

HOUSE OF LORDS

SESSION 2002–03  
44th REPORT

SELECT COMMITTEE ON  
THE EUROPEAN UNION

ANNUAL REPORT

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# FORTY-FOURTH REPORT

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18 NOVEMBER 2003

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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

## *Abstract*

This is the first annual report from the House of Lords European Union Committee.

The purpose of this report is:

- To review the substantive policy work of the Committee over the last year;
- To give a flavour of some of the work the Committee intends, subject to the need also to respond to events, to undertake over the coming year; and
- To give an account of procedural and administrative changes, together with a foretaste of matters which the Committee will take up next year.

This report follows the Committee's own Review of Scrutiny at the end of last year and reports progress on implementing the recommendations of that report.

This report also makes clear that the draft constitutional Treaty being considered by the Intergovernmental Conference will change the way national parliaments scrutinise EU legislation, particularly given the new opportunities to make the European Commission "think again" when a proposal breaches the principle of subsidiarity. The Committee intends to return to this matter in the new year.

The report covers in brief the range of substantive policy work undertaken by the Committee in areas including:

- The draft constitutional Treaty
- Economic and financial affairs, including scrutiny of the EC Budget
- Foreign affairs, security and defence
- Human rights
- International development
- Law
- Home affairs
- Social affairs, employment and education
- Agriculture and the environment
- Energy industry transport and research

We stress, not for the first time, that it is a strength of the House's scrutiny of EU legislation that such scrutiny is conducted by those with policy expertise in these and other areas, rather than being, as is the case in some national parliaments, a separate specialist function. It is a theme of the report, however, and one to which we will return in the new year, that the House needs to look closely at the arrangements made to support EU scrutiny and in particular the time made available for debates on our work. It is for this reason in particular that we recommend that this report be the subject of a debate in the House.

## ANNUAL REPORT

### CHAPTER 1: INTRODUCTION

#### **Purpose of this report**

1. This is the first annual report from the European Union Committee<sup>1</sup>. When, at the House's request, we reviewed the House's scrutiny of EU legislation at the end of last year<sup>2</sup>, we decided to produce this document to aid discussion on European issues in the debate on the Queen's Speech; and to inform members of the House of our work. Hence this report has three substantive chapters after this Introduction:

- A review of the substantive policy work of the Committee and its six Sub-Committees over the last year;
- A look ahead to policy work we will be undertaking in the next year, in the light of our forecast of developments in the EU; and
- An account of administrative and procedural developments over the year, together with a forecast of where we will turn our attention next year.

2. For convenience, the year covered by this report is the parliamentary session 2002-03 (13 November 2002 to 20 November 2003).

3. This report is very much a pilot. We hope in particular to develop in coming years our forward look at policy issues. For the moment, any feedback from members of the House, or from elsewhere, would be very welcome<sup>3</sup>.

4. We make this report to the House for debate.

#### **What do we do? Overview of the work of the Committee**

5. For the benefit of readers unfamiliar with our work, the following paragraphs set out the work of the Committee in very basic terms. A more detailed account can be found in the Committee's Review of Scrutiny.

6. Each week, the Government deposits in Parliament a number of EU documents accompanied by the Government's own Explanatory Memorandum. These documents are subject to the Scrutiny Reserve until cleared by the Committee. What this means is that the Government cannot agree to proposals in the Council until the Committee has considered them, although there can be exceptions for special reasons.

7. This does not mean that the Government has to act on any recommendations from the Committee, nor that the Committee can mandate ministers to take certain positions in Council (as is the system in a number of other Member States). What the Committee does is seek to influence the formulation of policy. To do so most effectively, the Committee aims to comment on proposals at the earliest possible stage in the legislative process.

8. The Committee operates through a series of six Sub-Committees (listed in Appendix 1) each of which examines matters in a range of policy areas. From the start of the new session we will have a seventh Sub-Committee, to examine matters of social policy and consumer affairs (to include health, worker protection and education). We say more later in this report on how this will affect the work of the Committee. In general terms, our view remains that it is an important strength of the House's scrutiny of EU legislation that European scrutiny and policy expertise are intimately linked<sup>4</sup>.

9. Each week the Chairman of the Committee conducts a sift of the deposited documents and refers some to the Sub-Committees for examination. Others are cleared from scrutiny, although some of these are drawn to the attention of the Sub-Committees for information. Appendix 3 gives more information on the sift process.

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<sup>1</sup> The members of the Committee and of its Sub-Committees are listed in Appendix 1.

<sup>2</sup> 1st Report Session 2002-03, HL paper 15.

<sup>3</sup> Comments should be sent to Simon Burton, Clerk to the European Union Committee, Committee Office, House of Lords London SW1A 0PW, or to the Chairman, Lord Grenfell, at the same address, or by email to [euclords@parliament.uk](mailto:euclords@parliament.uk)

<sup>4</sup> In many other national parliaments of the EU, the scrutiny of EU matters is separated from scrutiny of policy.

10. Sub-Committees deal with the documents referred to them in a number of ways; sometimes clearing them from scrutiny without comment; sometimes entering into correspondence with the relevant Minister; and sometimes conducting a substantive inquiry and making a report which is approved by and becomes a report of the Select Committee. Many of our reports are debated in the House. The Government is obliged to respond to each report. A list of reports we have made this year appears in Appendix 2.

11. The Committee does not normally deal with the implementation of EU law, although we hope that this will be a significant part of the work of the House's new committee on the merits of Statutory Instruments being set up next session.

### **How we are developing what we do - The Scrutiny Review**

12. The work of the Committee is changing as a result of the Review of Scrutiny we carried out last year. We discuss this in more detail in Chapter 4 below but key developments are:

- Enhanced scrutiny of the Commission's Annual Work Programme, to assist in the planning of work at the earliest possible stage in policy formulation
- Enhanced scrutiny of the EC budget
- More scrutiny of the effect of EU law on business (particularly through scrutiny of Regulatory Impact Assessments)
- Closer and more effective co-operation with other national parliaments, and with the European Parliament
- More emphasis on follow-up of previous work
- Looking ahead, a new emphasis on the scrutiny of human rights issues
- The case for an appropriate increase in the resources available to us to do our work.

### **Other changes to our work - The draft constitutional Treaty**

13. It is clear that the draft constitutional Treaty being considered by the Intergovernmental Conference will change the role of national parliaments in the scrutiny of EU legislation. In particular there will be new powers for national parliaments to ask the Commission to "think again" when a proposal appears to breach the principle of subsidiarity. The Committee had previously called for an additional "red card" mechanism which would have obliged the Commission to withdraw proposals. Our final report, however, supports the Treaty's "yellow card", subject to additional safeguards to ensure that it is effective. This is a matter to which we will return in the new year.

14. We will keep under review any more general development in the role of national parliaments arising from the draft Treaty.

### **Enlargement**

15. We stress here that, during 2004, the EU is going to experience a significant enlargement. We welcome this. We also welcome the opportunities that this will provide to ensure that all Member States can work together to enhance their scrutiny of the EU. We intend to contribute to this both by developing the series of bilateral exchanges we have begun with colleagues from the French Senate; and by continuing to work to ensure that COSAC<sup>5</sup> remains a forum for the exchange of information on scrutiny, rather than for general policy debate, and that it is reformed to carry out this work more effectively.

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<sup>5</sup> COSAC is the Conference of European Affairs Committees of national parliaments of Member States meeting with the European Parliament to discuss scrutiny issues.

## CHAPTER 2: REVIEW OF SUBSTANTIVE POLICY WORK

**The draft Constitutional Treaty and the Institutions***The draft Treaty*

16. Much of our work this year has been dominated by the Convention on the Future of Europe and the draft constitutional Treaty presented to the IGC. The Select Committee itself prepared a number of reports, including on the role of national parliaments and subsidiarity; on the institutions; and on the draft Treaty as it emerged from the Convention<sup>6</sup>.

17. Our report on the Treaty as it is being considered by the IGC provides an overview of key issues and supplements the more detailed work done on particular areas of the Treaty. The attached box gives the conclusions of that report<sup>7</sup>.

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<sup>6</sup> We understand that our reports have assisted the European University Institute in Florence in its seminars “A Critical Analysis of the Draft Constitution for Europe”. We also sent copies of our final report not only to Government Ministers and advisers but also to all Ambassadors of EU Member States and applicants, as well as to other member committees of COSAC, as we always do. We have had several letters commending the usefulness of the report. The full text is freely available on our website at <http://pubs1.tso.parliament.uk/pa/ld200203/ldselect/lducom/169/169.pdf>. HTML text is also available.

<sup>7</sup> The Report records the results of divisions in which a minority of Members of the Committee opposed certain provisions.

**Box 1***Abstract from Report on draft constitutional Treaty*

The draft Constitutional Treaty for the European Union is a significant document, meriting serious scrutiny and wide public debate. With ten new countries set to join the EU next year, it is necessary to agree a new Treaty now, as it is generally agreed that the present institutional structure would not function satisfactorily in a Union of 25. Whether or not the draft Treaty is a “constitution” is of less importance than what it says and how it will affect all our lives.

The draft Treaty was prepared by the Convention on the Future of Europe, which was composed of representatives of national parliaments and governments, including from the applicant countries, and of the European Parliament and the Commission. The Convention met in public<sup>8</sup>. The draft is now being considered by Ministers meeting in the Intergovernmental Conference, which does not meet in public.

The draft Treaty:

- Reforms the institutions of the EU
- Incorporates a Charter of Fundamental Rights
- Changes the way the EU works, including granting the Union some new powers ("competences")
- Enhances the role of national parliaments.

But the draft Treaty is also largely composed of the text of current Treaties - i.e. much of what it provides for is not new.

With an eye to whether the draft Treaty is good for Britain, and for the European Union, this report examines the draft Treaty against four key themes:

- Does it confirm the EU as a union of Member States, rather than a state in its own right?
- Does it mean significant improvements in democracy, accountability and transparency?
- Will it make any difference to citizens, and bring the EU's institutions closer to them?
- Will it make the EU more efficient?

The report concludes that the answer to the first question is yes<sup>9</sup>. But, as a consequence, provisions for direct democratic legitimacy are harder to achieve. For example, it is precisely because the EU is not a state that the Treaty does not provide some of the direct mechanisms (such as the power to remove a government) that would exist in a state.

Overall, the report concludes that the draft Treaty would make some contributions to democracy, accountability and efficiency in the EU. For example, the Treaty clearly sets out what the EU is. But it is far less successful in securing transparency or bringing the EU closer to citizens.

The Government could do much more to explain the draft Treaty, particularly to specialised audiences, but should also continue to do more to provide information to the public.

The report also concludes that the Intergovernmental Conference should not rush to agree the Treaty – they need to get it right. The report also makes recommendations for changes to the Treaty text in a number of areas, including with regard to the proposed European Foreign Minister.

A final key theme of the report is the need for national parliaments to do more, both collectively and individually, to hold the Governments, who take so many of the EU's decisions, to full account.

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*Analysis of Articles*

18. Several of our Sub-Committees too busied themselves with studying the Convention's work and the draft Treaty. Between February and May, Sub-Committee E prepared five reports on the draft Articles for a proposed EU Constitutional Treaty produced by the Convention<sup>10</sup>. These gave a detailed

<sup>8</sup> Paragraph 218 of our report, however, did note that the Convention's Praesidium met in secret.

<sup>9</sup> This conclusion was the subject of a division in the Committee, and was agreed by a majority.

<sup>10</sup> Areas covered by these reports include: the classification of competences; the question of legal personality for the EU; the Union's values and objectives; the flexibility clause; the legal acts of the Union; the implementation of the area of freedom, security and justice; the procedures for joining and leaving the EU; and the democratic life of the Union.

analysis of each draft Article, including an explanation of whether each Article was new or appeared in the existing Treaties and an evaluation of the Convention's justification for the inclusion of each Article. The reports were well received in the House and were cited by the House's delegates to the Convention during its proceedings.

#### *Foreign Affairs and Defence*

19. The Convention on the Future of Europe and the draft Treaty were also closely followed by Sub-Committee C. The Sub-Committee began by considering the working group reports; considered relevant articles as they were published; and contributed to the Select Committee's report on the draft treaty. The results of the Working Group on defence were broadly welcomed. The external action debate, however, proved highly divisive. Sub-Committee C produced reports on both these areas.

#### *Human Rights*

20. In February 2003, Sub-Committee E reported on the Future Status of the EU Charter of Fundamental Rights. This report examined the issues surrounding the possible inclusion of the Charter of Fundamental Rights into a new EU Constitution, and the possibility of the EU acceding to the European Convention on Human Rights. We concluded that either option was feasible but would be curtailed in terms of practical benefits to individual citizens unless there was a reform of the remedies available for breaches of such rights.

#### *Social Europe*

21. Sub-Committee F examined the social aspects of the Convention on the Future of Europe. Our report—Convention on the Future of Europe: "Social Europe"<sup>11</sup>:

- supported the inclusion of 'equality' in the values of the Union, but expressed doubts about the practicability of 'full employment' as an objective;
- foresaw difficulty in an enlarged EU in operating on the basis of unanimity in the social policy field;
- agreed that there should be no extension of competence in the social policy field except for public health;
- endorsed the idea of a Treaty base for the 'open method of co-ordination', provided that it did not restrict unduly the flexibility of the procedure.

#### *Court of Auditors*

22. Sub-Committee A pursued the conclusions from its 2001 inquiry into the European Court of Auditors. The Committee wrote to the Government to reiterate the conclusions of the report, to ask what progress had been made since the debate in the House and to ask what steps the Government were taking to pursue reform of the Court through the Convention and the IGC. The Government have assured the Committee that they are pursuing reform of the ECA through the IGC. The Committee will continue to monitor this process.

#### **Overarching Scrutiny**

23. The Select Committee has continued to undertake scrutiny across the range of issues studied in depth by the Sub-Committees. This informs the work of the Sub-Committees. This scrutiny has involved evidence sessions both with the Commission on its Annual Work Programme and with the Minister for Europe on the outcomes of European Council meetings. We have also taken evidence from the ambassadors of Presidency States. All these evidence sessions have been reported to the House, and published.

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<sup>11</sup> Published on 7 April 2003.

## **Economic and financial affairs**

### *The 2004 EC Budget*

24. Implementing recommendations of the Scrutiny Review, Sub-Committee A reorganised the way in which it scrutinises the annual EC Budget, concentrating its efforts at an early stage in the budgetary cycle, where recommendations could have most impact. Once the Commission had adopted its proposals for the 2004 Budget, the Sub-Committee took oral evidence from the Government and published a report on 14 July, which was before the first reading of the Budget in the Budget Council. The Government welcomed the Committee's "valuable contribution to the debate on the 2004 EC Budget" and agreed to work to facilitate future inquiries by the Committee on the annual EC Budget.

### *The European Central Bank*

25. An inquiry by Sub-Committee A entitled *The European Central Bank: Is it working?* followed up the Committee's earlier report<sup>12</sup> *The European Central Bank: Will it Work?* and reviewed the implementation of its recommendations. The report was published on 30 October, just before Mr Trichet took up office as the new President of the ECB. The Committee concluded that the ECB had performed well so far, but that reforms were needed to meet future challenges, particularly EU enlargement.

### *The Stability and Growth Pact*

26. Sub-Committee A reviewed the workings of the Stability and Growth Pact. The report was published on 18 March, before the European Council in Brussels, where the Heads of State and Government announced conclusions on the Pact. The Committee agreed that there need to be fiscal rules to support the single currency, but called for greater flexibility in their interpretation. The Governors of the central banks of Poland and the Czech Republic wrote to say that they had read the report with interest and would follow the future output of the Committee; the Finance Committee of the French Senate is examining the report with a view to making recommendations about fiscal rules for France. The report was debated in the House on 4 June.

### *Taxation of Fuel in the EU*

27. Sub-Committee A conducted a short inquiry to examine closely this controversial legislative proposal from the Commission. The report was published on 21 May. The Committee supported minimum rates of taxation on fuel but not harmonisation. The Committee emphasised the need for more coherence between transport policy, taxation and environmental issues at an EU level. The report received good coverage in the media and the Government endorsed all of the Committee's conclusions. The report was considered by a working group of the OECD that deals with financial and fiscal aspects of transport policy; the Australian Government got in touch to say that it was interested in the report.

### *VAT*

28. Sub-Committee A is holding under scrutiny three proposals that would significantly amend the 6th VAT Directive (for instance, by introducing VAT on stamps and children's clothes). The Sub-Committee is in correspondence with the Government about each and examining RIAs.

### *Mergers*

29. Sub-Committee A scrutinised the proposal for a new EC Merger Regulation (ECMR); the Committee had already reported on the Commission's Green Paper in July 2002<sup>13</sup>. Almost all of the Committee's recommendations were adopted by the Commission.

### *Takeovers*

30. Following a report published in 1996, Sub-Committee E revisited the proposed EU Takeovers Directive. This proposal, which was defeated at the conciliation stage in 1996, aims to set EU-wide rules for the conduct of corporate takeovers, which would be a change from the UK's current non-statutory regime. The Committee concluded that, whilst the Directive had little benefit from a narrow,

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<sup>12</sup> Published in May 1998 as our 24th Report of Session 1997-98 (HL Paper 112).

<sup>13</sup> The Review of the EC Merger Regulation, Session 2001-02, 32nd Report, HL 165.

domestic viewpoint, it would increase shareholder protection and open up markets in other Member States for UK companies. The Committee recommended a number of improvements to the Directive.

#### *Financial Services Action Plan*

31. Sub-Committee B, in considering the efforts to create a single market in financial services, took evidence on the progress of the Commission's Financial Services Action Plan (FSAP). A report is due to be published early in the new parliamentary session. In this report, the Committee will examine the FSAP as it nears the deadline for the adoption of outstanding Directives – April 2004 – and the machinery set up under the Lamfalussy Process to hasten the implementation of legislation.

32. The Sub-Committee concluded that it was more important to get the legislation right than to meet the deadline; that it was too early to judge the success of the Lamfalussy Process; and that all EU proposals to create and regulate a single market for financial services should be measured against the global context. The EU is not an island and the markets could move elsewhere if EU regulation proved to be too onerous. The Sub-Committee expressed sympathy for the views of UK witnesses who feared that the implementation of the FSAP might erode London's competitive position as the largest wholesale capital market in Europe but concluded that the FSAP could provide a positive opportunity for the dominant player.

### **Foreign Affairs, Security and Defence**

#### *ESDP*

33. ESDP became operational in January 2003 with a mission in Bosnia. Then, as a result of the Berlin Plus agreement (December 2002), the EU took over a mission in FYROM (Former Yugoslav Republic of Macedonia) from NATO using existing command and control structures. The mission to the Democratic Republic of Congo in June was the first EU mission to be conducted by the EU outside Europe.

34. Sub-Committee C has inquired into ESDP twice in the past<sup>14</sup>. Several aspects of European Security and Defence Policy (ESDP) are classified as non-military<sup>15</sup>. These civilian crisis management capabilities are: policing; the administration of justice (rule of law); civilian administration; and civil protection. Their combined goal is to allow the EU to provide assistance to countries in crisis. The first mission of 'civilian ESDP' began with the police mission to Bosnia (EUPM) in January 2003. The Committee found that preparations for the EUPM were highly successful. The Committee considers the EU's civilian role in crises to be valuable. The greatest surprise of the inquiry was that both Member States and media have so far shown little interest in the subject.

35. The Committee's main conclusions are that the EU should:

- Clarify the scope and goals of civilian ESDP;
- Ensure that the EU works to fill the gaps in the existing crisis management provision rather than duplicate the work of organisations already active in this arena;
- Streamline the chain of command and control; and
- Set in place workable, long-term financing arrangements.

#### *Foreign affairs*

36. Sub-Committee C asked the Minister for Europe, Dr Denis MacShane MP, to give evidence on the most recent developments in European Foreign Policy. Key topics in the evidence were: Wider Europe; EU mission to the Democratic Republic of Congo; NATO; Bosnia SFOR; France, Germany, Belgium and Luxembourg Summit; Intergovernmental Conference; and the Middle East.

37. The Iraq crisis and eventual war was the most significant foreign affairs event of the past year. The period was especially difficult for EU relations as Member States were divided on how the Union should respond. Sub-Committee C considered the division within the EU and its effect on relations with the United States. Our report 'A Fractured Partnership?' was published in July 2003. The Committee noted that the European Union's relations with the United States are at their lowest ebb for at least a generation; and asked how did this happen? and what can be done about it?

<sup>14</sup> 11th Report 2001-02, HL Paper 71; 15th Report 1999-00, HL Paper 101.

<sup>15</sup> This year we inquired into ESDP civilian operations the report was entitled 'EU-Effective in a Crisis?'

38. The Committee concluded that the outrage of 11 September 2001 thrust international security to the top of the US agenda, overshadowing the great bulk of transatlantic business that is done quietly and well. EU Member States agree with the US about the key security objectives, but there are serious divergences about how to achieve them. The Iraq crisis highlighted these divergences very sharply.

39. Both sides will be losers if the relationship remains bad. There is a massive agenda on which they need to work together. Both need to put effort into repairing the damage, even if differences about method persist. They should accentuate the positive, look to the future, and not focus on blaming or punishing for the past.

40. The EU for its part needs to:

- Help shoulder post-conflict burdens in Iraq, without arguing about whose fault they may be;
- Put its weight behind the Middle East peace process, and re-double its effort against proliferation of weapons of mass destruction;
- Build up its own military capability;
- Improve methods of handling and communicating agreed EU foreign policy, and explain itself better to the US; and
- Exploit NATO as the best forum for transatlantic dialogue in defence and security.

#### *Security strategy*

41. In June 2003 the EU unanimously endorsed the draft EU Security Strategy written by Javier Solana. The final version of the Strategy is expected to be agreed by the heads of government at the European Council in December. Sub-Committee C continues to monitor development of the EU Security Strategy.

## **Law**

#### *EU-US Extradition and Mutual Legal Assistance Treaties*

42. Sub-Committee E inquired into and produced a report on the EU-US Extradition and Mutual Legal Assistance Treaties. These treaties are intended to supplement the existing bilateral arrangements already in place between each Member State and the US and were a response to the events of 11 September 2001. The Sub-Committee raised a number of human rights questions over the treaties and were anxious that the Government's assurances on these matters were disseminated as widely as possible. The Sub-Committee were concerned about the Council of Ministers' delay in making the documents public and refused to scrutinise the text on a confidential basis. We pressed for the declassification of the Agreements and wrote directly (jointly with the House of Commons' European Scrutiny Committee) to the Greek Presidency of the EU for this purpose.

#### *Other legal affairs issues*

43. Sub-Committee E has considered a number of proposals in the area of criminal law, such as a Directive on the compensation payable to crime victims and Framework Decisions on the mutual recognition of financial penalties, the execution of confiscation orders and the application of the "double jeopardy" principle. Other major scrutiny items have related to the enforcement of intellectual property rights, asylum and the definition of refugee status, and combating racism and xenophobia.

## **Home Affairs**

#### *Introduction*

44. Home affairs issues, particularly immigration and asylum, have dominated Sub-Committee F's agenda reflecting the high priority they have been accorded by the European Council, notably at Seville in June 2002. Responding to this priority the Commission has brought forward a large number of Communications on all aspects of immigration and asylum policy, which the Committee has scrutinised closely.

#### *Illegal immigration*

45. The Committee has undertaken detailed inquiries into the most substantial of these proposals, starting with an inquiry into illegal immigration—A Common Policy on Illegal Immigration. The

report, which attracted strong media interest, was published on 28 November 2002 and debated on 7 March 2003. It called for a comprehensive approach to tackling illegal immigration in the EU with measures ranging from opening up legal migration routes to meet identified labour shortages to cracking down on illegal working. The Committee also recommended the establishment of special units in all major urban police forces to deal with the serious criminal aspects of illegal immigration (people smuggling and trafficking); and called on the Government to take a more positive line on opting into EU immigration measures, including on the protection of victims of trafficking.

#### *Border controls*

46. This inquiry was followed by an inquiry into the management of the EU's external borders. The Committee's report "Proposals to establish a European Border Guard", which was published on 10 July 2003, strongly endorsed the need for closer co-operation between Member States' border control agencies, but concluded that a centrally managed, multinational European Corps of Border Guards would not be justified. While welcoming the UK's active participation in practical measures to strengthen external border controls, the Committee found that it did not sit easily with the United Kingdom's partial opt-out from Schengen. The Committee also called for existing and proposed new central structures responsible for border control activities to be properly accountable.

#### *Asylum*

47. The Committee is currently undertaking an inquiry into new approaches to the asylum process.

#### *Other immigration issues*

48. Other significant immigration proposals on which the Committee has put forward its views to the Government include:

- new functions for the Schengen Information System
- a Community return policy on illegal residents
- proposals to further facilitate the free movement of EU citizens and their family members
- integrating migration issues into the EU's relations with third countries
- proposals for financial burden-sharing in connection with the mutual recognition of expulsion decisions
- arrangements for a network of Immigration Liaison Officers
- formalisation of the procedures governing transit where an illegal resident is being expelled through another Member State.

#### *Europol*

49. Sub-Committee F's report *Europol's Role in Fighting Crime*, which was published on 6 February 2003 and debated on 3 June 2003, examined proposals from the Danish Presidency to extend the remit of Europol (the EU police office). The report's main recommendations were for:

- oversight of Europol by national parliaments;
- retention of central national units in each Member State for exchanging data with Europol; and
- rigorous data protection safeguards, particularly for data transmitted to third countries.

Some of these issues were subsequently picked up in the Convention on the Future of Europe.

50. Separately the Committee conducted a lengthy correspondence with the Government on the USA/Europol Agreement on transfer of personal data, in which we expressed strong concerns about various aspects of the draft Agreement, including the scope of information exchange (which included data outside Europol's remit), the wide range of US authorities receiving data, including local as well as State and Federal authorities, and the nature of, and safeguards afforded by, the US data protection authorities.

51. The Committee was also concerned about implications of the way the dossier was handled for the scrutiny process more generally. It appeared that the text of the agreement was only deposited after it had been agreed with the US authorities, which meant that there was no realistic chance of any

amendments being accepted. In the event the Government overrode the scrutiny reserves of both Houses.

52. The Committee has also examined a series of other agreements between Europol and third countries on the transmission of personal data, which raised data protection issues, although not to the same extent as the agreement with the United States.

#### *Social Affairs, Employment and Education*

53. Probably the most controversial dossier in the employment area has been the draft Directive on Working conditions for temporary workers, which would give temporary workers, subject to certain limitations, equal status with permanent workers. In May 2003 the Presidency made a big push—eventually unsuccessful—to secure political agreement in the Council on a compromise proposal.

54. The Commission brought forward several substantial Communications on education issues using the Lisbon objective of making the EU “the most competitive, and dynamic knowledge-based economy in the world”. These included proposals for European benchmarks in education and training and a consultation paper on the role of universities.

### **Agriculture and Environment**

#### *Mid-term review of the common agricultural policy: external implications*

55. Sub-Committee D has continued to play close attention to reform of the CAP. The European Union is committed to a mid-term review of the Common Agricultural Policy (CAP) in 2003. Proposals made by the Commission in June 2002 for reforming an increasingly unsustainable CAP, although diluted by recent Council decisions, need to be implemented urgently.

56. Imminent enlargement of the EU and forthcoming World Trade Organisation negotiations have increased the urgency of reaching agreement on the proposals.

57. The principal features of the reform package are:

- a single farm payment, independent from production (decoupling)
- linking those payments to respect for environmental, food safety, animal welfare, health and occupational safety standards, as well as the requirement to keep all farmland in good condition (cross-compliance)
- a revised rural development policy with some increases in resources; new measures to promote quality and animal welfare; and help for farmers (through a farm advisory scheme) in meeting EU production standards
- a reduction in direct payments (degressive modulation) for bigger farms, to generate additional money for rural development and savings to finance further reforms
- revisions to the market policy of the CAP in relation to certain sectors (including milk and cereals).

58. The Committee’s latest Report comments on the proposals under four headings.

- EU enlargement: The proposals on decoupling are essential, to avoid compounding overproduction and market distortions in the enlarged Community, and should be reinforced by progressive abolition of market intervention and export subsidisation, particularly in the sugar and dairy sectors. Modulation (i.e. transfers from direct subsidies into structural measures) should be at a higher rate than proposed and possibly higher still for new Member States.
- Implications for the World Trade Organisation Doha Round: Decoupling is also essential to a credible EU negotiating position in the WTO, as are urgent reforms to the sugar and dairy regimes.
- Impact on Less Developed Countries: The CAP has for long had damaging effects on the economies of less developed countries, although the impact has varied from one country to another. In the worst cases it has led to impoverishment and the collapse of rural industries. The EU must abandon its direct subsidisation of exports and scale down its import tariffs.

- Sustainability: Cross-compliance and higher levels of modulation are the key to environmental improvement and to reducing pressures for intensification. The Commission's proposals for a new farm advisory system should be used to promote best practice.

*Progress of reform of the common fisheries policy*

59. The Common Fisheries Policy (CFP), after years of failure to achieve sustainable management of European fisheries, was due for substantial overhaul by December 2002. A promising package of proposals adopted by the Commission in May 2002 was seriously compromised by decisions taken by the Council in December 2002, as a result of special pleading by Member States.

60. Sub-Committee D examined the proposals. Our conclusion was that the Committee has no confidence that the new basic CFP Regulation agreed at that meeting, despite some positive features, will meet the objectives of sustainable fisheries and prevent irreversible decline in important stocks unless it is substantially improved.

61. In particular, the Committee deplores the fact that:

- Total Allowable Catches (TACs) have been persistently set at levels higher than could ultimately be justified;
- Long-term recovery plans for key stocks, especially for cod and hake, have yet to be adopted by the Council: proposals from the Commission have been on the table since December 2001 and fresh proposals for cod have only now emerged, after a long delay, in May 2003;
- Funds will continue to be made available under the Financial Instrument for Fisheries Guidance (FIFG) for construction of new fishing vessels until the end of 2004.

62. The Committee urges the Government to press hard for adoption by the Council of the following measures:

- Introduction of effort controls, to work alongside TACs and quotas as appropriate;
- Significant reductions in fishing fleet capacity, over and above those necessary to neutralise "technology creep";
- Early progress towards the establishment of a Community Fisheries Control Agency;
- Urgent establishment of Regional Advisory Councils;
- Comprehensive gathering of economic data as well as scientific data, as a basis for objective long-term planning.

63. The Committee concludes that economic intervention in fisheries management is vital. We emphasise the importance of giving fishermen a genuine stake in the long-term financial management of fisheries and argues that transitional financial aid, linked to stock recovery plans, is needed to enable fishing communities to adjust to change.

64. The Committee urges the Government to promote diversification of coastal economies and the development of alternative employment opportunities. We strongly support the Commission's proposal to explore the possibility of decoupling FIFG resources from fishing activity in favour of investment in coastal communities.

*EU waste management policy*

65. The European Commission has been seeking to develop a comprehensive and consistent policy on waste prevention and recycling within an overall objective of resource efficiency. Three initiatives form the basis of the Commission's future work in this area:

- A consultation exercise on strategy for the prevention and recycling of waste
- A Communication which sets out the Commission's thinking on an integrated product policy approach
- A consultation exercise on strategy for the sustainable use of natural resources.

66. Sub-Committee D has been conducting an inquiry into the proposals. The aim of the Committee's inquiry has been to review current processes for developing Community legislation in the waste policy field and the impact they have had on the quality of legislation. The report (to be published shortly) considers whether implementation of the Commission's ambitious agenda requires changes to be made to these processes.

67. In the Committee's view, the European Union has in the past tended to base policy on inadequate evidence and data, leaving significant details to be agreed behind closed doors after framework legislation has been adopted. Inconsistencies (e.g. definitions of "waste") and confusing overlaps between Directives need to be reviewed.

68. The Committee considers that placing waste in an overall context of sustainable use of natural resources is a rational approach, but that far better information is needed from which to develop workable, effective and proportionate legislative instruments in future.

69. Once legislation has been implemented, it should be monitored and evaluated in detail to find out whether it is having the desired effect. The Commission should make greater use of the European Environment Agency for collating data and give it powers to enforce its data gathering activities.

70. The UK has a poor record in influencing EU waste policy. It needs to operate at a more strategic level. It should initiate and innovate, not just react passively to legislative proposals from the Commission. This calls for a far greater level of collective working within Government, overseen and co-ordinated by a dedicated unit at the centre with the task of ensuring clear accountability for successes and failures.

71. The report concludes that:

- significant improvements can be made to the policy-making process at the Community and national level;
- the Commission should review the operation of the EU legislative process as it applies to waste; and
- the results of this review must be fed into current consultations on Community strategies for waste management and recycling and sustainable use of natural resources.

## **Energy, Transport, Industry and Research**

### *"Open Skies" or Open Markets: Aviation Relations*

72. The European Court of Justice handed down a series of judgments on 5 November 2002 against 8 EU Member States. These judgments affected the web of bilateral air service agreements (ASAs) between EU Member States and non-EU Member States. The ECJ judgments dealt with the "nationality" clause; and articles relating to computer reservations systems and intra-EU tariffs in "open skies" ASAs signed by some EU Member States with the United States of America.

73. The "nationality" clause was deemed to have infringed Article 43 of the Treaty establishing the European Community and the "open skies" infringements to have offended the principle of exclusive Community competence.

74. The European Community, in a Communication dated 19 November 2002, called on Member States to denounce existing bilateral ASAs with the United States and to agree a mandate for the Commission to negotiate all aspects of ASAs. This position was modified in a second Communication published on 26 February 2003 when the Commission sought to distinguish between the need to address the "infringements" that flowed from the ECJ judgments and the pursuit of a wider mandate aimed at renegotiating full ASAs with the United States on a bloc-to-bloc basis.

75. Sub-Committee B examined these issues, and the US responses, and we made the following recommendations:

- Member States should give the European Commission a limited mandate to negotiate with the USA;
- EU Member States bilateral ASAs with the United States should be brought into conformity with Community law as specified in the ECJ judgments of 5 November 2002;
- Member States should give the Commission a wider mandate to re-negotiate ASAs with the United States initially, and subsequently with major aviation powers such as Russia and Japan in order to achieve full aviation liberalisation;
- It would not be in the European Union's interest or in the United Kingdom's national interest to negotiate for anything short of a fully liberalised aviation market between the EU and the US.

76. At the 5/6 June Transport Council in Luxembourg the Council agreed to give the Commission two mandates:

- 1) to negotiate an air service agreement with the United States on behalf of the Community;
- 2) to negotiate on specific Community issues with other third countries while allowing flexibility for Member States to negotiate and implement air service agreements bilaterally.

77. In a supplementary Report, Sub-Committee B examined the detail provided (the text of the two mandates was confidential) and concluded that the Council's mandates appeared to be acceptable to UK national interest provided safeguards were introduced into the negotiations for an Open Aviation Area to prevent a phased negotiation from breaking down and leaving the UK in a worst position than it enjoyed under the existing bilateral ASA with the US.

*Entrepreneurship in Europe: Commission's Green Paper*

78. The Commission's Green Paper is the most recent of a series of Reports from the European Commission designed to encourage entrepreneurship. Both the European Union and the United Kingdom devote considerable funds each year to spread over an extensive range of programmes in support of enterprise – in the region of 13 billion euros at Community level and just under 8 billion pounds in the United Kingdom (counting receipts from the Common Agricultural Policy).

79. In our Report, Sub-Committee B focussed on:

- the importance of setting clear objectives and monitoring and establishing effective evaluation for such schemes for enterprise support, whether at UK or EU level; and
- the relationship between schemes at European Community level and those at Member State level.

80. We concluded that:

- any action plan based on the Green Paper had to be preceded by a thorough analysis of the evaluations currently being carried out by the European Commission;
- all policies proposed should have clear objectives specified in measurable form before policy was launched; and
- all schemes should have both monitoring and evaluation information collection defined and built into the programme design.

*Packaging and packaging waste*

81. Sub-Committee B considered and followed-up the Government Response on its Report "Packaging and Packaging Waste: Revised Recovery and Recycling Targets"<sup>16</sup>.

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<sup>16</sup> 33rd Report, Session 2001-02, HL Paper 166.

## CHAPTER 3: POLICY MATTERS: LOOKING AHEAD TO 2004

*Introduction*

82. This Chapter of our report gives a flavour of some of the issues we may consider next year. This cannot be definitive, as the Sub-Committees will of course need to respond to events and to documents sifted to them.

*The draft constitutional Treaty; and institutional affairs*

83. The IGC is working towards at least political agreement on the draft constitutional Treaty this year. Although we have stressed the need to get the Treaty right rather than giving overwhelming priority to getting it done quickly, we accept that there is need to have the final text agreed in good time for the European Parliament elections in May 2004.

84. The Select Committee intends to review the final output of the IGC, and in particular to determine what lessons can be learned about the success of the Convention as a process for Treaty change. The Committee anticipates that the final outcome of the IGC will need to be fully debated on the floor of both Houses.

85. The Committee will also be examining in more detail the proposed early warning mechanism on subsidiarity. Once we see the final form of this provision we will, taking account of any developments in the Commons, be able to advise the House on how to implement its new responsibilities in this area.

86. Sub-Committee E is currently undertaking an inquiry into the future role of the European Court of Justice under the draft Treaty. It is intended that a report be published early in the New Year.

87. 2004 will see not only elections to the European Parliament but also a new Commission. The attached box sets out the implications of these developments for the scrutiny of EU business next year.

**Box 2***Effect on scrutiny of institutional change in 2004*

On 1 May 2004, the accession countries will formally join the European Union. European parliamentary elections for the period up to 2009 will take place on 10 June 2004. A new Commission will take office on 1 November 2004.

These changes will affect the EU legislative process in a number of ways. Although EU legislative proposals do not fall if they are not agreed before the end of the European parliamentary session, any proposal subject to the co-decision procedure will be affected by the 2004 European Parliament election. Because of the accession of ten new Member States to the Union on 1 May 2004, it is expected that most of the May European parliamentary session will be taken up with ceremonial matters. This means that the last plenary session at which a vote can be taken on first or second reading of legislative proposals put forward under the co-decision procedure will be in the week commencing 19 April 2004. July will be taken up with internal European Parliament elections and parliamentary work will not properly resume before the September 2004 session.

As the election may mean a change of rapporteur for a legislative proposal, the Parliament hopes to leave as many proposals as possible with a decided first or second reading at the end of its session. There is no formal deadline for the Commission to propose a new piece of legislation, but any proposal put forward after November 2003 is unlikely to reach the end of parliamentary first reading by April 2004. The Commission is expected to act in accordance with this.

Therefore, as the Committee has heard from the Commission on a number of occasions recently, 2004 will be a year in which the Commission will concentrate on reviewing implementation of legislative measures in Member States and seeking to consolidate agreed legislation rather than proposing new legislation.

*The Commission's Annual Work programme; and the Council's strategic agenda*

88. We have continued our scrutiny of the Commission's Annual Work Programme. We will shortly be reporting separately to the House on the Commission's Annual Work Programme for 2004.

89. Once the output of the IGC is clear, we will review the case for scrutiny of any strategic agenda set by the European Council.

*The WTO: The EU Mandate After Cancun*

90. Sub-Committee A is examining what the EU should do to help to bring the Doha development round of trade negotiations to a successful conclusion. The inquiry will follow up the Committee's previous report on *The World Trade Organisation: The EU Mandate After Seattle* (published June 2000).

*Economic and financial affairs: other key issues for 2004*

91. Sub-Committee A will scrutinise the draft budget for 2005.

92. Sub-Committee A will also examine new proposals for:

- The Structural Funds, which will determine the funding of EU regional policy
- The new Financial Perspective, which will set the parameters for the EC budgets for the period after 2006. It is possible that this document will review the UK's rebate on the EC Budget.

*Foreign Affairs and Defence*

93. In the year ahead, foreign affairs and defence will remain in the spotlight. Sub-Committee C plans to continue their regular evidence sessions with the Minister for Europe and officials from the Foreign and Commonwealth Office and, from time to time, from the Ministry of Defence. This will include updates on the monthly General Affairs and External Relations Council and discussing the Government's opinion on current developments in European Foreign policy.

94. The most significant issues on the horizon are:

- the publication of the finalised EU Security Strategy;
- the proposed European Armaments Agency;
- relations with the Union's new neighbours following Enlargement; and
- a possible ESDP peacekeeping mission in Bosnia.

The Sub-Committee wait with interest to discover the outcome of the IGC's deliberations concerning the proposal to create a European Minister for Foreign Affairs.

*International development*

95. Sub-Committee C's main inquiry for the beginning of the new session is EU international development assistance. The Sub-Committee plans to take evidence from a wide range of development experts and to make recommendations on how the EU can alter its development policy and procedures to benefit the world's most needy.

*Immigration and asylum*

96. The establishment of a new Sub-Committee (G) to scrutinise measures on social policy and consumer affairs, including health, worker protection and education, will enable Sub-Committee F to concentrate exclusively on home affairs. It seems likely that immigration and asylum will continue to have a high political profile in the European Union with the Commission bringing forward further measures in response to the conclusions of successive European Councils.

97. There is likely to be continuing interest in the arrangements for managing the European Union's external frontier, Commissioner Vitorino having recently announced that the Commission would shortly be bringing forward proposals for the creation of an external border agency, which would take over responsibility for cross-border cooperation and coordination. The Committee will examine these proposals closely in the light of its report on proposals for a European Border Guard. The Commission is also planning to make proposals for immigration quotas, which are likely to be controversial.

98. Another important dossier, particularly as regards data protection, will be the development of a new system to replace the Schengen Information System.

99. The Committee's immediate task in the new session will be to complete its current inquiry into new approaches to the asylum process, which, among other things, is looking at various proposals designed to keep asylum seekers nearer to their countries of origin.

100. The work of Europol and Eurojust is also likely to require continuing attention, in view of their central roles in combating trans-national organised crime, particularly in view of the enhanced remit likely to be conferred on Europol by the Constitutional Treaty.

101. The Committee will also complete early in the new session a short inquiry into proposals to require airlines to provide advance passenger information to national authorities and to notify them if a passenger does not embark on his return ticket. The Committee has consulted a number of organisations representing carriers and several Non-Governmental Organisations about this proposal which raises important issues both of principle and of practicability.

#### *Energy, Industry, Transport and Research*

102. In the coming Session, Sub-Committee B will examine the Commission's legislative and work programme for 2004 and consider which, if any, issues require more detailed examination. The Commission is introducing draft legislation aimed at achieving a single market in services—from architecture to accountancy and jobs from hotel manager to boiler-fitter, which account for 70% of the EU Economy. Sub-Committee B will examine these proposals. The Commission has already indicated that it will review the growth and competitive performance of the EU in the light of the targets set at the Lisbon European Council Meeting in 2000. Sub-Committee B is likely to look into this review as it affects single market issues.

103. The Sub-Committee will continue to monitor all aspects of Energy, Industry and Transport under the internal market and to follow-up earlier inquiries. For example, the European Single Sky proposals come into effect. Sub-Committee B reported on these in the 9th Report Session 2001-02, *Reducing Air Traffic Delays: Civil and Military Management of Air Space in Europe*<sup>17</sup>.

104. The Sub-Committee will wish to continue to monitor the EU/US negotiations on an Open Aviation Area and the two mandates granted to the Commission and which form the subject of the Committee's Report "Open Skies" or Open Markets? The effect of the European Court of Justice Judgments on Aviation Relations between the European Union and the United States of America<sup>18</sup>.

105. The Sub-Committee will also wish to revisit the matter of the security of energy supplies in Europe. This, too, will be a follow-up to the Report which the Sub-Committee produced in Session 2001-02<sup>19</sup>.

106. The Italian Presidency introduced a new initiative on Trans-European Networks with the object of increasing the Commission's ability to part-fund from 10% of contract to 30%. The Sub-Committee may look at these proposals and may consider what progress, if any, has been made in the liberalisation of rail freight.

107. Finally, the Sub-Committee will wish to return to the issue of the Commission's plans to allocate slots at Community airports.

#### *Agriculture and Environment*

108. With a change of Chairman of Sub-Committee D pending, no view has yet been taken on possible topics for inquiries in the forthcoming 2003-04 Session. A number of important dossiers (e.g. on revision of the CAP regime for tobacco, olive oil, cotton and sugar) are awaiting scrutiny and may give rise to inquiries.

#### *Law*

109. Sub-Committee E is also likely to scrutinise anticipated EU proposals in the field of criminal procedure as well as proposals on a range of civil law matters. In January, the Sub-Committee will undertake an inquiry into the proposed Regulation on the law applicable to non-contractual obligations (known as "Rome II"). This aims to standardise Member States' rules of conflict of laws regarding non-contractual obligations.

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<sup>17</sup> HL Paper 79 (Supplementary Report, HL Paper 63).

<sup>18</sup> 17th Report Session 2003-03, HL Paper 92 and supplementary Report, 36th Report, Session 2002-03, HL Paper 151.

<sup>19</sup> 14th Report, HL Paper 82.

## CHAPTER 4: ADMINISTRATIVE AND PROCEDURAL MATTERS

**Effective scrutiny***Scrutiny of ministers in Council*

110. Our Review of Scrutiny of European Legislation undertook to conduct more regular scrutiny of meetings of the Council of Ministers<sup>20</sup>. The Select Committee has continued to take evidence from the Minister for Europe after meetings of the European Council, implementing a recommendation of the Review of Scrutiny. Sub-Committee C takes ministerial evidence after each General Affairs and External Relations Council (GAERC). To this end the Minister for Europe was invited to give evidence on the GAERC held on 18–19 March<sup>21</sup>. A further evidence session was held on 12 June<sup>22</sup>. Sub-Committee C remains committed to holding the Government to account on matters of EU foreign policy and defence, and to receive written evidence on each GAERC.

111. All Sub-Committees continue to take evidence from ministers and officials in the context of Council meetings as necessary.

*Enhanced scrutiny*

112. We will review the case for enhanced scrutiny in defence, and of matters subject to the Open Method of Co-ordination.

113. We will return in 2004 to some of the ideas in the Scrutiny Review which did not find favour with the Government, particularly those concerned with enhancing the effectiveness of the Scrutiny Reserve Resolution.

114. We await, and will consider, proposals from the Government for enhanced scrutiny during co-decision procedure. This takes on a new significance as, under the draft constitutional Treaty, more matters will be subject to co-decision.

*Scrutiny overrides*

115. The Government reports to us on the occasions when the House's scrutiny reserve has been overridden in Council. During the period January to June 2003 there were 37 such overrides, a figure which seems to us to be high. We will analyse these cases carefully and will seek to enhance the provision of such information directly to the House.

*Documents not deposited*

116. We continue to monitor occasions when documents are not deposited for scrutiny; and to seek regular reports back from the Government to allow us if necessary to review the decisions taken.

*The work of our Sub-Committees*

117. Our Sub-Committees continue to work to implement the Review of Scrutiny:

- All Sub-Committees are taking into account the cross-cutting scrutiny work being undertaken by the Select Committee
- Where appropriate, Sub-Committees monitor regulatory impact assessments and the budgetary implications of proposals
- Sub-Committees plan their work to make the best use of time spent with witnesses; and to ensure an appropriate balance between inquiries and briefer scrutiny activity
- Sub-Committees are committed to follow-up of previous work
- All Sub-Committees have reviewed and endorsed the sift process (see Appendix 3)

<sup>20</sup> 1st Report, Session 2002–03, HL Paper 15, paragraphs 111 and 204.

<sup>21</sup> The Committee took this opportunity to obtain information from the Minister on the process of scrutinising European Security and Defence Policy (ESDP) and on the state of the Common Foreign and Security Policy (CFSP) following recent events relating to the war in Iraq.

<sup>22</sup> The Minister for Europe was asked about a wide range of foreign policy issues including the “wider Europe” policy; the EU missions to the Democratic Republic of Congo and Bosnia, the IGC and the Middle East.

- All Sub-Committees will pay attention to matters of comitology, and Sub-Committee E continues to monitor comitology issues in general.

118. The Select Committee has set up a series of mechanisms to review the work of Sub-Committees. These include regular report backs on activity (three times a year) and the production of this annual report. We expect to launch a monthly newsletter on our work in the new year and would welcome any suggestions for what would be of value.

### **Scrutiny: Co-operation**

#### *The House of Lords*

119. We will continue to work to find ways to improve the usefulness of our work to the House. In our view, however, the House has in return a duty to make use of our work. In particular, timely debates on our reports are needed in the interests of effective scrutiny, but are not being delivered. We were accordingly disappointed that the Procedure Committee was not able to support any of our suggestions for enhancing the provision of time on the Floor of the House for debates on our reports but we note their invitation to the Usual Channels to consider these questions further. Noting that, at the end of the current session, no fewer than nine debates on our reports are outstanding, dating as far back as March, we will need to return urgently to this matter in the new year.

120. We will also examine ways of improving the information flow from our Committee to the members of the House in general.

#### *The House of Commons*

121. We continue to work closely with colleagues in the Commons. This includes not only the European Scrutiny Committee on cross-cutting issues but also departmental select committees on particular inquiries. We will look to strengthen the work currently done mainly at official level and to enhance co-operation between members where doing so will add value.

#### *Other national parliaments*

122. We will develop bilateral and collective exchanges with other national parliamentary scrutiny bodies. We continue to work to ensure that COSAC focuses on scrutiny and not on general debates. We are pursuing this both in our work on the constitutional treaty; in COSAC itself (where we work closely with our colleagues in the Commons); and through the Conference of Speakers at which our Chairman has represented the Lord Chancellor on behalf of the House.

#### *The European Parliament*

123. We have taken part, with members of the House of Commons, in two meetings to exchange views with UK MEPs, and we will work to enhance the effectiveness of those meetings. All Sub-Committees continue to develop links with individual MEPs.

#### *The UK Presidency*

124. Although the current system of rotating presidencies of the European Council is expected to end under the provisions of the draft Constitutional Treaty, this will not take effect before the United Kingdom holds the Presidency from July to December 2005. We will examine during 2004 what preparations need to be made by the House in advance of the Presidency.

### **Resources and administration**

#### *Resources*

125. The House has agreed to a recommendation from the Liaison Committee that each of our seven Sub-Committees has ten members, instead of the 12 who currently serve on each of our six Sub-Committees. We will monitor the impact on our work of this reduction in the number of Peers available to serve on our Committees.

126. The recruitment of research staff, combined with the provision of one clerk for each of our Sub-Committees, has enabled us to undertake more work, and to do so more effectively. A review of the staff resources available to us is underway. We are pressing for the House to have appropriate representation in Brussels, as the Commons already has.

*The internet*

127. Our pages on Parliament's website<sup>23</sup> contain a great deal of useful information, including the text of all our reports since 1997<sup>24</sup>. Our staff will work during 2004 to continue to develop the website and in particular to present information around policy themes and issues rather than just by Sub-Committee as at present. Our staff will also work to develop exchanges of information with other national parliaments and the European Parliament.

128. Subject to the provision of the necessary resources, we will do more to make correspondence with Ministers available on the internet as soon as practicable after it has been sent and received.

*Format of reports*

129. From the start of the new session our reports will be published in a new House of Lords format, designed to make them more accessible. In preparing our reports, we will continue to work to the principles we agreed in the Review of Scrutiny that:

- 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.

*Press and publicity*

130. Working with the Committee Office's Information Officer, we have agreed, and all Sub-Committees have endorsed, a press and publicity action plan<sup>25</sup>. Bearing in mind the practical realities of dealing with the media, we hope that this will allow us to make the most effective impact.

*Facilities*

131. We continue to press the House authorities to provide effective modern facilities such as videoconferencing and simultaneous translation, which will benefit all in the House.

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<sup>23</sup> [www.parliament.uk](http://www.parliament.uk)

<sup>24</sup> These are freely available in HTML and (for Reports since May 2002) also in pdf format.

<sup>25</sup> This is printed in Appendix 4.

## APPENDIX 1

**Membership of Committees: Session 2002–03**

EUROPEAN UNION COMMITTEE (appointed 19 November 2002)

Select Committee

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, Earl of Selborne, Lord Shutt of Greetland, Baroness Stern, Lord Williamson of Horton, Lord Woolmer of Leeds.

Sub-Committee A (Economic and Financial Affairs, Trade and External Relations)

Lord Hannay of Chiswick, Lord Lamont of Lerwick, Lord Radice (Chairman)

Co-opted Members: Lord Armstrong of Ilminster, Lord Geddes, Lord Jones, Lord Lea of Crondall, Lord Marlesford, Lord Sharman, Lord Sheldon, Lord St John of Bletso, Lord Taverne.

Sub-Committee B (Energy, Industry and Transport)

Lord Cavendish of Furness, Lord Shutt of Greetland, Lord Woolmer of Leeds (Chairman)

Co-opted Members: Lord Chadlington, Baroness Cohen of Pimlico, Lord Faulkner of Worcester, Lord Fearn, Lord Howie of Troon, Lord Skelmersdale, Lord Walpole.

Sub-Committee C (Common Foreign and Security Policy)

Lord Jopling (Chairman), Baroness Park of Monmouth, Lord Williamson of Horton

Co-opted Members: Lord Bowness, Lord Harrison, Baroness Hilton of Eggardon, Lord Inge, Lord MacLennan of Rogart, Lord Morris of Aberavon, Lord Powell of Bayswater, Lord Watson of Richmond, Lord Williams of Elvel.

Sub-Committee D (Environment, Agriculture, Public Health and Consumer Protection)

Baroness Billingham, Baroness Maddock, Earl of Selborne (Chairman)

Co-opted Members: Lord Carter, Lord Crickhowell, Lord Fyfe of Fairfield, Lord Haskins, Lord Lewis of Newnham, Lord Livsey of Talgarth, Countess of Mar, Lord Palmer, Lord Renton of Mount Harry.

Sub-Committee E (Law and Institutions)

Lord Brennan, Lord Neill of Bladen, Lord Scott of Foscote (Chairman)

Co-opted Members: Lord Fraser of Carmyllie, Lord Grabiner, Lord Henley, Lord Lester of Herne Hill, Lord Mayhew of Twysden, Lord Plant of Highfield, Baroness Thomas of Walliswood, Lord Thomson of Monifieth.

Sub-Committee F (Social Affairs, Education and Home Affairs)

Lord Dubs, Baroness Harris of Richmond (Chairman), Baroness Stern

Co-opted Members: Lord Avebury, Lord Corbett of Castle Vale, Baroness Gibson of Market Rasen, Baroness Greengross, Lord Griffiths of Fforestfach, Lord King of West Bromwich, Baroness Knight of Collingtree, Lord Wright of Richmond.

## APPENDIX 2

**Reports published in session 2002–03**

- 1st Report: Review of Scrutiny of European Legislation, HL Paper 15
- 2nd Report: Reform of the Common Fisheries Policy: The Current Crisis over Fish stocks, HL Paper 16
- 3rd Report: EU Russia Relations, HL Paper 29
- 4th Report: Evidence by the Minister for Europe, Foreign and Commonwealth Office, on the Brussels European Council, HL Paper 30
- 5th Report: Europol's Role in Fighting Crime, HL Paper 43
- 6th Report: The Future Status of the EU Charter of Fundamental Rights, HL Paper 48
- 7th Report: EU-Effective in a Crisis?, HL Paper 53
- 8th Report: Evidence by the Greek Ambassador on the Greek Presidency; and by the Minister for Europe, Foreign and Commonwealth Office, on the Copenhagen European Council, HL Paper 54
- 9th Report: The Future of Europe: Constitutional Treaty—Draft Articles 1–16, HL Paper 61
- 10th Report: Mid-Term Review of the Common Agricultural Policy: External Implications, HL Paper 62
- 11th Report: The Future of Europe: National Parliaments and Subsidiarity – The Proposed Protocols, HL Paper 70
- 12th Report: The Future of Europe: Constitutional Treaty—Draft Articles 24–33, HL Paper 71
- 13th Report: The Stability and Growth Pact, HL Paper 72
- 14th Report: The Future of Europe: Social Europe, HL Paper 79
- 15th Report: The Future of Europe: Convention Working Group—Reports on Defence and External Action, HL Paper 80
- 16th Report: The Future of Europe: Constitutional Treaty—Draft Article 31 and Draft Articles from Part 2 (Freedom, Security and Justice), HL Paper 81
- 17th Report: “Open Skies” or Open Markets? The Effect of the European Court of Justice (ECJ) Judgments on Aviation Relations Between the European Union (EU) and the United States of America (USA), HL Paper 92
- 18th Report: The Future of Europe: Constitutional Treaty—Draft Articles 43–46 (Union Membership) and General and Final Provisions, HL Paper 93
- 19th Report: Evidence by the Minister for Europe, Foreign and Commonwealth Office on European Security and Defence Policy Scrutiny, the General Affairs and External Council of 18–19 March 2003 and the Current State of Common Foreign and Security Policy, HL Paper 94
- 20th Report: Government Responses: Review of Scrutiny of European Legislation; Europol's Role in Fighting Crime; and EU Russia Relations, HL Paper 99
- 21st Report: The Future of Europe: Constitutional Treaty—Draft Articles on the Institutions, HL Paper 105
- 22nd Report: The Future of Europe: Constitutional Treaty—Draft Articles 33–37 (The Democratic Life of the Union), HL Paper 106
- 23rd Report: The Future of Europe: Constitutional Treaty—Draft Articles on External Action, HL Paper 107
- 24th Report: The Taxation of Fuel in the European Union, HL Paper 108
- 25th Report: Progress of Reform of the Common Fisheries Policy, HL Paper 109
- 26th Report: Government Responses: The Stability and Growth Pact; EU-Effective in a Crisis; and The Future of Europe: Convention Working Group—Reports on Defence and External Action, HL Paper 112

- 27th Report: Government Responses: Mid-Term Review of the Common Agricultural Policy: External Implications; and The Future Status of the EU Charter of Fundamental Rights, HL Paper 114
- 28th Report: If at first you don't succeed ... Takeover Bids Again, HL Paper 128
- 29th Report: Proposals for a European Border Guard, HL Paper 133
- 30th Report: A Fractured Partnership? Relations Between the European Union and the United States of America, HL Paper 134
- 31st Report: Reforming Comitology, HL Paper 135
- 32nd Report: The Proposed Framework Decision on Racism and Xenophobia – an update, HL Paper 136
- 33rd Report: The 2004 EC Budget, HL Paper 141
- 34th Report: The Commission's Green Paper: Entrepreneurship in Europe, HL Paper 142
- 35th Report: The Future of Europe: Progress Report on the Draft Constitutional Treaty and the IGC, HL Paper 150
- 36th Report: Supplementary Report on the Effect of the European Court of Justice Judgments of 5 November 2002 on Aviation Relations Between the European Union and the United States of America, HL Paper 151
- 37th Report: Current Developments in European Foreign Policy, HL Paper 152
- 38th Report: EU/US Agreements on Extradition and Mutual Legal Assistance, HL Paper 153
- 39th Report: Evidence by the Italian Ambassador on the Italian Presidency, HL Paper 164
- 40th Report: Government Responses: The 2004 EC Budget; The Commission's Green Paper: Entrepreneurship in Europe; and Progress of Reform of the Common Fisheries Policy, HL Paper 166
- 41st Report: The Future of Europe: The Convention's Draft Constitutional Treaty, HL Paper 169
- 42nd Report: Is the European Central Bank Working?, HL Paper 170
- 43rd Report: Evidence by Lord Filkin on the Proposed Council Directive Defining Refugee Status and those in need of International Protection?, HL Paper 173
- 44th Report: Annual Report, HL Paper 191
- 45th Report: Towards a Single Market for Finance: The Financial Services Actions Plan, HL Paper 192
- 46th Report: Revision of the EC Bathing Water Directive, HL Paper 193
- 47th Report: European Union Waste Management Policy, HL Paper 194
- 48th Report: Government Responses for Session 2001–02, HL Paper 195
- 49th Report: Correspondence with Minister: July 2002–March 2003, HL Paper 196
- 50th Report: Evidence from the Commission on the Commission's Annual Work Programme, HL Paper 200
- Evidence taken on 8 October 2002 on the Convention on the Future of Europe, HL Paper 33

## APPENDIX 3

**Scrutiny of EU Legislation – the sift process**

4 March 2003

*The sift process – the background*

The Select 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 (EM) and decides whether it should be referred to one or more of the Sub-Committees or to the Select Committee itself or an ad hoc Sub-Committee (this is extremely rare) or cleared from scrutiny. The clerks and the Legal Adviser aid the Chairman in this process. The sift is undertaken once a week when the House is in session and as required during recesses.

In practice the Legal Adviser reads all the EMs and (aided by the Legal Assistant) formulates a recommendation on each document. Subject to time constraints, this is then discussed with the Clerks of the Sub-Committees. An “agreed” recommendation is then forwarded to the Chairman. The results, in particular the list of those documents cleared by the Chairman from scrutiny, are made available to Sub-Committees as they wish. About a quarter of all documents (we receive over 1000 a year) are sifted to a Sub-Committee.

*Relevant criteria*

No criteria for determining which documents should be cleared on the sift (and which not) have been defined either by the Select Committee, the Chairman or the Clerk to the Select Committee. In broad terms, the political, practical or legal implications of the document are examined. Some of the factors which, in the light of experience, the Legal Adviser considers may be relevant in advising the Chairman whether to sift a document to a Sub-Committee for further examination are:

- Nature of the document (a Green or White paper, draft legislative proposal or routine report)
- Scope (including geographic) of application of proposal, including degree of UK interest
- Policy implications (usually identified and assessed by Government – any acknowledged problems of which the Committee should be aware and/or might have a view)
- Legal problems (vires, subsidiarity, extension of competence, implementation issues)
- Broad political/public impact (the tabloid test – “Surely you could not have let that pass without examination!”)
- Existing media coverage
- Reactions of European Parliament or other national parliaments
- Advice from reputable NGO or other interested party
- Previous involvement of Select or Sub-Committee, whether in relation to an earlier sifted document or an earlier (general or focused) Report
- Completeness of the documentation/EM (in particular the absence of a Regulatory Impact Assessment where the measure could have substantial implications for producers, suppliers, users, consumers or taxpayers – note this case of “fridges”)
- Particular interest/expertise of members in the Sub-Committee.

*The time factor*

The EM includes a section dealing with the timetable. The time factor is always a relevant consideration in how a Sub-Committee handles a document, but shortness of time should not be decisive as to whether a document is sifted. But even where a Sub-Committee takes a document in anticipation of the sift, shortness of time may curtail effective scrutiny. Sub-Committees must do their best in the circumstances and should not be put off raising issues even at a late stage where those issues are considered significant. In particular, Sub-Committees should not become resigned or feel pressured into clearing a document merely because it is listed for a particular Council in the near future.

The Scrutiny Review Report considered the question of the sifting of documents at the later stages of the legislative cycle. Where a document (usually an earlier version) remains under scrutiny then any later version should be sifted to the Sub-Committee. Even where the earlier version has been cleared the new document and EM should be sifted where, for example, they identify a new issue, or show a major change in Government policy or appear to contradict earlier Government explanations.

Particular problems may arise where a measure is subject to co-decision and goes into the conciliation process, where it is discussed between representatives of the Council and the European Parliament. Practical experience is that there may be little the Committee can do at this stage. Deals are being struck and the Sub-Committee may feel itself to be very much the outsider. So far as the sift is concerned, the key, if not decisive, issue would seem to be the extent of previous involvement and continuing interest of the Sub-Committee. The question in practice is not what the Committee might be able to do at this late stage in the process but whether the Committee's questions have been answered and its views properly considered by Government.

Finally, it is always open to a Sub-Committee to alert the Chairman in advance that it wishes to see all documents relating to a proposal.

### **The Scrutiny Reserve, and our Orders of Reference**

*Text of the Scrutiny Reserve Resolution, agreed by the House on 6 December 1999,*

(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); and

(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.

*European Union Committee's Orders of Reference, 19 November 2002*

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

The expression "European Union documents" shall include the following documents:

- (i) Any proposal under the Community treaties for legislation by the Council or the Council acting jointly with the European Parliament;
- (ii) Any document which is published for submission to the European Council, the Council or the European Central Bank;
- (iii) Any proposal for a common strategy, a joint action or a common position under Title V (provisions on a common foreign and security policy) of the Treaty on European Union which is prepared for submission to the Council or to the European Council;
- (iv) Any proposal for a common position, framework decision, decision or a convention under Title VI (provisions on police and judicial co-operation in criminal matters) of the Treaty on European Union which is prepared for submission to the Council;
- (v) Any document (not falling within (ii), (iii) or (iv) above) which is published by one Union institution for or with a view to submission to another Union institution and which does not relate exclusively to consideration of any proposal for legislation;
- (vi) Any other document relating to European Union matters deposited in the House by a Minister of the Crown.

the committee have power to appoint sub-committees and to refer to such sub-committees any of the matters within the terms of reference of the committee; the committee have power to appoint the chairmen of sub-committees, but such sub-committees have power to appoint their own chairman for the purpose of particular inquiries; two be the quorum of such sub-committees;

the committee have power to co-opt any Lord for the purpose of serving on a sub-committee;

the committee have power to appoint specialist advisers;

the committee and any sub-committee have power to adjourn from place to place;

the committee have leave to report from time to time;

the reports of the Select Committee from time to time shall be printed, notwithstanding any adjournment of the House;

the minutes of evidence taken before the European Union Committee or any sub-committee in the last Session of Parliament be referred to the committee;

the minutes of evidence taken before the committee or any sub-committee from time to time shall, if the committee think fit, be printed.

## APPENDIX 4

**Press and Publicity: Draft Action Plan for Sub-Committees**

10 April 2003

*Introduction*

Following a recommendation in our Scrutiny Review, we heard a presentation from Jillian Bailey, Press and Publicity Officer (Committees) at our meeting on 11 February. We agreed that a short analysis of the key messages of our media strategy would be adopted by the Select Committee and implemented by the Sub-Committees as they conduct individual inquiries.

This paper meets that request. A number of key areas are covered but the overall message is that Sub-Committees have an important role to play in the process and that the media strategy needs to be part of the planning of Sub-Committee work. The role of chairmen too is key, as is the question of whether our Committee is adequately resourced to implement these proposals across the board.

The Select Committee endorsed the approach taken in this paper; and referred this action plan to the Sub-Committees. Sub-Committee Chairmen were asked to identify priorities so that resources could be effectively deployed. Our Clerk will also examine the resource implications in detail; determine what can and cannot be done with existing resources; and make the appropriate recommendations. The suggestions proposed in this Action Plan are being piloted in a number of key areas (identified by the Sub-Committee Chairmen) over the coming months.

As a parallel element in implementing the Scrutiny Review, the Committee will also shortly be asked to consider broader questions of the dissemination of our work, including how we can make our work directly available to Members of the House (eg via our proposed Annual Report).

*Key messages*

We must be aware of the key messages of each of our reports. There are many press releases issued every day so those from our Committee need to stand out in order to compete.

- We have already agreed that all reports should include an abstract. In addition, we have agreed to make key information available separately from reports to ensure wider distribution (our staff are working on proposals to deliver this);
- Caroline Jackson MEP in her evidence to the Scrutiny Review called for recommendations to be more forceful and pointed;
- The main message of a report is not necessarily always that which the media pick up and we must be robust in rebutting inaccuracies;
- The news value of reports, and media coverage of them, will vary. While many reports are reflective, we should strive to find a human interest news angle if possible.

*Target audiences*

It is important to be aware of the key audiences for each report. These will vary between reports. The amount of preparation and work involved in identifying and effectively targeting widely varying audiences should not be underestimated. The following suggestions are made:

- Press Briefings at the beginning of a major inquiry should be considered, so that the Sub-Committee can set out the direction of the inquiry (other Committees have done so).
- Media and non-media contacts relevant to a particular inquiry should be identified at the start of an inquiry and contacts developed and maintained during the course of that inquiry;
- Members of Sub-Committees should indicate particular organisations and individuals which should be targeted – specific MEPs in particular are a key target audience;
- Members of Sub-Committees should help to ensure that relevant local and regional media are targeted for each inquiry, in particular where individual members have their own local press contacts;
- The mainstream and specialised press and media are already targeted, but effort needs to be directed at attracting more European media correspondents via the Foreign Press Association and the

London correspondents of European and other international media. The main press interest in the Committee's work is in Brussels and there is a need to target the Brussels press core, perhaps using the national parliament office;

- Appropriate contacts in London embassies should be identified to receive copies of reports and be asked to suggest relevant national journalists;
- Particularly newsworthy and interesting witnesses should be drawn to the attention of target audiences and press and media contacts during the inquiry;
- Press conferences or briefings should be carefully considered and not organised as a matter of routine;
- Sub-Committee Clerks and the Press and Publicity Officer (Committees) should compile a list of key non-media organisations such as relevant contacts in universities and other relevant bodies who will be sent copies of reports. The Sub-Committee and Select Committee Chairmen should be prepared to sign personal letters to selected contacts (this already happens on occasion).

### *Process*

As the "window of opportunity" to promote inquiries is very short, best use needs to be made of the inquiry period. Process is therefore key. Publicity and communication with the media is something House of Lords Committees have tended to tack on at the end of an inquiry. For such work to have maximum impact it must run alongside a Committee's substantive work and be seen as an integral part of the planning of work.

- Sub-Committee Chairmen and Clerks should meet the Press and Publicity Officer (Committees) at the start of each inquiry and Sub-Committees should involve the Press and Publicity Officer (Committees) at the earliest stage in planning inquiries so that effective press and dissemination plans can be promulgated;
- Each report should be accompanied by a media plan giving the date of publication, the target audiences, the distribution strategy, and the case for a press conference/briefing if necessary: this plan should be adopted by the Sub-Committee along with the first draft. Committee Staff should prepare the plan, using a prepared pro-forma to be devised by the Press and Publicity Officer (Committees) and with her advice;
- Press releases need to be short and snappy. Much of the material with which the Committee works needs digesting: while the recommendations need to be carefully drawn, a press release can be more colourful: this is a matter for the Sub-Committee Chairmen and Clerks with advice from the Press and Publicity Officer (Committees);
- Embargoed press briefings should be considered where issues are complex and sensitive so the Committee gets its message across clearly;
- Consideration should be given to professionally translating certain press releases and digests of reports into other languages;
- We should seek publicity on activity other than reports, such as correspondence with Ministers, interesting visits etc;
- Each Sub-Committee should review press coverage after the publication of each report. Monitoring to assess the most effective mechanisms should become routine.