Economic and Financial Affairs	A, E	HM Treasury
Justice and Home Affairs	E, F	Home Office; Lord Chancellor's Dept.
Employment, Social Policy, Health and Consumer Affairs	D, F, E	Dept. for Education and Skills; Dept. of Health; Dept. of Trade and Industry; Dept. for Work and Pensions
Competitiveness (Internal Market, Industry and Research)	A, B, E	Dept. of Trade and Industry
Transport, Telecommunications and Energy	B	Dept. for Transport; Dept. of Trade and Industry
Agriculture and Fisheries	D	Dept. for Environment, Food and Rural Affairs
Environment	D, E	Dept. for Environment, Food and Rural Affairs
Education, Youth and Culture	F	Dept. for Education and Skills; Dept. for Culture, Media and Sport; Home Office

Table 2

EU Sub-Committee	Council of Ministers	UK Government Depart
A – Economic and Financial Affairs, Trade and External Relations	2.Economic and Financial Affairs; 5.Competitiveness (Internal Market, Industry and Research)	HM Treasury; Dept. of Trade and Industry
B – Energy, Industry and Transport	5.Competitiveness (Internal Market, Industry and Research); 6.Transport, Telecommunications and Energy	Dept. of Trade and Industry; Dept. for Transport
C – Common Foreign and Security Policy	1.General Affairs and External Relations	Foreign and Commonwealth Office; Ministry of Defence; Dept. for International Development
D – Environment, Agriculture, Public Health and Consumer Protection	4.Employment, Social Policy, Health and Consumer Affairs; 7.Agriculture and Fisheries; 8.Environment	Dept. for Environment, Food and Rural Affairs; Dept. of Health; Dept. of Trade and Industry
E – Law and Institutions	1.General Affairs and External Relations; 3.Justice and Home Affairs 4.Employment, Social Policy, Health and Consumer Affairs; 5.Competitiveness	Home Office; Lord Chancellor's Dept.; Law Officers Dept.
F – Social Affairs, Education and Home Affairs	3.Justice and Home Affairs; 4.Employment, Social Policy, Health and Consumer Affairs; 9.Education, Youth and Culture	Dept. for Work and Pensions; Dept. for Education and Skills; Home Office; Depart. for Culture, Media and Sport;

The Office of the Deputy Prime Minister is not covered in this table.

100. For Dr Cygan, a strength of the Sub-Committee structure was that it allowed multiple inquiries on a range of topics, providing both flexibility and the development of expertise to provide continuity. He suggested, however, that there should be provisions for *ad hoc* sub-committees on general matters which cut across the existing Sub-Committee boundaries (pp 54–55).

101. Some of our witnesses suggested that we should vary the work between Sub-Committees: the European Policy Centre, for example, suggested that there should be one Sub-Committee looking at justice and home affairs alone; and that the Sub-Committee on law and institutions should focus on strengthening the European Court of Justice, particularly if the European Charter on Fundamental Rights became legally binding or if the European Union acceded to the European Convention on Human Rights (p 50).

#### *Integration of policy*

102. It should be noted that, unlike the House of Commons, the House of Lords has very few Select Committees on individual policy areas (known in the House of Commons as Departmental Select Committees and sometimes referred to as “sectoral committees”). There is therefore little danger that our work in scrutinising European legislation on particular policy areas will overlap with or duplicate that of other Committees of the House of Lords. **In our view this integration of substantive policy into European scrutiny is a strength of our Sub-Committee system, which must be maintained. And if Members of the House wish to be considered for membership of our Sub-Committees because of interest and expertise in particular policy areas, and not just because of expertise in European affairs, so much the better.**

103. We note that the Convention's Working Group on National Parliaments stresses the role of sectoral committees as a key element in strengthening parliamentary scrutiny of European business. **We believe that our Sub-Committees, which examine sectoral policy issues in the European context, provide a model for a national parliament wishing to scrutinise European legislation in depth and on the basis of genuine expertise.** There is, in our view, a weakness in any system which confines "European scrutiny" to a small group of specialists. There is a danger that scrutiny could be conducted in a mechanistic way with Members not having the time to do more than draw attention to matters which they think are important. Such a system can of course work well, if a plenary, or the sectoral committees, to which matters are referred have the time and inclination to take them seriously. Neither of these can be taken for granted. **It is accordingly our view that European scrutiny is strengthened if undertaken by those with a range of policy specialism and expertise.**

#### *The number of Sub-Committees*

104. As part of this review, we asked individual Sub-Committees to consider what they were doing. It clearly emerged that many Members feel that the current remits of the Sub-Committees are too broad. Some Sub-Committees, for example, are expected to cover the work of four or more significant policy areas. Members accordingly feel that they can never give adequate attention to them all. **There is thus a *prima facie* case for expanding the number of our Sub-Committees to ensure that better attention can be paid to a wider range of policy areas.**

105. We would, however, not wish expansion of the number of our Sub-Committees to take place unless a sufficient number of Members of the House were clearly available with both the expertise and time necessary to do the work and put it to good use. We stress here that we believe expertise and commitment to be more important factors than party balance. We have no wish, however, to increase the number of Members serving on individual Sub-Committees. Indeed, we have no objection to Members serving on more than one Sub-Committee or to having smaller Sub-Committees if there are more of them. We do, however, support the rotation rule in its present form although we would welcome a wider pool of names coming forward to allow us greater flexibility in co-opting members to Sub-Committees.

106. **We will accordingly propose to the Liaison Committee a plan for restructuring our Sub-Committees' work. This will be based on a practical assessment of the requirements for scrutiny in different policy areas.** Our Sub-Committee structure would need to be expanded to nine to match more closely the formations of the Council of Ministers. Such an arrangement would, however, not cover the areas of Law and Institutions currently covered by Sub-Committee E, which we would not wish to lose. **The Convention's work on subsidiarity may lead to other new tasks for national parliaments. We are willing to take on additional work in this and other areas. For the moment, we will formalise the experimental arrangement we have been operating under which Sub-Committee C has been considering international development. External relations – currently with Sub-Committee A—will fall to Sub-Committee C too.**

#### THE ROLE OF THE SELECT COMMITTEE

107. The Select Committee at present performs the following tasks:

- Appointing the members of Sub-Committees;
- Approving reports prepared by the Sub-Committees;
- Considering Government responses to our reports;
- Appointing specialist advisers for the Sub-Committees;
- Scrutinising the Minister for Europe after every European Council;
- Scrutinising the Commission's Annual Work Programme;
- Hearing a presentation (in the form of published evidence) from the Ambassador of every incoming Presidency;
- Inquiring into matters which do not efficiently fall to an individual Sub-Committee, including major institutional questions (such as the report on the Second Chamber) and crosscutting inquiries (such as this).

108. The Chairman of the Select Committee performs specific tasks too including the sift (see paragraph 16 above) and signing all correspondence on behalf of the Sub-Committees. **We endorse this system of correspondence, as it provides a focus for bringing our work together and a single point of contact for the Government.**

109. We note evidence received that our sessions with the Ambassadors were not a contribution to scrutiny (EPC p 109), although Lord Howell of Guildford found them very useful and wished to see more (Q 74). We nevertheless consider that gathering information at an early stage during a Presidency's life assists the Chairmen and Members of Sub-Committees in their subsequent scrutiny work. We will, of course, review these sessions if there is a change to the six monthly rotating Presidency system. We consider our sessions with the Minister of Europe after the European Council provide an opportunity for thorough scrutiny across policy areas. We are, however, concerned at the lack of interaction between this work and the House's only opportunity to debate European Councils, by way of a Ministerial Statement repeated in the Lords usually within a day or so of the Council concluding. **We accordingly recommend that a general debate on European affairs is held in the House within one month of every European Council.** The House will then have the opportunity to digest the Ministerial statement, and the mini-debate that takes place on it, and return to the issues in more detail subsequently. We would undertake to ensure that the results of our evidence session with the Minister for Europe were available in good time for such a debate, to better inform the House and so enable it to make the best use of its time.

#### DO OUR SUB-COMMITTEES OPERATE IN THE MOST EFFECTIVE WAY?

##### *Evidence*

110. Evidence has long been the basis of our work. The process of taking evidence can assist scrutiny if it is properly condensed and properly analysed. We would not wish to move away from an evidence-based system of scrutiny, particularly given that the Government itself is stressing the need for "evidence based policy making"<sup>35</sup>. We are constantly alive to the need to ensure that we take evidence from the widest possible range of interests, as suggested by Baroness Williams of Crosby (Q 172). We note criticism from Dr Caroline Jackson MEP that our questioning of witnesses, particularly from the Commission, could be tighter (p 60) and that we should pay more attention to the objections to proposed legislation. **We undertake to ensure that our questioning of witnesses is based on the best possible information and makes the best possible use of the time we spend with them,** noting Baroness Williams' suggestion that we might focus our oral evidence more; and take more written evidence (Q 175). **We also intend to ensure that our scrutiny of individual legislative proposals, even where these are not the subject of a full inquiry, are where necessary based on examination at least of the relevant government officials.**

111. We accordingly invite the Government to ensure that all Departments are made aware of the need to ensure that officials are available to give evidence to our Sub-Committees, often at short notice and on particular aspects of individual legislative items. We have also noted the suggestion by Lord Howell of Guildford<sup>36</sup> that the Committee holds a "second reading debate on EU possibilities". We take this to mean that we should hold more regular scrutiny with Ministers on the general issues coming before Council. **We undertake to conduct more regular scrutiny of the Council. In particular, Sub-Committee C will in future invite Ministerial evidence on the outcome of every General Affairs Council.** Lord Howell of Guildford has also suggested more regular sessions with Commissioners (Q 74–75). **We will make greater use of techniques such as video-conferencing to get round some of the practical problems of hearing busy witnesses. We recommend that the House equips a committee room for the purpose of video-conferencing by Lords Committees.**

##### *Expertise*

112. The Leader of the House told us we were fortunate in having Members of the House with the expertise, time and commitment to perform an effective role on Committees (Q 5). It has been suggested that it is inappropriate for the same members of Sub-Committees both to conduct wide-ranging inquiries into policy and more detailed scrutiny into individual documents<sup>37</sup>. We reject this suggestion, as did Baroness Williams of Crosby in evidence to us (Q 172). This argument, however, appears to be based on the assumption that in giving their time to one of these functions our members could not give adequate time to the other. If the work of a Sub-Committee is properly planned, there will be sufficient time for all its activities. For example, scrutiny of individual legislative documents cannot as a matter of course be tagged on to the end of a meeting during which members have taken an hour and a half of oral evidence. Proper time needs to be available for this work, even if it appears less exciting. **It follows that Sub-Committees need to limit the amount of time spent on oral evidence**

<sup>35</sup> See "Modernising Government" (Cm 4310) March 1999, Chapter 2.

<sup>36</sup> See n. 12 above.

<sup>37</sup> Lord Desai (HL Deb. 11 February 2002 col. 906).

**and cross-examining witnesses, in order to ensure that adequate time is made available for other work.**

113. Jimmy Hood thought it was one of the great strengths of our system that we had specialist committees that could look at proposals on their merits (Q 138). We are not, however, complacent about the expertise of our members. Many Members of the House have been appointed because of their expertise in particular areas, but that expertise needs to be kept up to date. **We accordingly consider that it is of positive benefit to those conducting scrutiny of specific legislative items that they have also conducted in-depth inquiries into general policy.**

#### *Planning*

114. Sub-Committees at present set their own agenda, on the basis of documents sifted for examination by the Chairman of the Select Committee and having regard to general policy issues and developments. **In order to continue to operate in the most effective way possible, Sub-Committees will continue to need to take into account the work the Select Committee undertakes in scrutinising the Commission's Annual Work Programme and the European Council, and any similar cross-cutting initiatives. This work will help the Select Committee to inform the planning of work by the Sub-Committees.** The aim will be to ensure that members of Sub-Committees do not find their incentive to contribute diminished by inquiries which are, for example, only of interest to a small persuasive minority of their own members. The Select Committee, on which all the Sub-Committees are represented, is in a position to take the broader picture of developments in the European Union and to carry that through in the work of the Sub-Committees.

115. We also note concerns that scrutiny suffers during the long parliamentary summer recess. The Leader of the House has proposed a September sitting for the House and it has been agreed that this will happen in 2003. A sitting in September would allow Sub-Committees to examine matters arising towards the end of July. This is because there is usually a gap of a few weeks while the Government's Explanatory Memoranda are prepared (QQ 13, 25). **We note that it has been suggested in the House that we should consider whether the revised sitting times, particularly if the House rises earlier for the Summer Recess, might adversely affect our scrutiny<sup>38</sup>. We are confident that this will not be the case.**

116. **We will consider further the opportunities for greater openness in our meetings.** We have already proposed (paragraph 110 above) an increase in the number of sessions with officials. These would normally be public sessions, on the record.

#### CO-OPERATION WITH OTHER SCRUTINEERS

##### *The House of Commons: The European Scrutiny Committee*

117. Our Committee and the Commons European Scrutiny Committee do quite different jobs, although we do both work "for a common cause" (to quote the Chairman of the Commons Committee, Jimmy Hood MP (Q 122)). In order to examine the opportunities for co-operation, it is necessary to understand our different working methods. The principal difference is that the Commons Committee does not ostensibly examine the merits of a particular document but considers each document against the criteria of whether it is politically and legally important and should accordingly be debated. We examine all documents on their policy merits, and we consider a number of documents in detail and based on evidence. The Commons Committee produces few reports based on evidence.

118. A second major difference between our two committees is that we appoint Sub-Committees, including *ad hoc* Sub-Committees. It is through the vehicle of the Sub-Committees that our Committee both conducts scrutiny of individual documents, often involving correspondence with Ministers, and substantial inquiries. The Sub-Committee system allows our members to bring and develop expertise; to hear outside views on proposals; and to consider the merits of a policy. We can accordingly focus in detail on specific policy areas at every stage. In the Commons that detailed policy work is left to departmental Select Committees.

119. We have considered whether there is real "complementarity" between our Committee and the Commons European Scrutiny Committee and whether we succeed in avoiding unnecessary duplication of effort. We have also considered the opportunities for co-operation (including joint evidence sessions) with the Commons in order to improve scrutiny.

120. Lord Howell of Guildford argued that greater co-ordination between the two Houses was both desirable and inevitable (QQ 59–62). Dr Caroline Jackson MEP on the other hand was not alone in

<sup>38</sup> Lord Crickhowell HL Deb. 24 July 2002 col. 394.

proposing a single European Committee of the two Houses combining the quality and range of view of our reports with an input by MPs (whose own reports she criticised for a lack of impact) to make our work “more forceful and pointed, and...with greater polemic force” (pp 61–62).

121. Dr Cygan proposed in the long term a joint committee involving both Houses equally in the whole range of scrutiny tasks, although he also suggested for the medium term that we should focus only on in-depth inquiries and the Commons should do only the mechanics of scrutiny (pp 54–55). Baroness Williams supported joint working on the Convention (Q 176).

122. The Leader of the House too floated the idea of a joint committee, although stressing that this was his own view and did not represent government policy. His proposal was based on the need to avoid duplication, and designed to ensure a more effective outcome. He suggested that a joint committee might improve scrutiny, noting that the Commons did not work “potentially as well as we can”. He also noted that it was inconvenient for witnesses to appear before more than one committee on the same issue (QQ 4, 7–8, 21).

123. We can see the force in some of the arguments for a joint committee. The UK national parliament would be able to speak with one voice, although it is a matter of discussion whether that would lead to any greater impact outside Westminster than we have at present. **On balance, however, the arguments advanced do not persuade us of the need for a joint committee. We nevertheless make proposals below for more joint working.** We note that the Commons Committee has already rejected the suggestion for a joint committee<sup>39</sup>. That such a committee would enhance scrutiny has been stated but no convincing argument advanced. Indeed the Leader of the House implied that the Commons work was less effective than ours (Q 4). It therefore does not follow that adding their work to ours (or ours to theirs) would necessarily improve scrutiny: indeed it might dilute its effect in spite of minor improvements in administrative efficiency. The number of Members of this House on a joint committee would certainly be less than on our Committee at present. We would almost certainly lose our power to co-opt Members of expertise. Both of these would be weaknesses in a joint committee.

124. Another argument for a joint committee is that it is conceivable that, if two committees came to different views, the Government might be able to play them off against each other. We were pleased to hear Jimmy Hood MP say that he did not think our committees would be distracted in that way (Q 156).

125. The argument that witnesses find it inconvenient to appear twice is a good one, but as the Commons European Scrutiny Committee only occasionally takes evidence the issue almost never arises. Where they do it tends to be from a Minister and we remain firmly of the view that, in a bicameral system, scrutiny of Ministers by both Houses strengthens scrutiny. We are sure that the Leader of the House’s motive for proposing a joint committee was not a desire to reduce the accountability of Ministers to Parliament.

126. As for the Commons departmental Select Committees, we are aware that, where they undertake inquiries on European topics, there can be an overlap with the work of our Sub-Committees. Our officials monitor such developments closely. The same issues arise with regard to the Scottish Parliament, and in particular its European Affairs Committee, but once again official channels provide a good means of co-operation.

**127. We remain of the view that effective scrutiny is a synthesis of scrutiny based on legislation and scrutiny based on policy. The different scrutiny systems in the two Houses complement each other in this way and should continue.**

128. We nevertheless warmly welcome Jimmy Hood MP’s commitment to collaboration and working together and are pleased to note that his Committee finds our work on the merits of proposals helpful (Q 138). **We will accordingly take up with the Commons Committee the question of whether the balance of work between the two Committees is appropriate. We will also examine ways by which we can use and build on their scrutiny work in conducting our own.**

129. We have already accepted the case for joint working on specific issues, as well as building on established mechanisms for co-operation between officials. For example, co-operation between the Houses in the Standing Committee on the Convention has been a success<sup>40</sup>. We work with the Commons in connection with COSAC (see paragraph 133 below). We also invited the Commons to join our scrutiny of the Commission’s Annual Work Programme in a joint session of evidence from the Commission. Our colleagues in the Commons, however, declined this invitation. **We will, though, consider with the Commons the case for a joint meeting after each European Council to allow the**

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<sup>39</sup> In their Report on Scrutiny (see n.11 above) paragraph 37.

<sup>40</sup> The four United Kingdom parliamentary representatives attend and answer questions. Although this is technically a Commons Standing Committee, any member of the Lords can attend and participate and a number have done so. Proceedings are transcribed by Commons Hansard and published in the usual way.

**two Committees to exchange views on the future planning of work on the basis of the agenda set by the European Council. We will also consider practical means for joint dissemination of our views, where they coincide, to increase our impact.**

*The European Parliament*

130. A number of our witnesses suggested more direct contact between national parliamentarians and members of the European Parliament. Professor Neil MacCormick MEP wanted to see direct contact between members of national parliamentary scrutiny committees and members of relevant parliamentary committees (p 63). Andrew Duff MEP wished to see MEPs joining our committees (and, incidentally, having the right to table written questions in national parliaments), as well as national parliamentarians attending European parliamentary committees (p 57). Baroness Williams of Crosby thought MEPs should be better treated at Westminster and should participate in the work of our Committees regularly (Q 177). Lord Inglewood MEP, on the other hand, while noting the important role of MEPs as conduits from the European institutions to their Member State, thought there were practical problems in any structured and formal involvement. He suggested that each political delegation at the European Parliament should give evidence to our Sub-Committees during their inquiries (p 60).

131. Dr Cygan suggested that we should co-opt MEPs for particular inquiries, as the Bundestag did. This would be a way of improving information and strengthening the United Kingdom line on particular issues (p 55). Lord Howell of Guildford wanted to see MEPs “pressed” to attend our Committees more often, and wished thought to be given to other ways of including them (QQ 73–76). Mr Larsen-Jensen, however, said that contacts between his committee and MEPs had been of little value: contacts between MEPs and individual subject committees would be more useful (Q109).

132. The European Parliament scrutinises and adopts almost all EU primary legislation, often in co-decision with the Council. We have therefore much to learn from MEPs, who have the expertise, the experience and the responsibility for deciding on this legislation. The question whether MEPs should have further rights of access to our Parliament, however, is not one that we are qualified to address. This would be a matter for the House itself. We note that the Liberal Democrats, as a Party, have regular sessions with their MEPs (Q 159). We note that the Commons Committee is considering regular meetings with MEPs (Q 132) as an enhancement of scrutiny. **We undertake to ensure that relevant UK MEPs have the opportunity to give evidence to our inquiries, and that the outputs of our work are communicated directly to them.**

*Scrutiny by other national parliaments*

133. We are constantly alive to what we can learn from other national parliamentary scrutiny committees, and to what they can learn from us. To this end, we are working in particularly close operation with our Danish colleagues and the Commons European Scrutiny Committee, on proposals to reform COSAC<sup>41</sup>, the body aimed at facilitating co-operation between national parliamentary European scrutiny committees. A key aim is a better exchange of information between national parliaments, which Mr Larsen-Jensen thought would be of value both in terms of best practice and specific policies (QQ 118, 120). In addition, our Chairman gave presentations on our behalf to both the Irish Parliament and the Northern Ireland Assembly on how they might develop their scrutiny systems. **We are happy to share our experience with any other parallel national parliamentary body among the current Member States or the incoming countries. We also undertake to follow up our session with our Danish colleagues by taking evidence from a number of national parliaments (including bicameral parliaments) whose scrutiny systems are well developed, to see what we can learn from their work.**

RESOURCES

134. In terms of Members of the House, our Committee and its Sub-Committees are extremely well resourced, not least in the expertise of our members. Some 70 Members of the House serve on our Committees: this represents about 10% of the total membership of the House, and probably a higher percentage of the active membership. Members serving on the Committee and its Sub-Committees are required to make a considerable time commitment to their work. Sub-Committees tend to meet at least once a week and Members serving on the Select Committee as well have an additional commitment (sometimes weekly). Together with the reading of papers, a hard-working and serious committee member will find that a lot of time is spent on this work.

<sup>41</sup> *Conférence des Organisations Spécialisées dans Affaires Communautaires* – Conference of Europe Affairs Committees.

135. In terms of staff, our resources have recently been enhanced. We are also making full use of our power to appoint specialist advisers on particular topics. But our proposals for more effective scrutiny may well require extra resources. **We are pleased to note the suggestion from the Leader of the House that vigorous and powerful revision and scrutiny require the House to “will the means” over the coming months (Q 25). We expect the House to deliver the resources required to fulfil this commitment. In particular, the United Kingdom has a National Parliament Office based in Brussels, currently staffed by the House of Commons. We will consider further what support we can expect from, and offer to, the work of this valuable office.**

## PART 5: IMPACT OF OUR WORK

## THE IMPACT OF OUR WORK

*Introduction*

136. One way of judging our impact is to hear what people tell us. The Leader of the House said our work was extremely important and well regarded in Europe but had less significance in the UK Parliament (Q 4). Commissioner Barnier wrote that “the Commission has always found the work of the Committee of value” (p 49). Dr Cygan cited specific examples of influence in the areas of fraud, unfair contract terms and the Court of Auditors and called our “influence unquestionable” (p 55). The Government praised the Comitology report (Q39); and Lord Howell of Guildford that on CAP reform (Q 82).

137. Dr Caroline Jackson MEP on the other hand, while stressing that our reports were “very important and useful” for European policymakers, concluded that our work “has an ephemeral impact and little long term effect”. She offered specific suggestions for improvement reflected elsewhere in this report (pp 60, 62 see also paragraphs 86, 93, 110). Lord Stoddart of Swindon made his view clear: we cannot influence the outcome of proposals and are at best a weak advisory body (p 64). This is a serious accusation, with which other witnesses did not agree.

138. Dr Cygan suggested our reports were read because they were strong on expertise, influence and independence from the Government but measuring this was hard, especially where reports were of specialist interest. He nevertheless praised our work for providing at least an opportunity for citizen participation: detailed inquiries, expert evidence and wide consultation all contributed to this. Such accountability was a primary role of national parliaments (pp 52–53, 55).

139. Another way of judging whether our work is valued is whether those interested in setting up scrutiny systems have asked us for advice (see paragraph 133 above). Another is to analyse how far our conclusions have been reflected in changes to the Government’s position on a particular dossier or on the various versions, although even the fact that changes that we proposed have been made is not firm evidence that we caused them.

140. **Contributing to a climate of opinion forming is a key way in which we can have an impact, by analysing issues and presenting a range of evidence combined with our own conclusions on it.** We hope, however, that it is not only our reports that have an impact: the very act of preparing an EM provides a discipline on Whitehall and the need for every EM to be signed by Ministers (as we recommend in paragraph 49 above) provides a check. We have indicated above (paragraph 86) that we will in future do more to follow up our work.

*Long or short reports?*

141. As requested by the Leader’s Group, we have also considered the arguments for and against long-running inquiries leading to substantial reports, and shorter reports more obviously focused on a limited point or points of policy in a particular area. The Leader of the House told us that the Government found focused reports “more challenging” as they provided a necessary irritant to the Government especially when on topics that cut across more than one Department. All our reports were of value but the more reflective reports had less immediate impact (QQ 22–3).

142. **We consider that there is no necessary correlation between the shortness of a report and its focus.** A quite substantial report can be very neatly focussed on a complex series of issues while a short report can present its arguments in a muddled and diffuse way. In our work, short reports on specific topics are already common. We also produce short reports in which a series of letters to and from Ministers are gathered together, sometimes with evidence, under cover of a short summary, to present a volume which has all the material on a particular topic.

143. As far as style is concerned, Dr Caroline Jackson MEP called for our reports to be more forceful and pointed, with general conclusions combined with “political conclusions—imperatives really—that ministers could not ignore” (p 62). We have also heard a presentation by outside researchers into the impact and dissemination of our reports. We were told that shorter, sharper and better directed reports are more likely to have an impact on decision-makers.

144. We agree that reports should be presented to have the most impact. Internal improvements to the layout and presentation of reports are under way. We accept that our readership is not the general public, and we would not wish to see any sacrifice of the rigour and expertise that we aim to impart to our work. Nevertheless, even the busy experts to whom many of our reports are directed are more likely to read them if they are well presented.

145. **We have accordingly considered how in practice a focused and readable report can actually be produced. To this end we will aim to ensure that all our substantive reports accord with the following standards:**

- An abstract gives the reader a flavour of what is to come (including why the topic is important; why the report is necessary and why it is necessary now; and what the key conclusions are);
- An introduction sets out the background in more detail;
- Individual policy areas are considered one by one;
- Summaries of evidence on each policy area are crisp, do not involve lengthy quotation and make use of bullets and boxes to enhance readability;
- Each section of evidence leads to a description of the Committee's views and to any conclusions and recommendations with key recommendations highlighted in bold;
- Key conclusions are pulled together in a summary.

*How effective is correspondence with Ministers?*

146. Correspondence with Ministers is the means by which much of our day to day scrutiny work is conducted, including scrutiny of those proposals which are cleared but where the Sub-Committee asks to be kept informed of developments. We propose to make the following improvements to the correspondence process:

- **As a contribution to speeding up our own scrutiny, we will expect Ministers to respond to our letters within ten working days – we will where necessary follow up delays by tabling Written Questions;**
- We work on the assumption that letters, once sent, are presumed to be public and can therefore be released to the press and interested parties;
- We will ensure quicker and more regular publication of significant correspondence (using the internet) in addition to the twice-yearly published volume;
- We will make more use of letters to follow up scrutiny issues raised by proposals which come forward after a major inquiry;
- We will increase efforts to foster a culture of respect for scrutiny in Whitehall, including the holding of regular sessions of evidence from senior civil servants responsible for European policy.

147. **We also propose that regular digests of significant scrutiny by correspondence be made freely and publicly available.**

IMPACT IN THE HOUSE

*Debates on our reports*

148. A key question for this review was what notice does the House take of our work? Lord Inglewood MEP noted that debates on EU topics tended to be held out of prime time and usually attracted the same speakers. He suggested debates in Committee meetings open to all Members and the public (p 59). Lord Howell of Guildford criticised the lack of time the House spent debating our reports and the delays that could make them lose their freshness (Q 43).

149. One of the key points made in our submission to the Leader's Group, and a matter on which the Committee felt most strongly, was that there should be more time for debates on the floor of the House on our Committee's reports. We accept that it is not unknown for major reports from our Committee to receive prime time debates lasting a whole afternoon, although these more often than not occur early in the year when the legislative programme is at its least busy. In addition, as the recent debate on the European Arrest Warrant has shown<sup>42</sup>, if the Government really feels that something needs urgent debate (most probably because of an imminent Council) it is on occasion possible to secure this.

150. We recognise that the "usual channels" do their level best to make quality time available, and on occasion make emergency arrangements even at short notice, but we nevertheless conclude that better arrangements could be made. The delays in securing debates and the backlogs that occur can be thought to be a sign that the work we put into reports is not as valued as it should be. **We propose that**

<sup>42</sup> HL Deb 19 November 2001, col 948.

there should be a presumption that Government responses are produced within 6 weeks of publication of a report; and that reports are usually debated within 8 weeks of publication, although earlier or later debates may on occasion be required.

151. **We also urge better planning of our debates, and more advance notice. The lack of a clear timetable announced in advance hampers the Government at the negotiating table: not knowing when the scrutiny reserve will be lifted by debate is a disadvantage for UK Ministers in the Council.**

152. If the House values our work then appropriate time should be made available for debates. Friday debates, while good for publicity, are inconvenient (as the Leader of the House recognised – Q 3) and would weaken the impact of our work; and a dinner break Unstarred Question—while useful for reports on very specific points of detail<sup>43</sup>—cannot provide sufficient time in the majority of cases.

153. **We welcome the Leader’s Group’s package of reforms, if, in freeing more time on the floor of the House, they ensure greater opportunities for debates on committee work. The opportunities provided by the new pattern of sittings (and by the greater use of Grand Committees on bills) should be explored and exploited to ensure better time for our debates. We also urge the House to review the current balloted Wednesday debates: does having two balloted two and a half hour debates rather than just one really make the best use of prime time? We further recommend that consideration be given to a regular time-limited slot on Thursday mornings allowing a two and a half hour debate on those reports on which we have no objection to a time limit.**

*Impact in the House: general business*

154. In a broader context, we asked ourselves how we can encourage the House to make more use of our work outside the set-piece debates. The question is a simple one: do Members of the House as a whole make as much use of our work as they could in scrutinising the Government and, if not, how could the position be improved? Based on our experience, our view is that Members of the House make very little use of our work outside the set piece debates. So what steps can be taken to encourage Members to “mainstream” our work more into the House’s broader consideration of EU matters? Baroness Williams of Crosby suggested that our Committee’s members should make more use of topical and unstarred questions (Q 164). Lord Howell of Guildford suggested a regular EU question time (Q 57). We do not support this particular suggestion. Instead, **we urge all our members, as individual Members of the House, to make more use of Question Time (and the new topical questions) to raise European matters of concern on the floor of the House.**

155. **We also propose to produce an annual report from the Committee, giving an account of our activity, drawing attention to any problems in the scrutiny process and outlining key emerging issues in a short and punchy document produced in time for the debate on the Queen’s Speech.** We note that the Leader of the House supported the suggestion for an annual review (Q37). **We also recommend that those taking part in the debate on the Queen’s Speech pay close attention to European Affairs, on all areas of policy.** Baroness Williams of Crosby suggested twice yearly debates on the Commission’s Annual Work Programme and Annual Policy Strategy (Q 160). We have recommended above twice yearly debates on the outcome of European Councils (see paragraph 109).

156. **We also undertake to look at administrative questions such as finding ways to improve the availability and accessibility of our work by means that Members of the House actually notice, namely through their party whips, the Crossbench notices and the Forthcoming Business document.**

IMPACT : OUTSIDE THE HOUSE

157. More generally, it was suggested to us that if EU affairs had a higher profile in the country our work would be more noticed. Dr Cygan suggested a department of European Affairs which we could scrutinise (p 55). We note this suggestion.

158. We have heard from our colleagues in Denmark that the Folketing has a public information service which provides documentation and impartial information on EU affairs to all citizens. The service includes an extensive website; and staff dedicated to answering questions (Q 111). **We plan to discuss the establishment of an information service on EU issues, perhaps based on an expansion of our website to include more information of interest to the public.**

<sup>43</sup> See the debate on provisional agreement HL Deb. 14 October 2002, Col. 672.

159. In the meantime, we are pleased to note the appointment of an Information Officer for Select Committees to strengthen the support provided to the House's Committees. We have heard several specific examples of how publicity and information provisions on our work may be enhanced, including Baroness Williams of Crosby's suggestions that we should send copies to major universities and that publication of every report should be accompanied by a press conference to include European newspapers and the specialised press (Q 164). **We will consider these with the Information Officer for Select Committees. In addition we would wish to see copies of our reports made as freely and easily available as possible by the House.**

## PART 6: SUMMARY OF CONCLUSIONS

## GENERAL CONCLUSIONS

160. National parliamentary scrutiny of EU legislation has a clear constitutional purpose and to that end entails (paragraphs 12–13):

- The accumulation, presentation and summary of relevant material, including information, statistics, explanation and analysis.
- The provision of information to the House and to the public as a contribution to transparency.
- Drawing the attention of the House, the Government, European institutions and the public to significant matters contained within that information and in particular making recommendations—“focusing the debate”.
- Contributing to the law-making process by detailed analysis of draft texts, by exposing difficulties and proposing amendments.
- An examination of the Government and its role in agreeing European legislation and, as part of that process, compelling the Government not only to think through what it is doing or has done but sometimes to account for it.
- An examination of the Commission and the policies it formulates.

161. Our inquiries can be of value both on legislative proposals and on early discussion documents but we endorse the near unanimous view of our witnesses that we should aim to work at the earliest possible stage in the policy making cycle (paragraphs 29–30).

162. Contributing to a climate of opinion forming is a key way in which we can have an impact, by analysing issues and presenting a range of evidence combined with our own conclusions on it (paragraph 140).

163. For the scrutiny reserve to be working “properly”, it is first necessary for the Committee not to maintain the reserve unnecessarily: to do so would weaken the Government’s negotiating position and devalue the reserve. But it is also essential that the Government does not override it without good cause (paragraph 63).

164. A mandatory scrutiny system would not work under UK circumstances (paragraph 70).

## RECOMMENDATIONS ADDRESSED TO THE GOVERNMENT

165. The Government should always draw to the Committee’s attention any matters under discussion or consideration by the Commission which might merit detailed scrutiny when a proposal comes forward. Such an early warning system would greatly assist us (paragraph 31).

166. It continues to be essential that the right documents are deposited by the Government in good time (paragraph 63).

167. Subject to final agreement with the Commons (which has made a similar proposal), the following categories of document need no longer be deposited for scrutiny, although we would wish to see the same arrangements made to keep us informed as are proposed by the House of Commons (paragraphs 51–54):

- 1) Community positions on rules of procedure for various Councils and Committees, including those established under Association Agreements;
- 2) Proposals to extend Common Positions imposing sanctions (without making substantive changes) in pursuance of UN Security Council resolutions;
- 3) Proposals for making minor changes to lists of people or organisations subject to restrictive provisions in existing measures;
- 4) Draft Council decisions relating to decisions already made in Association Councils or Committees;
- 5) Reappointment of members to EU organisations;
- 6) Proposals for legislation concerning the administration of community tariff quotas.

168. We support the consolidation of all transfers of appropriations into a single report (paragraph 50).

169. The Government should submit an EM on the Commission's Overview document of the Preliminary Draft Budget at the earliest possible opportunity, preferably by the middle of May. The Government should also quickly update the Committee by Ministerial letter after the various stages of the annual Budget cycle rather than waiting to draft an EM once they have received the official translated texts (paragraphs 80, 82).

170. We find it disappointing that Ministers might be prepared to agree laws in Council without having determined how they are to be implemented in the UK. We therefore recommend that the Government's proposals to implement a particular piece of legislation be set out in more detail in the initial EM. The fullest possible explanation needs to be given on the implementation of EU legislation on matters concerned with Justice and Home Affairs (paragraph 47).

171. More generally, the EM should as a matter of course state whether primary or secondary legislation is envisaged and if the latter under which power. An indication should be given of the factors which lay behind the decision. Furthermore, where the powers in section 2(2) of the European Communities Act 1972 are intended to be used, the Government should indicate whether the affirmative or negative procedure is envisaged and the reasons why (paragraph 47).

172. EMs should give fuller information on the devolution implications of a proposal; on any proposed creation or extension of the powers of a comitology committee; and a fuller account of the policy implications for the UK. There should also be a section on any potential human rights issues and the Government should consider whether the Minister signing the EM should make a statement of compatibility with the Human Rights Act 1998, as happens with primary legislation (paragraph 48).

173. All EMs – which are the Minister's evidence to Parliament – should be signed. Those categories of document currently subject to an unsigned EM should instead be accompanied by a short form EM, as at present, but with a signature (paragraph 49).

174. We would welcome proposals from our Government to ensure better provision of information on matters subject to the co-decision procedure at its various stages (paragraph 35).

175. There should be a review, co-ordinated by the Cabinet Office and taking place say every six months, of those cases when the scrutiny reserve has been overridden and giving reasons why. This information should be reported to Parliament (paragraph 76).

176. The Government should review the importance of EU subsidiary legislation, and what its significance is in practice. The Government should inform the Committee on a regular basis of any significant proposals (paragraph 90).

177. Where a proposal is moving quickly through the legislative cycle we will more regularly ask government officials to be available at short notice to assist the Committee in matters of explanation and elucidation (paragraph 42).

178. We will expect responses from Ministers within ten working days to letters sent by our chairman on behalf of the Committee and its Sub-Committees and we will where necessary follow up delays by way of Questions for Written Answer (paragraph 146).

179. Our reports should receive a Government response within six weeks of publication (paragraph 150).

#### RECOMMENDATIONS ADDRESSED TO THE CONVENTION ON WHICH THE GOVERNMENT SHOULD RESPOND

180. Greater openness in the Council will facilitate faster scrutiny by national parliaments. Abolishing the six monthly cycle of presidencies could help too by avoiding the "end of term" rush to decision, provided that other artificial deadlines are not built in (paragraph 41).

181. The Convention should consider a revision of the co-decision procedure to allow a greater opportunity for national parliamentary scrutiny. When conciliation is triggered, the relevant documents (from the Commission, Parliament and the Council) should be issued publicly and submitted to national parliaments which would have four weeks to consider them before the Conciliation Committee can meet (paragraph 35).

182. The Convention should consider whether the European Parliament's procedures could be strengthened by setting up an equivalent of our committees which scrutinise (or will scrutinise) Statutory Instruments; by strengthening the work of their existing committees in scrutinising comitology legislation; and by giving consideration to a procedure analogous to our negative and affirmative resolution procedure (paragraph 91).

183. Scrutiny of the impact of legislation would be greatly enhanced if the European Parliament was obliged to produce a cost analysis of the effect of its own proposed amendments to EU law and we call on those responsible for Treaty amendment to ensure that such a procedure is introduced (paragraph 95).

#### RECOMMENDATIONS ADDRESSED TO THE HOUSE ON WHICH THE GOVERNMENT SHOULD RESPOND

184. To maintain effective parliamentary scrutiny of EU legislation, our Committee, acting on a recommendation from one of our Sub-Committees, should have the right to require that the Government secure a positive resolution from the House as a whole in order to lift a scrutiny reserve being maintained by our Committee because of significant outstanding policy concerns. We do not envisage this power being exercised other than exceptionally (paragraphs 71–2).

185. In those cases where a Minister overrides a reserve the Minister should come to Parliament and give an explanation by way of Ministerial Statement (paragraph 74).

186. The Scrutiny Reserve Resolution needs to be amended to take account of all forms of agreement, including provisional agreements, in the Council (paragraph 75).

187. Scrutiny of secondary legislation implementing EU legislation is weak and needs to be strengthened. In addition to the work already undertaken by the Delegated Powers and Regulatory Reform Committee in scrutinising the delegation of powers, the scrutiny of delegated legislation implementing EU law should be a key task of the House's proposed new committee on Statutory Instruments. We will do all we can to assist the new committee, including making Sub-Committee Chairmen available to give evidence where necessary (paragraphs 96–97).

188. Subject to the availability of a sufficient number of Members with the relevant expertise, we see a *prima facie* case for increasing the number of our sub-committees (even if that means smaller Sub-Committees or Members serving on more than one Sub-Committee). We do not wish to see a change to the rotation rule but would welcome a wider pool of names coming forward (paragraphs 104–105).

189. We will propose to the Liaison Committee a plan for restructuring our Sub-Committees' work. This will be based on a practical assessment of the requirements for scrutiny in different policy areas. We note that our Sub-Committee structure would need to be expanded to nine to match more closely the formations of the Council of Ministers. Such an arrangement would, however, not cover the areas of Law and Institutions currently covered by Sub-Committee E which we would not wish to lose. In the meantime, Sub-Committee C will take on External Affairs (currently with A) and international development (paragraph 106).

190. The House should hold a general debate on European affairs within one month of every European Council (paragraph 109).

191. Our reports should be debated within eight weeks of publication although on occasion a longer or shorter timeframe may be required (paragraph 150).

192. We urge better planning of our debates, and more advance notice. The lack of a clear timetable announced in advance hampers the Government at the negotiating table: not knowing when the scrutiny reserve will be lifted by debate is a disadvantage for UK Ministers in the Council (paragraph 151).

193. The opportunities provided by the new pattern of sittings (and by the greater use of Grand Committees on bills) should be explored and exploited to ensure better time for our debates (paragraph 153).

194. The House should review the current Wednesday debates: does having two balloted debates rather than just one really make the best use of prime time? Consideration should be given to a regular time-limited slot for our debates on Thursday mornings (paragraph 153).

#### *Resources*

195. We are pleased to note the suggestion from the Leader of the House that vigorous and powerful revision and scrutiny require the House to “will the means” over the coming months. We expect the House to deliver the resources required to fulfil this commitment (paragraph 135).

196. We will consider further what support we can offer to, and expect from, the valuable National Parliament Office in Brussels, currently staffed by the House of Commons (paragraph 135).

197. The House should equip a Committee Room for video-conferencing by Lords Committees (paragraph 111).

## RECOMMENDATIONS WE WILL IMPLEMENT

198. We have begun to scrutinise the Commission's Annual Work Programme. We will consider further the suggestion for national parliamentary scrutiny of the Council's strategic agenda (paragraph 30).

199. We will enhance our scrutiny of the EC Budget by concentrating our efforts at an early stage in the budgetary cycle. Sub-Committee A will continue to consider in detail any changes to the overarching legal framework within which the annual Budget is set. Sub-Committee A will therefore take oral evidence from the Government on an annual basis before the first reading of the Budget in the Budget Council and thereafter we will publish a short report. The major spending decisions will also remain a focus of rigorous scrutiny for all of our Sub-Committees. The Sub-Committees will continue to scrutinise in detail proposals for legislation that have budgetary implications and will follow closely negotiations on such proposals at Council meetings (paragraphs 78, 80).

200. We continue to monitor the work of the Convention on the Future of Europe, and the output of its Working Groups. We propose to examine in a separate report proposals on the role of national parliaments and on subsidiarity emerging from the Convention. The Convention's conclusions on subsidiarity may lead to new tasks for national parliaments. We are willing to take on additional work in these and other areas (paragraphs 4, 40, 85, 106).

201. We reinforce the importance of the sift process, which we consider works well provided that proper EMs are deposited. A Sub-Committee is not precluded from examining a document cleared on the sift. We will examine the criteria used for sifting documents at the later stages of the legislative cycle (paragraphs 35, 57–59).

202. We will ensure that every report takes into account an analysis of the cost impact assessments, based on scrutiny of figures from the Government and the Commission when they are available and giving a clear statement when they are not. This will, however, require us to commission additional advice, as it is not work we ourselves could undertake without detracting from our existing scrutiny (paragraph 95).

203. We will examine most keenly any proposal to delegate power under the comitology procedure (paragraph 89).

204. We will hold more regular scrutiny with Ministers on the general issues coming before Council. In particular, Sub-Committee C will in future invite Ministerial evidence on the outcome of every General Affairs Council. We will make greater use of techniques such as videoconferencing to get round some of the practical problems of hearing busy witnesses (paragraph 111).

205. Questioning of witnesses must be based on the best possible use of information and make the best use of the time we spend with them. Where necessary, at least the relevant Government officials need to be examined during scrutiny of individual legislative items, even if these are not the subject of a full inquiry. Sub-Committees need to limit the amount of time spent on oral evidence and cross-examining witnesses, to ensure that adequate time is made available for other work (paragraphs 110, 112).

206. We will seek to devote the necessary time and resources to following up our previous work. This could take the form of periodic reviews of our recommendations before proposals are implemented (paragraph 86).

207. The suggestion for general review of European legislation is not one we can usefully undertake, without a major disruption of our scrutiny work (paragraph 86).

208. The integration of substantive policy into European scrutiny is a strength of our Sub-Committee system, which must be maintained (paragraph 102).

209. While European scrutiny is enhanced by the involvement of those with a range of policy specialism and expertise, we are not complacent about the expertise of our Members. Many members of the House have been appointed because of their expertise in particular areas but that expertise needs to be kept up to date. We accordingly consider that it is of positive benefit to those conducting scrutiny of specific legislative items that they have also conducted in depth inquiries into general policy (paragraphs 102–3, 113).

210. We believe that our Sub-Committees, which examine sectoral policy issues in the European context, provide a model for a national parliament wishing to scrutinise European legislation in depth and on the basis of genuine expertise. There is, in our view, a weakness in any system which confines "European scrutiny" to a small group of specialists. There is a danger that scrutiny is conducted in a purely mechanistic way with Members not having the time to do more than draw attention to matters which they think are important (paragraph 103).

211. In order to ensure that the Sub-Committees continue to operate in the most effective way possible, they will continue to take into account cross-cutting scrutiny undertaken by the Select Committee. This will in turn help the Select Committee to inform the planning of the work by the Sub-Committees (paragraph 114).

212. We are confident that the revised the sitting times of the House will not adversely affect our scrutiny (paragraph 115).

213. We will consider further the opportunities for greater openness in our meetings (paragraph 116).

214. On balance the arguments advanced do not persuade us of the need for a joint European scrutiny committee of the Lords and Commons. The different scrutiny systems in the two Houses complement each other and should continue (paragraphs 123, 127).

215. We nevertheless make recommendations for more joint working and warmly welcome Jimmy Hood's commitment to collaboration and working together. We will take up with the Commons Committee the question whether the balance of work between the two Committees is appropriate. We will also examine ways by which we can use and build on their scrutiny work in conducting our own. We will, in particular, consider with the Commons the case for a joint meeting after each European Council to allow the two Committees to exchange views on the future planning of work on the basis of the agenda set by the European Council. We will also consider practical means for joint dissemination of our views, where they coincide, to increase our impact (paragraphs 123, 128–9).

216. The question whether MEPs should have further rights of access to our Parliament is not one that we are qualified to address. This would be a matter for the House itself. We undertake to ensure that relevant UK MEPs have the opportunity to give evidence to our inquiries, and that the outputs of our work are communicated directly to them (paragraph 132).

217. We are happy to share our experience with any other parallel national parliamentary body among the current Member States or the incoming countries. We will take evidence from a number of national parliaments (including bicameral parliaments) whose scrutiny systems are well developed, to see what we can learn from their work (paragraph 133).

218. We urge all our members to make more use of unstarred questions, Question Time (and the new topical questions) to raise matters of concern on the floor (paragraph 154).

#### *Administrative Matters*

219. We endorse the practice whereby all our letters are signed by the Chairman of the Select Committee, regardless of which Sub-Committee has been considering the issue. This provides a single focus for our work (paragraph 108).

220. We work on the assumption that letters, once sent, are presumed to be public and can therefore be released to the press and interested parties (paragraph 146).

221. We will ensure quicker and more regular publication of significant correspondence (using the internet) in addition to the twice-yearly published volume (paragraph 146).

222. We will make more use of letters to follow up scrutiny issues raised by proposals which come forward after a major inquiry (paragraph 146).

223. We will increase efforts to foster a culture of respect for scrutiny in Whitehall, including the holding of regular sessions of evidence from senior civil servants responsible for European policy (paragraph 146).

224. We propose that regular digests of significant scrutiny by correspondence be made freely and publicly available (paragraph 147).

225. Our reports should be presented to have the most impact. There is no necessary correlation between the shortness of a report and its focus. Internal improvements to the layout and presentation of reports are underway. We have nevertheless considered how in practice a focused and readable report can actually be produced. To this end we will aim to ensure that all our substantive reports accord with standards set out in this report (paragraphs 142, 145).

226. We will produce an annual report from the Committee, giving an account of our activity, drawing attention to any problems in the scrutiny process and outlining key emerging issues in a short and punchy document produced in time for the debate on the Queen's Speech (paragraph 155).

227. We will look at administrative questions such as finding ways to improve the availability and accessibility of our work by means that Members of the House actually notice, namely through their party whips, the Crossbench notices and the Forthcoming Business document (paragraph 156).

228. We will discuss further the public provision of information including via the redesigned website ([www.parliament.uk](http://www.parliament.uk)) (paragraph 158).

229. We will consider with the Information Officer for Select Committees how publicity and information provisions on our work may be enhanced. In addition we would wish to see copies of our reports made as freely and easily available as possible by the House (paragraph 159).

#### CONCLUSION

**230. This report raises many issues requiring further work to implement recommendations over the coming year. We will review and follow up the responses given to our recommendations. We will ensure that we continue to scrutinise the work of the Convention and relevant developments arising in that forum. In the meantime we make this Report to the House for debate.**

APPENDIX 1  
**Membership of the Committee**

The Members of the Committee are:

Baroness Billingham  
Lord Brennan  
Lord Cavendish of Furness  
Lord Dubs  
Lord Grenfell (Chairman)  
Lord Hannay of Chiswick  
Baroness Harris of Richmond  
Lord Jopling  
Lord Lamont of Lerwick  
Baroness Maddock  
Lord Neill of Bladen  
Baroness Park of Monmouth  
Lord Radice  
Lord Scott of Foscote  
The Earl of Selborne  
Lord Shutt of Greetland  
Baroness Stern  
Lord Williamson of Horton  
Lord Woolmer of Leeds

The following Members of the House were Members of the Committee until the end of session 2001–2002 and took part in this inquiry:

Viscount Bledisloe  
Lord Brabazon of Tara (Chairman)  
Lord Brooke of Alverthorpe  
Viscount Brookeborough  
Lord Tomlinson  
Lord Williams of Elvel

## APPENDIX 2

**Evidence**

The following gave evidence to this inquiry:

Commissioner Barnier

The Corporation of London

Mr Stanley Crossick, European Policy Centre

Dr Adam Cygan

Mr Andrew Duff MEP

Mr Jimmy Hood MP, Chairman, House of Commons European Scrutiny Committee

Lord Howell of Guildford

Lord Inglewood MEP

Ms Caroline Jackson MEP

Mr Claus Larsen-Jensen and Mr Peter Juul Larsen, European Affairs Committee, Folketing, Denmark

Baroness Ludford MEP

Professor Neil MacCormick MEP

Lord Pearson of Rannoch

Lord Stoddart of Swindon

Baroness Williams of Crosby

Rt Hon. Lord Williams of Mostyn (Leader of the House) and Mr Michael Roberts

The following questions formed our “call for evidence”:

**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?
  - 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 3

**Our Working Methods**

Our Committee was set up in 1974 after a thorough analysis by a specially appointed Committee of the House into what parliamentary scrutiny of European legislation would be required when Britain joined the European Community. That Committee was chaired by Lord Maybray-King<sup>44</sup>. Maybray-King started from the principle that, as a consequence of the United Kingdom's membership of the European Community, the United Kingdom Parliament would give to Ministers acting in Council the ability to make law binding on the United Kingdom and its citizens. The fact that EC membership has involved the transfer of a measure of national sovereignty has lain at the heart of European scrutiny by this House for nearly thirty years.

Maybray-King said "the purpose of Parliamentary scrutiny is to influence United Kingdom Ministers prior to discussions in the Council on Community proposals in which they take final form; and to examine ministerial actions in their Community legislative function on decisions reached in the Council on draft proposals. Parliamentary scrutiny is also a means—

- To give public opinions and interests affected sufficient opportunity for expression;
- To inform United Kingdom members of the European Parliament of the views of their colleagues in the national Parliament before the Council consults the European Parliament; and
- To obtain information about technical and political evolution of the Community, for parliamentary comment and debate."

*Role of the Committee*

Our Committee is the successor to the European Communities Committee, first established in 1974, the year after the United Kingdom joined the Community. The Committee's title was changed in December 1999 to reflect the changes agreed in the Treaties of Maastricht and Amsterdam.

The House of Lords, as part of the national parliament, performs a valuable service for the United Kingdom in scrutinising and reporting on proposed European legislation.

*Remit and Organisation of the Committee*

The Committee is appointed at the beginning of every parliamentary session. Its terms of reference are:

"To consider European Union documents and other matters relating to the European Union."

The Committee is chaired by a salaried Officer of the House (the Principal Deputy Chairman of Committees). It has 19 members, each of whom (other than the Chairman) serves on one or more of the subject-area sub-committees through which the Committee conducts its investigations. Other members of the House are also co-opted to the sub-committees, so that a total of around 70 Members are actively involved in the work of the Committee or sub-committees.

The Sub-Committees are:

Economic and Financial Affairs, Trade and External Relations (A)

Energy, Industry and Transport (B)

Common Foreign and Security Policy (C)

Environment, Agriculture, Public Health and Consumer Protection (D)

Law and Institutions (E)

Social Affairs, Education and Home Affairs (F)

Additional sub-committees may be set up *ad hoc* to examine specific proposals.

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<sup>44</sup> See n. 10 above.

### *How the Sub-Committees Work*

The sub-committees meet regularly when the House of Lords is in session to conduct inquiries based either on the scrutiny of EU documents or into subjects chosen by the sub-committees from within their field of activity. The sub-committees are assisted by clerks, and by consultant specialist advisers appointed for their expert knowledge of the subject under inquiry. The sub-committees operate in the same way as other select committees of the House of Lords and the House of Commons. They invite written and oral evidence from government departments, Community institutions and other interested bodies and individuals, in order to consider a wide range of points of view before reaching conclusions. Draft reports setting out conclusions and recommendations are then prepared and agreed by the sub-committees, and approved by the Select Committee before they are published.

About half the reports published are subsequently debated in the House. The Government has undertaken to reply to all reports, whether debated or not, within two months of publication.

### *Scrutiny of the Three Pillars of the European Union*

The Treaty of Maastricht, which came into effect in 1993, set up the European Union comprising three “pillars”:

1. The European Community and its legislation.
2. A Common Foreign and Security Policy.
3. Justice and Home Affairs.

Scrutiny of the first pillar was the committee’s main activity from 1974 to 1993.

The second and third “pillars” are based on inter-governmental co-operation. Instruments adopted under these two inter-governmental pillars, where they are legally binding, are binding under international law and not as Community law.

From 1993 to 1998, the Committee scrutinised “Pillar” documents on an informal basis. Following a review of procedures in the House of Commons, the arrangements for scrutiny of the pillars were formalised in November 1998. Since that date arrangements for the deposit of “pillar” documents have been formalised and a scrutiny reserve (see below) has applied to proposals under the inter-governmental pillars.

The Committee has always adopted the same procedure for scrutiny of inter-governmental pillar documents as that for Community legislation. This procedure is described in more detail in the following paragraph.

### *How the Scrutiny System Works*

The Committee considers a wide range of documents under all three pillars. They include not only proposals for legislation under the first pillar and proposals for binding legal instruments under the second and third pillars, but also discussion documents such as white and green papers.

These documents are deposited in the United Kingdom Parliament by the Government. Over 1000 documents are deposited each year, along with an explanatory memorandum, signed by a Government Minister. This sets out the legal, financial and policy implications of every document, and the procedure and timetable for its consideration and adoption. Many of the documents are routine or of comparatively minor importance (for example, minor adjustments to existing policies); in any case the number of documents is too great for the Committee to give detailed consideration to them all.

The Chairman of the Committee therefore conducts a “sift”. The Chairman considers all the explanatory memoranda, sifts the more significant documents from the less important ones, and decides which should be referred to the sub-committees for further examination. About a quarter of the documents deposited are referred to the sub-committees.

Each sub-committee then examines the documents referred to it. A sub-committee will usually simply take note of many of them, choosing a few each year on which to conduct a substantial enquiry and make a report.

The Committee may sometimes set out its views in a letter to the appropriate Government Minister if its views can be expressed succinctly without the need for extensive evidence (for example, by reference to an earlier report) or where Council decision on a proposal is likely to be reached quickly. The Committee’s correspondence with ministers is published at regular intervals in a report to the House.

### *Wide-Ranging Scrutiny*

Since establishment the Committee has scrutinised and reported on a wide range of issues which affect people’s everyday lives and the longer-term future of both the United Kingdom and Europe.

*Other Activities*

The Select Committee, in addition to considering draft reports prepared by the sub-committees, also hears regular sessions of evidence from Foreign Office ministers, particularly following each European Council. The Committee plays an active role in the Conference of European Affairs Committees of National Parliaments (COSAC).

*The Scrutiny Reserve Resolution*

The scrutiny system originally rested on an undertaking given by the Government that they will not, except in special circumstances, agree to any proposal in the Council until it has been cleared by the Committee. This has now been formalised in a Resolution of the House of Lords agreed on 6 December 1999. This “scrutiny reserve” gives the House an opportunity to influence the position which the Government adopts on the proposal in negotiation with other Member States of the Community. The text is as follows:

Resolved, That—

- (1) No Minister of the Crown should give agreement in the Council to any proposal for European Community legislation or for a common strategy, joint action or common position under Title V or a common position, framework decision, decision or convention under Title VI of the Treaty on European Union—
  - (a) which is still subject to scrutiny (that is, on which the European Union Committee has not completed its scrutiny);
  - (b) on which the European Union Committee has made a report to the House for debate, but on which the debate has not yet taken place.
- (2) In this Resolution, any reference to agreement to a proposal includes –
  - (a) agreement to a programme, plan or recommendation for European Community legislation;
  - (b) political agreement;
  - (c) in the case of a proposal on which the Council acts in accordance with the procedure referred to in Article 251 of the Treaty establishing the European Community (co-decision), agreement to a common position, to an act in the form of a common position incorporating amendments proposed by the European Parliament, and to a joint text; and
  - (d) in the case of a proposal on which the Council acts in accordance with the procedure referred to in Article 252 of the Treaty establishing the European Community (co-operation), agreement to a common position.
- (3) The Minister concerned may, however, give agreement to a proposal which is still subject to scrutiny or which is awaiting debate in the House –
  - (a) if he considers that it is confidential, routine or trivial or is substantially the same as a proposal on which scrutiny has been completed;
  - (b) if the European Union Committee has indicated that agreement need not be withheld pending completion of scrutiny or the holding of the debate.
- (4) The Minister concerned may also give agreement to a proposal which is still subject to scrutiny or awaiting debate in the House if he decides that for special reasons agreement should be given; but he should explain his reasons –
  - (a) in every such case, to the European Union Committee at the first opportunity after reaching his decision; and
  - (b) in the case of a proposal awaiting debate in the House, to the House at the opening of the debate on the Committee’s Report.
- (5) In relation to any proposal which requires adoption by unanimity, abstention shall, for the purposes of paragraph (4), be treated as giving agreement.

## APPENDIX 4

**National Parliamentary Scrutiny in other Member States****Austria***Political System*

The Austrian bicameral parliamentary system is very similar to that of Germany and consists of the Nationalrat and the Bundesrat.

*Composition*

As in Germany, the members of the Austrian Bundesrat are representatives of the Austrian Laender delegated by the Laender parliaments. The Austrian Bundesrat, however, has more limited constitutional rights than its German counterpart.

*EU Committees*

The Nationalrat has a Main Committee that has a Standing Sub-Committee on EU matters and can also convene as an EU Committee and as such functions in a similar way to the House of Commons EU Committee. Its membership reflects the political weighting in the Nationalrat. The EU Committee, when it convenes as such, can oblige the Government to take a particular approach at a European Council. The Government is only allowed to deviate from this position in stipulated instances. To deviate from the agreed approach on an EU Treaty change, it must ask permission of the Nationalrat Committee. In the Bundesrat, the main Committee can convene as the European Committee when important EU decisions are being negotiated.

*Legislative Powers*

The Government is obliged to provide the parliament with all EU documentation. This information is stored and is accessible to both chambers. The Bundesrat has the right to write to ministers with questions. It can also take views on particular EU matters, but does not have a formal right to oblige the Government to adhere to these, except in very limited circumstances.

**Belgium***Political System*

Belgium has a bicameral political system. The Kamer van Volksvertegenwoordigers (Chamber of Representatives) and the Senate. Since 1970, a number of far-reaching amendments to the Belgian Constitution has given Belgium a federal constitutional structure.

*EU Committees*

The Belgian Parliament deals with European matters through its Joint Advisory Committee on European Affairs, which involves MEPs.

*Legislative Powers*

There are three procedures for legislative decision-making in Belgium. 'Monocameral' competences are decided by the Chamber of Representatives and the King and cover matters such as the budget and national defence. 'Fully bicameral' competences must be agreed by the Chamber of Representatives, the Senate and the King. This procedure covers international agreements, the constitution, language laws and national suffrage. The third procedure is that of 'part bicameral laws' where the Senate's constitutional right is determined case by case.

*Conclusion*

As international agreements come under the second 'fully bicameral' procedure, the Belgian Government must have approval from both parliamentary chambers. The Government is also obliged to inform both chambers of its intent before amendments to EU treaties. The Senate has the right to submit questions to the Government.

**Denmark***Political System*

The Danish Parliament, the Folketing, is unicameral.

*EU Committee*

The European Affairs Committee (Europaudvalget) was created in 1972 and meets throughout the year, except for August. It has 17 permanent members and 11 substitutes. The parties are allocated places on the Committee according to their strength in the Folketing.

*Role of EU Committee*

The primary role of the European Affairs Committee is to provide a politically binding mandate for the Government's EU (and WTO) policies. The Committee may consider all proposals for legislative acts from the European Commission, regardless of subject. The Danish Government must submit memoranda indicating the nature and purpose of the proposal within four weeks of formal circulation by the Council.

The Government must also submit a mandate for negotiations for all Justice and Home Affairs issues. The Government does not require a mandate for Pillar II proposals, although it will often confer with the Committee on CFSP policies.

The Danish Prime Minister is required to report to the Committee, in person, prior to and after participating in the European Councils and Intergovernmental Conferences. MEPs are not normally allowed to participate in meetings of the European Affairs Committee but may be invited for consultation.

See also "conclusion" under Sweden, below.

**Finland***Political System*

The Finnish Parliament, the Eduskunta/Riksdag, is unicameral.

*EU Committee*

The Grand Committee (Suuri valiokunta/ Stora utskottet) was given its task to scrutinise EU policy in 1994 (the Committee was formed in 1906). It has 25 members and 13 substitutes. The Eduskunta/Riksdag selects committee members to reflect party strength. However, even the smallest party normally has at least one substitute place on the committee. The Grand Committee meets twice a week.

*Role of EU Committee*

The Grand Committee's most important task is to determine Finland's negotiating basis in relation to the Council proposals lying within the Parliament's competence. The Committee may consider all

proposals for legislative acts from the European Commission, regardless of subject. The Government must submit memoranda indicating the nature and purpose of the proposal 'without delay'.

§ 96 of the Finnish Constitution prescribes that proposals relating to CFSP are to be considered in the Foreign Affairs Committee. The Legal Affairs Committee will advise the Grand Committee on matters falling under Pillar III.

The Finnish Prime Minister is required to report to the Grand Committee, in person, prior to and after participating in the European Councils and Intergovernmental Conferences. MEPs are not entitled to participate in meetings of the Grand Committee.

See also "conclusion" under Sweden, below.

## **France**

### *Political System*

France has a bicameral parliamentary system composed of the National Assembly and the Senat.

### *EU Committees*

The mechanism for examining EU legislation by the national parliament has not been in place for very long, only around 10 years. It involves a "delegation" of each chamber. The objective of the French system is to allow the National Assembly and the Senat to adopt a position on legislation in preparation.

The delegations in the Assembly and the Senat are at the centre of the process, and are like committees but not called that as the latter are only for working on French law. The delegations of the Assembly and the Senat each comprise 26 Parliamentarians, representing all the political groupings, in the proportions of the plenary. Each of the 26 is a member of one of the specialist permanent committees dealing with national law.

The Government sends around 1000 texts per year for scrutiny.

### *Mechanism of examination*

Examination is very similar in both Houses. The French Constitution distinguishes between laws: those voted for by Parliament, and regulations adopted by the Government. The initial sift is done by the Conseil d'Etat separating texts which have an impact on national law from the rest. However, if the delegations feel that a document which has not been sent to them after the initial sift presents a point of political interest and is worth a closer look, it is also sent to them. This ensures that documents which are of no real interest do not take up the time of the delegations.

Once sifted to the delegations, the majority of texts are of minor importance and are subject to written procedure only. For each, the secretariat provides the members of the delegation with a summary note outlining the contents and the reasons why an extensive scrutiny is not necessary. If, within eight days, a member feels that further scrutiny is necessary the text is retained for the following meeting, and reclassified as for examination.

In around fifty of the texts examined each year, a rapporteur is appointed who, with assistance from the secretariat, carries out an in-depth analysis of the proposal examining its influence on French legislation, the consequences for French interests and the Government position. If it is felt appropriate, officials will be called to provide further information and meetings held with the permanent representation in Brussels. When the rapporteur is ready the text is examined by the delegation.

If the delegation is satisfied with the progress of the proposal and the Government's position, the scrutiny ends there. If the delegation considers the proposal raises a question of significant political importance, the text itself is unsatisfactory, or it would like to question the Government further, they will propose a resolution. The proposal for a resolution is sent to the permanent competent committee and a final resolution is adopted by the committee, or the plenary.

In urgent situations the minister responsible for negotiations on a specific text can request the Parliament to give their opinion urgently. The request must be accompanied by a justification.

#### *Perceived advantages*

Parliamentarians can focus on the most important texts, and the sifting process is legitimised by the use of the Conseil d'Etat.

A specific Parliamentary organ can deal with the work, but debate is not restricted and involves the whole Senat.

#### *Problems*

They tend to be concerned with the timing of national and EU process. General delays resulting in the inability to provide timely comments from the Senat in some circumstances.

### **Germany**

#### *Political System*

Germany has a bicameral parliamentary system. The Bundestag is the equivalent of the Commons. The members of the second parliamentary chamber, the Bundesrat represent the German federal Laender. Its constitutional role, therefore, is to take decisions in the interest of the second political level in Germany, the federal Laender.

#### *Composition*

The Bundesrat is composed of cabinet members from the 16 Laender delegated by the Laender governments. The Bundesrat provides a forum for intergovernmental cooperation between the regional and national political level. The number of Laender representatives in the Bundesrat is proportional to the population of each Land. North Rhine Westphalia therefore has six representatives whereas Saarland only has three. The votes awarded to each Land cannot be split and must be cast uniformly.

#### *EU Committees*

Both chambers have EU Committees. The Bundestag EU Committee links the national level to Europe by consisting of 14 MEPs and 36 MPs. The MEPs, however, do not have the right to vote in the committee. The Bundestag has the same system of Explanatory Memorandums as the UK Parliament.

#### *Legislative powers*

Act 23 of the German Basic Law states that both the Bundestag and the Bundesrat shall participate in European affairs. Both chambers have an entrenched right to be consulted on European legislation. The German government is legally obliged to provide all information on European matters to both chambers as soon as possible, to hear and take into consideration the view of both chambers before it goes to a European Council and to account for any deviance from the agreed view at a European Council and give clear reasons for it.

Whenever European legislation impinges on exclusive Laender competencies as set out in the Basic Law, government action is subject to Bundesrat opinion. The Bundesrat can veto the Bundestag's decision to cede sovereignty to European level, as such a decision would have clear ramifications for the Laender. The Bundesrat is permitted time to debate and review proposals before the German negotiation position for the European Council is determined.

### *Conclusion*

The role of the Bundestag as constitutional representative of the Laender at the federal level has led to equal degrees of scrutiny in both the Bundestag and the Bundesrat. In cases where European legislation is deemed to impinge on exclusive Laender competencies there is even scope for a representative of the Bundesrat to take part in Council meetings.

## **Greece**

### *Political System*

Greece has a unicameral parliamentary system.

### *EU Committee*

The composition of the Committee of European Affairs is mixed, consisting of national MPs and MEPs. The Committee has an advisory role but does not meet regularly. It can be convened by its Chairman, by a third of its members or by the Government. In general, the Chairman chooses topics for consideration but the Parliamentary Speaker may also do so.

## **Ireland**

### *Political System*

Ireland has a bicameral parliamentary system. The Houses of Parliament, the Títhe an Oireachtas is divided into the Dáil (The House of Representatives) and the Seanad (the Senate). While government administration and policy may be criticised in both Houses, the government is responsible to the Dáil only.

### *EU Committee*

The Irish Parliament set up a Joint Committee on European Affairs (An comhchoiste um Ghnóthaí Eorpacha) in 1973, where members of both Houses are represented. Committee membership is proportionally representative of the Parliament. Committee Reports are published but it is for the House(s) to decide on any follow up action. With the exception of the month of August, the Committee meets throughout the year.

The rejection of the Nice Treaty by the Irish public in the first referendum was interpreted by the Oireachtas as evidence of a democratic deficit in relation to the EU and called, among others, for increased powers of scrutiny for the Joint Committee. The Irish Government accepted the argument and introduced, from the 1st of July 2002, a more transparent system for scrutiny.

The Joint Committee on European Affairs may now consider all proposals for legislative acts from the European Commission, regardless of subject. The Government must submit memoranda indicating the nature and purpose of the proposal within four weeks of formal circulation by the Council. Briefing on request will be given in relation to CFSP and Justice and Home Affairs business.

Ministers will also be available on request to offer oral briefing in advance of Council meetings. It was also agreed that the Taoiseach (Prime Minister), Minister for Foreign Affairs or Minister of State for European Affairs will, on request, brief the Committee in advance of European Councils.

Irish MEPs (including Northern Ireland MEPs) and members of the Irish delegation to the Parliamentary Assembly of the Council of Europe can attend and participate at their meetings but without voting rights. The Committee can also invite MEPs of other Member States to attend under similar conditions.

### *Conclusion*

In the aftermath of the first Nice referendum the Oireachtas has recognised the crucial role played by national parliamentary scrutiny. The new system, introduced in 2002, is intended to give the Oireachtas more influence over Irish EU policy.

## **Italian System**

### *Political System*

Italy has a bicameral system consisting of the Chamber of Deputies and the Senate.

### *EU Committees*

In the Senate, the relevant Committee is the “Giunta per gli affari delle Comunità europee”, and in the Chamber of Deputies, the “Commissione le politiche dell Unione Europea”—also known as the XIV standing committee.

Traditionally in both Houses of the Italian Parliament direct competence on EU matters is the responsibility of standing committees, the EU Committees having a consultative role. In 1999 the Chamber of Deputies reformed its rules of procedure, giving the Chamber’s EU committee standing committee status, with specific tasks. The Giunta of the Senate, however remains solely consultative, with the primary competence falling to the Constitutional Affairs Committee. This is felt to have created an imbalance between the two.

### *Mechanism of examination*

According to Italian law, the Government must transmit all EU legislative proposals to the Chamber of Deputies in sufficient time for the relevant standing Committee to scrutinise them. However, there is no a regular process for the transmission of proposals, although the process has improved since ratification of the Amsterdam Treaty.

The insufficient flow of proposals, usually once negotiations are in an advanced state, has meant that Parliament’s opinion has been ineffective. There has also been a lack of Explanatory Memoranda, the Government giving very little in the way of detailed information on any proposals. It is felt that this due to EU matters being split between Foreign Affairs and EU Affairs ministers, and poor co-ordination between ministries.

The two Parliamentary scrutiny committees do not study proposals uniformly. For example, between September 2000 and March 2001 the Giunta scrutinised around seventy documents, but the Standing Committee, which had primary competence, looked at only one proposal.

Since the new legislature in April 2001 scrutiny has become more sporadic, due to a decline in the number of documents deposited to the Committees by Government. Both the Giunta and the XIV Standing Committee have requested that the Government regularly deposit documents, provide an Explanatory Memorandum outlining the negotiating position in Brussels and the likely impacts on Italy, and forward the Parliament’s comments to the Permanent Representative in Brussels.

A legislative proposal has recently been presented by the Government to address the problems outlined above, and improve Italy’s scrutiny system.

## **Luxembourg**

Luxembourg’s Chamber of Deputies has a Committee for Foreign and European Affairs and Defence, which scrutinises, investigates and reports on EU documents, sometimes after taking evidence and the Committee’s opinions are sent to Government. The Committee has 16 members, reflecting proportionate strengths of part groups. Luxembourg MEPs may attend in advisory capacity.

## **Portugal**

The Assembly of the Republic follows and analyses Portugal's involvement in the construction of the European Union. Parliament is informed, through the Government, of all proposals presented in the Council. The whole Parliament—Plenary and Specialist Committees—is involved in an ongoing review process of EU laws and initiatives and evaluates them.

The Committee of European Affairs is the specialist committee for all matters related to the European Union. The Committee has an umbrella responsibility, distributing the issues among the relevant Specialist Committees. The Committee may then request Opinions from the individual Specialist Committees on which it bases reports to the Government. These reports, whether based on other Committee opinions or not, may lead to the presentation of resolutions to the plenary. The European Affairs Committee is the only Committee with such a power.

Parliament in particular assesses the structural funds and the Cohesion Fund in the light of national programmes in which the use of those funds is envisaged.

The Committee for European Affairs:

- a) Evaluates subjects of interest to Portugal within the framework of the European institutions or of inter-governmental cooperation, in particular the activities of the Government with reference to those affairs;
- b) Encourages greater participation by Parliament in the activities undertaken by the European institutions;
- c) Stimulates exchanges between Parliament and the European Parliament;
- d) Appoints the Portuguese representatives to COSAC

## **Spain**

Spain's bicameral parliament has a single Joint European Affairs Committee of 32 members (based on proportional representation) with some alternates and a series of sub-committees. The Committee scrutinises and ranks proposed laws, and makes reports to the plenary and the government. Joint meetings are held with Spanish MEPs. There is currently a sub-committee on the 2004 IGC.

## **Sweden**

### *Political System*

The Swedish Parliament, the Riksdag, is unicameral.

### *EU Committees*

The Advisory Committee on EU Affairs of the Riksdag (EU-Nämnden) was established in 1995. It has 17 permanent members and 30 substitutes. The Advisory Committee on EU Affairs reflects the parties' strength in the Riksdag. The Committee meets weekly throughout the year, except in August.

### *Role of EU Committee*

The primary role of the Advisory Committee on European Affairs is to provide a politically binding mandate for the Government's EU (and WTO) policies.

The Committee may consider all proposals for legislative acts from the European Commission, regardless of subject within five weeks of formal circulation by the Council. The Swedish Government must seek a mandate for matters falling under the second and third pillar using the same guidelines as for Pillar I issues.

The Swedish Prime Minister will report, in person, to the Advisory Committee before participating in European Councils and Intergovernmental Conferences. During the final negotiations at the Intergovernmental Conferences there are normally telephone conferences between the Advisory

Committee and the Minister of Foreign Affairs or the Prime Minister's closest associates. MEPs are not normally allowed to participate in meetings of the Committee but may be invited for consultation.

### *Conclusion*

Finland, Sweden and Denmark all have similar systems for scrutinising their Governments' European policy, sometimes referred to as the Nordic Model. The Nordic Parliaments all mandate their Governments to conduct negotiations in the Council, reflecting a consensual style of policy making. The European Committees will also report, and in the case of the Danish Parliament organise public events, on Commission Green and White Papers.

All three Parliaments give high priority to openness and transparency. 95% of documents dealt with by the Committees are made public on their websites. Both the Swedish and Danish Parliaments operate EU Information Centres, the task of which are to provide neutral information to the general public. The Finnish Eduskunta/Riksdag operates a similar service through its external information centre.

## **The Netherlands**

### *Political system*

Holland has a bicameral parliamentary system. The Tweede Kamer (second chamber) is the equivalent of the House of Commons. The Eerste Kamer (first chamber) is the equivalent of the House of Lords.

### *Composition*

The 75 members of the Eerste Kamer are part-time politicians who have other professional positions and responsibilities. They are appointed for their policy expertise by a body that consists of directly elected representatives of each of the 12 Dutch provinces. The Eerste Kamer assures the quality of legislation by double-checking proposals in detail.

### *Legislative powers*

The Eerste Kamer can only accept or reject legislation. In fact the threat of it rejecting proposed legislation leads to it having practical influence. Since 1945 there have only been a handful of proposals that have been rejected by the Eerste Kamer. Members of the Eerste Kamer can submit written questions to the Government.

### *EU Committees*

Both chambers have an EU Committee. In the Tweede Kamer, membership of the Committee reflects the political weighting of the second chamber. The Tweede Kamer EU Committee broadly functions under the same terms as the Commons EU Committee, though in a more ad hoc manner. The Committee in the Eerste Kamer conducts general work on EU affairs, and refers particular issues to specialised committees. It plays a particular role in transposition.

## APPENDIX 5

**Scrutiny of EU Financial Affairs: Memorandum by Sub-Committee A**

## INTRODUCTION

1. We are keen to improve our scrutiny of EU financial affairs. In particular, we hope to develop the way in which we scrutinise the annual Budget of the European Communities and the implementation of that Budget<sup>45</sup>. For a long time there has been dissatisfaction with the arrangements for parliamentary scrutiny of the annual EC Budget and, despite several reviews over the years<sup>46</sup> and various improvements in how scrutiny of the Budget is handled, frustration remains. The annual timetable for the Budget is complicated and involves many different stages (see below paragraphs 14–16). Yet, although the overall procedure is lengthy, the short amounts of time between the different stages means that the process does not lend itself to in-depth scrutiny work at all junctures.

2. We examine how we might best discharge our scrutiny responsibilities given the restrictions of the Budget timetable. We set out the background to the current scrutiny arrangements for EC Budget documents and propose a number of changes that would improve both our scrutiny of the Budget and the arrangements for reporting to the House. We suggest a structure that will ensure we systematically approach the Budget in a way which is well-timed and effective.

3. We conclude that short, focused scrutiny of the Budget should take place at the earliest possible opportunity in the annual cycle. Furthermore, our scrutiny of the Budget should not distract us from other important inquiries on topics and legislative decisions that have large budgetary implications.

## BACKGROUND: PUTTING THE ANNUAL BUDGET IN CONTEXT

4. The annual EC Budget is one element that determines European spending levels, but many important budgetary decisions are taken outside the annual budgetary process. Broadly speaking, decisions on European spending involve three forms of legislation. These are as follows.

*The legal framework*

5. Expenditure in the annual Budget is tightly constrained by certain key agreements and items of legislation. Foremost among these is a multi-annual financial programme, known as the Financial Perspective, which lays down revenue and expenditure parameters. The Financial Perspective forms part of an inter-institutional agreement between the Commission, the Council and the European Parliament, all of who are bound to respect its principles and ceilings when the annual Budget is set year by year. This financial framework contains the Communities' medium-term expenditure plans. The Financial Perspective sets out annual ceilings for the six major categories of EC expenditure (agriculture, structural operations, internal policies, external action, administrative expenditure, and reserves) and is thus decisive in shaping the annual Budgets.

6. Another key piece of legislation is the Own Resources Decision, which sets out the arrangements for financing the Community Budget. This document determines Member States' contributions to the Budget and limits the amount of money that the Community can raise from the Member States. It is fixed in terms of a percentage of overall Community Gross National Income (GNI) that the Budget may absorb in any one year. For 2002, this figure is equivalent to 1.24% of Community GNI. These two legislative instruments constitute the major financial decisions for the EC, as they set the boundaries within which the annual EC Budget is negotiated.

7. Changes to this overarching legal framework are very infrequent and are the focus of concentrated scrutiny by the Committee. The current Financial Perspective was set at the March 1999 Berlin Council and covers the period 2000–2006.<sup>47</sup> We examined the proposals for the current Financial Perspective and the operation of the Own Resources System in our Report *Future Financing of the*

<sup>45</sup> The Budget is established and authorised under the Community pillar of the Union and its legal order; it is thus a Budget not of the Union but of the Communities.

<sup>46</sup> Over the years there have been several internal reviews in Parliament and numerous meetings between the officials of the two Houses and HM Treasury. These have led to several sets of correspondence and two published reports: one by the House of Commons Select Committee on European Legislation entitled *Scrutiny of the EC Budget* (Session 1997-98, 20th Report, HC 155-xx) and one by the House of Commons European Scrutiny Committee *European Scrutiny in the Commons* (Session 2001-02, 30th Report, HC 152-xxx).

<sup>47</sup> The first financial perspective ran from 1988 to 1992. The second one, which ran from 1993 until 1999, was agreed at the Edinburgh European Council in December 1992.

*EU: Who pays and how?* (Session 1998–99, 6th Report, HL 36), which was published at the beginning of March 1999 in the run up to the Berlin Council.

8. The negotiations on the next Financial Perspective are set to be very complex and difficult. They will cover an enlarged EU and will take place amid calls for reform of the CAP for and a review of the UK abatement.

**9. The decisions on the total level of EC expenditure are of paramount importance and must remain the focus of concentrated scrutiny by this Committee. We will continue to consider in detail any changes to the overarching legal framework within which the annual EC Budget is set. We undertake to carry out a full inquiry on the subject of the next Financial Perspective soon after the Commission publishes its proposals in this area (which are expected in 2004). By connecting with this procedure at an early stage, we will be able to publish our report whilst negotiations are still ongoing, and thus we hope to have an influence on the process.**

10. The Financial Regulation applicable to the general Budget of the European Communities lays down the basic rules that govern all aspects of the EC Budget matters that are referred to in the Treaties. The 1977 Financial Regulation has this year been revised in an attempt to clarify and simplify the budgetary rules. The new Financial Regulation introduced Activity-Based Budgeting to the EC Budget, in an attempt to link proposed expenditure to clear objectives and results. It also redefined the financial actors, clearly separating the roles of authorising and accounting officer. The Financial Regulation thus lays down the general guidelines for the budget and the proposals for its revision were the subject of scrutiny by Sub-Committee A. **We will in the future look at the ways in which the move to activity-based reporting is improving budgetary effectiveness across the Community, and how objectives and performance points are having an impact on the budgetary process.**

#### *Individual spending programmes*

11. Spending in the annual Budget is divided amongst six major categories: agriculture, cohesion policy and the Structural funds, internal policies, external action, preparations for enlargement, and administration. Whilst the ceilings for spending in each category are set in the Financial Perspective, the driver for how and where money is spent within each category in the annual Budget comes from the decisions to adopt particular spending programmes. For example, a decision to enter billions into the Budget on a multi-annual research programme automatically follows from the decision to approve the research programme. The initial policy decision approving the spending programme therefore sets the dynamics for the annual Budget. In this sense, the annual Budget process simply records budgetary provisions for previously considered and scrutinised spending and revenue decisions. This is the case for the two areas that together take up nearly 80% of the total EC Budget: CAP spending and the Structural Funds. Scrutiny of such decisions is certainly as important as scrutiny of the annual Budget.

12. The Common Agricultural Policy (CAP) is historically the most resource-consuming of the Community policies. The EC provides a large proportion of the funding for European agriculture: this year, agriculture is set to consume almost 46% of EC expenditure. The Structural Funds aim to reduce inequalities in wealth distribution across the regions so that all European citizens can benefit from EMU and the large Community market. The Framework 6 programme for Structural Funds made far-reaching policy decisions with large budgetary implications. These funds are the second largest element of EC expenditure, accounting for 34% of the 2002 Budget.

13. A number of new multi-annual programmes, including indicative multi-annual spending volumes, have recently come into effect. These include the Sixth Research and Development Framework Programme (which will cost €17.5 billion between 2002 and 2006) the Public Health Programme (€12 million over the period 2002–06) and the Employment Incentive Measures (€55 million, 2002–06). These spending decisions themselves underwent United Kingdom parliamentary scrutiny in the usual process, outside scrutiny of the annual Budget cycle.

14. Our Sub-Committees take an active role in scrutinising and reporting on these major spending decisions. In the build up to the current Financial Perspective, we reported on the financing of enlargement,<sup>48</sup> CAP reform<sup>49</sup> and reform of the Structural funds.<sup>50</sup> Since then, we have reported on EU

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<sup>48</sup> *The Financial Consequences of Enlargement*, 10th Report, HL 41, Session 1997-98.

<sup>49</sup> *CAP Reform in Agenda 2000: The Transition to competition: Measures for rural development and the rural environment*, 18th Report, HL 84, Session 1997-98.

<sup>50</sup> *The Reform of the Structural Funds and the Cohesion Fund*, 30th Report, HL 138, Session 1997-98.

Aid to the Balkans,<sup>51</sup> which is a large element of the spending on external relations. Furthermore, Sub-Committee D is currently conducting an inquiry into the mid-term review of the CAP.

15. By prioritising these long-term policy decisions, we act upon the strengths of the Sub-Committee structure and working methods. In such considered inquiries we have time to stand back and take a long-term perspective. In so doing, we hope to influence policy makers and those who take decisions in a way which is extremely difficult in the fast-moving process of the annual Budget cycle. Such inquiries, if well timed, can add much value to our scrutiny of the annual EC Budget. **The major spending decisions will remain a focus of concentrated and rigorous scrutiny for us and will continue to form the basis of our inquiries. We will continue to scrutinise in detail proposals for legislation that have budgetary implications and will follow closely negotiations on such proposals at Council meetings. For instance, with the prospect of enlargement, we will scrutinise the proposals on Structural Funds before they are settled in preparation for the next IGC.**

#### *The annual budgetary process*

16. The budgetary procedure is set out in Article 272 of the EC Treaty, which stipulates the sequence of stages and the time-limits which must be respected by the two arms of the 'budgetary authority': the Council of Ministers (acting by qualified majority) and the European Parliament, who together establish the annual Budget. The Council has the final say on "compulsory" expenditure, that is, spending that is a direct result of treaty application or acts adopted on the basis of the treaties, which in practice means spending on agriculture; the European Parliament has the final say on all other categories (defined as "non-compulsory" expenditure, which includes spending on regional policy, research policy and energy policy).

17. The annual budgetary procedure, as defined in the Treaty, extends from 1 September to 31 December of the year preceding the Budget year in question. In practice, however, a 'pragmatic' timetable has been applied by the three institutions since 1977. The different stages of the Budget procedure are as follows:

—The Commission draws up a Preliminary Draft Budget (PDB) in May.

—The Council conducts its first reading in July and establishes a Draft Budget (DB), which is then passed to the European Parliament for a first reading.

—The European Parliament conducts its first reading in October on the basis of the Council's Draft Budget.

18. The Draft Budget, with any amendments, then returns for a second reading first to the Council and then to the European Parliament.

#### *Second reading by the Council*

The Council conducts this second reading during the third week of November, after a conciliation meeting with a delegation from the European Parliament. The Draft Budget is amended in the light of the European Parliament's amendments (non-compulsory expenditure) or proposed modifications (compulsory expenditure). As a general rule, the Council's decisions on second reading relating to compulsory expenditure determine the final amount: unless the entire Budget is subsequently rejected by the European Parliament, the Council has the 'last word' on this category of expenditure. The Draft Budget as amended is then returned to the European Parliament.

#### *Second reading by Parliament and adoption of the Budget.*

In December, the European Parliament reviews non-compulsory expenditure, for which it can accept or refuse the Council's proposals. The President of the European Parliament then declares the Budget adopted and it can be implemented.

19. The 2002 general Budget, which was formally adopted after its second reading in the European Parliament on 13 December 2001, amounted to €98,635 million for commitment appropriations and €5,655 million for payment appropriations. The UK's gross contribution, after abatement, to the 2002 adopted Budget was about €13.4 billion (14.3% of the total). In 2001, this figure was €12.6 billion (13.9%).

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<sup>51</sup> Responding to the Balkan Challenge: The role of EU aid, 20th Report, HL 107, Session 2001-02.

## DIFFICULTIES WITH SCRUTINISING THE ANNUAL CYCLE OF THE EC BUDGET

20. There are a number of complexities in the structure of the annual Budget cycle that make effective national parliamentary scrutiny of it difficult. The Budget generates a very large amount of paperwork that is often delayed in reaching Member States as a result of translation. This means that documentation is often dealt with at a national level at the same time as it is already being negotiated at European Council fora. It is then too late for national parliamentary scrutiny to be effective.

21. A number of years ago, the Chairman of the Select Committee recommended radical reform of the timetable as the only means to allow effective national parliamentary scrutiny of the Budget.<sup>52</sup> However, the prospect of any significant change to the annual Budget timetable is remote.<sup>53</sup>

22. The European Parliament Committee on Budgets is responsible for matters relating to the definition and exercise of the European Parliament's budgetary powers (Articles 268 to 273 of the EC Treaty) and the rules thereof dealing with the establishment of the Budget. Acting in this capacity, the European Parliament Committee on Budgets follows closely each stage of the annual budgetary procedure. In contrast, it is difficult for a scrutiny committee of a national parliament to keep pace with the fast-moving annual budgetary process. It is our opinion that the scrutiny system of a national Parliament should seek primarily to influence its Government Ministers in the Budget Council and to hold them to account for their decisions. The Committee does not have the time or resources to undertake detailed scrutiny of every single stage of the annual budgetary process without compromising its other scrutiny work, including our inquiries into the budgetary decisions that are taken outside the annual Budget cycle.

23. In deciding which stages of the annual budgetary process to scrutinise, we must ensure that the Committee's handling of budgetary matters does not simply duplicate the work we already do when Sub-Committees consider the legislative proposals authorising spending programmes or revenue raising powers. Given the 80% of the annual Budget that is spent on the CAP and the Structural Funds, and excluding a further 10% of the annual Budget that is taken up by spending on multi-annual programmes, only a small percentage of the total EC Budget is decided on an annual basis and is relevant for detailed annual scrutiny. This low percentage of EC spending does not merit the complicated procedure concentrated scrutiny of every stage of the annual Budget process would entail. The last point is borne out by the fact that the difference between the Preliminary Draft Budget and the final adopted Budget is often very small.

**24. The House will, of course, always have the opportunity to scrutinise the various stages of the budgetary process, if it deems that this is essential. We consider, however, that the Committee's efforts are best spent by focusing on particular key stages and developments in the annual process. The crucial question here is how a national parliament can best feed its views into the European procedure of formulating the Budget. It is important to understand when the Committee's opinions can best contribute to the European discussion and affect the position of the Government. In this respect, we consider that the key event is the establishment of the Draft Budget by the Budget Council in July, as this meeting sets the main features of the Budget for the following year. It is at this early stage in the annual budgetary process that our views could best influence the Government and be of most use to them.**

25. Between the Commission adopting its Preliminary Draft Budget in May and the Council establishing the Draft Budget before 31 July, there would be time for the Committee to take evidence from a Minister or HM Treasury officials and scrutinise how the Government are approaching the negotiations. In fact, from 1995 to 1997, Sub-Committee A used to take oral evidence from the Government on the Preliminary Draft Budget at the beginning of July, before the Budget Council. The Select Committee published short reports following each of these evidence sessions.<sup>54</sup> In two out of these three years, however, these reports were not published until after the summer recess. It is our intention to ensure a publication date before the Council conducts its first reading on the annual Budget.

<sup>52</sup> Letter of 23 July 1997 from Lord Tordoff to Mrs Helen Liddell, Economic Secretary to the Treasury (*Correspondence with Ministers* Session 1997-98, 11th report, HL 60 pp 48-50).

<sup>53</sup> Amendment of the budgetary procedure figured little in the Inter-Governmental Conference that led to the Amsterdam Treaty. Working Group IX (Simplification of legislative procedures and instruments) of the Convention on the Future of Europe is examining the budgetary procedures, but it seems unlikely that it will recommend significant amendment or simplification of the timetable.

<sup>54</sup> *Preliminary Draft General Budget for 1995*, 18th Report, HL 94, Session 1993-94; *Preliminary Draft General Budget for 1996*, 20th Report, HL 100, Session 1994-95; *Preliminary Draft Budget for 1997*, 14th Report, HL 104, Session 1995-96.

26. **The Committee has a responsibility both to hold the Government to account preceding the first reading at the Council of the Budget and to inform the House of issues pertaining to the EC Budget. We therefore propose to take oral evidence from the Government on an annual basis before the first reading of the Budget in the Budget Council in July and thereafter to publish a short report.<sup>55</sup> Publication of a report at this juncture in the Budget-making process, before the Draft Budget has been established, would also inform the House of negotiations at an early stage and would introduce an element of parliamentary scrutiny where little presently exists in this House. By adopting this focused approach at an appropriate time in the annual Budget process, we would ensure greater accountability, openness and transparency. We hope thereby to ensure that the scrutiny process is a constructive one for all concerned.**

#### DOCUMENTATION

27. There is a huge amount of documentation on the annual Budget that has to be deposited in Parliament. The 2003 PDB alone contains over 2000 pages. Not only is the documentation lengthy, it is also of a complex, technical nature. The flow of a large number of documents relating to the annual Budget, together with the accompanying EMs and Ministerial letters, is inefficient and produces a confusing and bureaucratic picture of the Budget-making process and of scrutiny generally. Furthermore, duplication occurs when the Committee considers each separate stage of the Budgetary making process. This duplication is reflected in the repetitive nature of successive EMs and Ministerial letters. **There is great scope for streamlining the flow of documents on the annual Budget to Parliament, in order to produce a more efficient procedure that is focused on the key stages where our scrutiny work can have an influence on the Government.**

#### *Information for the proposed annual evidence session with the Government*

28. Our aim is to move a substantial part of the scrutiny process to an earlier point in the annual cycle. In order to ensure that the evidence session with the Government on the Preliminary Draft Budget, before the Budget Council, is purposeful, the Committee will need a certain amount of well-focused documentation from the Government. **The Commission's Overview document (Volume 0 of the Preliminary Draft Budget) contains a detailed summary of the expenditure proposals that should be sufficient for the purposes of making an overall assessment of the following year's annual Budget. Discussion of the issues that will arise at the Budget Council could begin on the basis of this document. We call on the Government to submit an EM on the Commission's Overview document at the earliest possible opportunity, preferably by the middle of May.** The Committee could then hold an evidence session with the Minister and complete its formal scrutiny function as required by the Scrutiny Reserve Resolution, before the Budget Council.

29. For the proposed evidence session to be comprehensive, it should look back at how money has been spent as well as looking forward to spending in the next Budget. Each year, the Government produces a very useful White Paper, entitled *European Community Finances*.<sup>56</sup> This document not only presents that year's Budget (fixed in the negotiations the year before), it also covers the implementation of the previous Budget, as it includes details of EC financial management and the fight against fraud. If the Government were to bring forward production of this White Paper, our evidence session before the Budget Council would be more informed and could entail a retrospective element. Consequently, we could monitor the execution of the current year's Budget, as well as considering the Budget for the following current year. Our consequent report could therefore be more comprehensive and so hopefully be of more use to Members of the House.

#### *Information following the other stages in the Budget cycle*

30. One strength of the current scrutiny process of the annual Budget is that, by recording each of the separate stages for the annual Budget-making procedures, a complete record is provided for the House on each annual Budget. This must not be lost. However, the supplementary comments that the Government supply at each stage on every document are of marginal benefit to the Committee if we are to focus our scrutiny efforts on the Preliminary Draft Budget.

31. Once we have scrutinised the Preliminary Draft Budget, the important thing is then for us to be informed of the major developments in the annual Budget negotiations as soon as possible. In practice, this would mean the Government quickly updating the Committee by Ministerial letter after the

<sup>55</sup> This process would work in much the same way as how the Select Committee currently takes evidence every 6 months from the Minister for Europe and the incoming Presidency of the Council and is proposing to do every year on the Commission's Annual Work Programme.

<sup>56</sup> The most recent White Paper, entitled *European Community Finances: Statement on the 2002 EC Budget and Measure to Counter Fraud and Financial Mismanagement*, Cm 5547, was published in July 2002.

various stages of the annual Budget cycle (i.e., after the first reading in Council, the first reading in the European Parliament and after the second readings in the Council and the European Parliament). This way we would not have to wait to receive the official translated texts. The documents themselves, of course, should still be deposited in Parliament, in order to maintain a complete record of each EC Budget, but we see little use in having an additional EM at each stage if the Minister has already written to the Committee to update us.

#### *Transfers of appropriations*

32. Transfers do not change the total financial implications of an annual Budget but are concerned only with the movement of funds between chapters or Articles of the Budget. There seems to be no requirement for scrutiny to be completed before the transfer is effected and very little time in which this would be possible. This means that the Committee is normally informed of the transfer after the approval for the transfer has been given. Consequently, the documents are usually cleared by the Chairman of the Committee on the sift. There are more than 50 Transfers a year, many involving very small sums of money.

33. Acknowledging this fact, it was agreed a few years ago that transfers would be consolidated into quarterly reports, which are clear, useful documents that are depositable along with an EM. However, transfers which involve significant sums still necessitate a separate EM (the threshold is currently deemed to be over €25m). This means that the Committee is often merely informed of relatively minor decisions that have already taken place. We no longer see the need for the Sub-Committee to continue to be informed in this way of matters where it has no power to alter, or even influence, the Government's position. **We recommend that all transfers should be recorded in a consolidated report rather than deposited separately.<sup>57</sup> This reform would streamline the present bureaucratic system of reporting transfers and would provide a more efficient procedure so that we can concentrate our scrutiny work on the major financial decisions.**

#### *Supplementary and Amending Budgets*

34. Supplementary and Amending Budgets (SABs) relate to "unavoidable, exceptional or unforeseen circumstances" (as defined by the Financial Regulation). This means that SABs generally serve to alter the total level of payments, commitments or contributions to an annual Budget. Like transfers, however, there is normally no real scrutiny of SABs, as Parliament is often informed only after a decision has been reached in the Council. Consequently, the documents are usually cleared by the Chairman of the Committee on the sift.

35. SABs can come forward at short notice, in order to deal with some sort of funding emergency. This means that there is often a very short time lapse between the publication of the documents and the time when decisions are made in Council. Indeed, English versions for deposit in Parliament are not always available before Council decisions are taken. The normal timetable for parliamentary scrutiny as laid out in the Amsterdam Protocol is therefore not always met.

36. SABs are usually related to high profile and potentially contentious events. Recent events covered by SABs include the situation in Kosovo, funding the 'Solana building', financing the Convention on the Future of Europe and in reaction to the floods across Europe over the summer. The number of SABs produced each year is much smaller than the number of transfers. Often there are only one or two per year.

37. There is an argument that the same scrutiny rules should apply to SABs as to Transfers. That is, if the total amount of money involved is significant, or if the issue involved is novel or contentious, then a signed EM from the Minister is necessary. If the total involved is less than this designated amount, then they can be dealt with together in a single quarterly report. **The distinction between Transfers and SABs is a fine one and a transfer dealing with €30m could be said to be more important than a SAB with limited financial impact. However, given the small number of SABs produced each year and their discrete nature (they deal with the Union's response to a distinct event which would often be of interest to the House), we suggest that the arrangement for the deposit of SABs remain unchanged. We recognise, however, that these are matters that must be agreed between the Government and both Houses of Parliament.**

<sup>57</sup> The same could apply to Amending letters to the Budget.

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## CONCLUSIONS ON THE SCRUTINY OF THE EC FINANCIAL AFFAIRS

38. We will continue to examine EU finances rigorously. Our aim is to concentrate on our strength of conducting inquiries and producing timely, considered reports. In doing so, we will focus on the important, financial issues for the Union. We will produce more reports that deal with the budgetary issues that surround the annual EC Budget.

38. As regards our scrutiny we will reorganise our timetable of the annual Budget so as to ensure that our scrutiny is more focused and regularly takes place earlier in the annual cycle, at a time when it can influence the Government. In particular, we will call the Government to account each year in an evidence session before the first reading of the Budget in the Council and thereafter produce a short report for the House.

40. Taken together, these recommendations would result in a shift in focus from documents that merely inform the Committee of decisions previously taken to dealing directly with the Government before decisions are made and asking the Minister to account for decisions afterwards. In our opinion, this would be a sensible move towards greater scrutiny and could be of more interest to Members of the House.