



HOUSE OF LORDS

European Union Committee

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32nd Report of Session 2007–08

# Annual Report 2008

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### *The European Union Committee*

The European Union Committee is appointed by the House of Lords “to consider European Union documents and other matters relating to the European Union”. The Committee has seven Sub-Committees which are:

Economic and Financial Affairs, and International Trade (Sub-Committee A)  
Internal Market (Sub-Committee B)  
Foreign Affairs, Defence and Development Policy (Sub-Committee C)  
Environment and Agriculture (Sub-Committee D)  
Law and Institutions (Sub-Committee E)  
Home Affairs (Sub-Committee F)  
Social and Consumer Affairs (Sub-Committee G)

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Baroness Cohen of Pimlico	Lord Plumb
Lord Dykes	Lord Powell of Bayswater
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**FOREWORD—what this Report is about**

This Annual Report provides a summary of the work of the House of Lords EU Select Committee and its seven Sub-Committees from November 2007 to October 2008.

The report provides details of the routine scrutiny carried out by the Committee and highlights some of the committee inquiries conducted over the past year including a major inquiry on the Lisbon Treaty. It also looks at the Committee's contacts with the European Commission and with other parliaments and provides some details on procedural developments over the past year including in relation to scrutiny overrides.

# Annual Report 2008

## CHAPTER 1: BACKGROUND

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1. This is the sixth Annual Report on the work of the European Union Select Committee and its seven Sub-Committees. This report covers the Committee's work from November 2007 to October 2008. The Committee's terms of reference can be found at Appendix 1.
2. There are five principal areas of activity through which the Committee and its Sub-Committees carry out their work and these are as follows:
  - Routine Scrutiny
  - Committee Inquiries and Reports
  - One-off hearings
  - Contacts with the European Commission
  - Contacts with other Parliaments
3. Chapter 2 of this report highlights some of the major pieces of work carried out in each of these areas while Chapter 3 looks at some of the procedural matters which have arisen over the past year.
4. We make this report for the information of the House. No Government response is required.

## CHAPTER 2: THE COMMITTEE'S WORK

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### Routine Scrutiny

5. A core aspect of the Committee's work is the routine scrutiny of the EU documents which are deposited in Parliament by the Government. Each document is followed by an Explanatory Memorandum (EM) setting out the Government's views on a number of key areas including the policy implications of the proposal and the timetable for its consideration in the Council. The Chairman conducts a first sift of each document and accompanying EM deposited in the previous week and, drawing on the advice of the Clerks and the Legal Adviser, decides whether it should be referred to one or more of the Sub-Committees or cleared from scrutiny. Documents which are not cleared are subject to the House's Scrutiny Reserve Resolution which can be found at Appendix 2.
6. During the period of this report, 926 EMs relating to deposited documents have been sifted by the Chairman with 399 being referred to the Select Committee and its Sub-Committees. The vast majority of routine scrutiny is carried out by the Sub-Committees as demonstrated in Table 1 below.

**TABLE 1**

**EMs considered**

<b>Committee</b>	<b>Number of EMs Considered</b>
Select	7
Sub A	66
Sub B	62
Sub C	76
Sub D	61
Sub E	49
Sub F	33
Sub G	46

7. Consideration of sifted documents is a substantial undertaking and forms a large part of the work of the Sub-Committees. This may include an exchange of correspondence with the relevant Minister until the Committee is satisfied and prepared to clear the document.
8. Significant items of routine scrutiny in the past year include Sub-Committee A's consideration of the European budget for the post-2013 period and several items relating to VAT and VAT fraud. Sub-Committee B carried out detailed scrutiny of the funding arrangements for the Galileo project, looked into the Single European Skies II proposals and took evidence from Department of Transport officials on the negotiations for part 2 of the EU-US Aviation agreement. Significant items of scrutiny carried out by Sub-Committee C included consideration of an EU mission to Chad and the Central African Republic, Council Guidelines for the European Defence

Agency's work in 2008 and proposals for Stabilisation and Association Agreements between the EC and Bosnia and Herzegovina.

9. Sub-Committee D's routine scrutiny included detailed examination of three proposals forming part of the Climate Change and Energy package published by the Commission in January 2008. The Committee wrote a letter to DEFRA and the Department for Transport jointly setting out its view that the proposals must be examined within the broader context of the Government's overarching strategy for achieving greenhouse gas emission reductions. The Committee received a joint response from both Ministers.
10. Areas of scrutiny where Sub-Committee E has been particularly active include proposals for Eurojust and the European Judicial Network, for the *In Absentia* Framework Decision and for Wills and Succession. In relation to each the Sub-Committee raised concerns and have received detailed responses from the Government. The Government has indicated a particular interest in the Sub-Committee's input on the proposals for Wills and Succession, which are of real practical importance for European citizens, but involve particularly difficult issues of reconciliation of differing legal approaches. After the Sub-Committee had expressed concern regarding the adequacy of the proposed fundamental rights protection in the proposed *In Absentia* Framework Decision, it was informed by the Attorney General of the addition of further significant fundamental rights guarantees.
11. Sub-Committee F's scrutiny role included looking in detail at a proposal for a directive on conditions of entry and residence of third-country nationals for the purposes of highly qualified employment. The Sub-Committee is also continuing its scrutiny of a Commission Communication relating to the creation of a European Border Surveillance System.
12. Sub-Committee G scrutinised particularly closely the proposals on temporary agency work and on working time, taking evidence from the Minister following the Council's adoption of its Common Position and prior to the European Parliament's Second Reading. Other scrutiny items it dealt with included proposals for a directive on credit agreements for consumers, the European Year for Combating Poverty and Social Exclusion and a proposal for a Regulation on the provision of food information to consumers.

### **Major Inquiries and Reports**

13. In addition to its routine scrutiny work a Sub-Committee may also decide to conduct an inquiry into a document or into an issue. The Sub-Committee's report is submitted to the Select Committee for publication and may also be debated in the House. A full list of reports published over the last year can be found at Appendix 3 while the major committee inquiries are outlined below.

#### *Lisbon Treaty*

14. The most substantial piece of work carried out by the Committee over the last year was its inquiry on the impact of the Lisbon Treaty. This involved unprecedented collaboration between all seven Sub-Committees and the Select Committee. Each Sub-Committee explored the Treaty's effects in its own area of expertise.
15. The European Union (Amendment) Bill was introduced by the Government during the inquiry. The two Houses of Parliament were asked to pass the Bill to enable the Government to ratify the Treaty. The main aim of the report,

which was published on 13 March 2008, was to inform the House of the most important aspects of the Treaty, particularly by comparing its provisions with the status quo, and assessing their impact on the institutions of the EU, on the Member States and on the UK.

16. The report looked in detail at every significant provision of the Treaty and was designed to aid Parliamentarians in their consideration of the Treaty's potential impact. The Committee sought to analyse the Treaty itself and did not address the question of whether or not there should be a referendum. The Chairman stated on publishing the report that: "We have deliberately not considered arguments for or against a referendum on the Treaty as our aim was to provide an objective analysis of the Treaty itself. It is for Parliament as a whole, not this Committee, to decide whether or not this Treaty should be ratified and our aim was to help ensure it makes an informed decision."<sup>1</sup>
17. We welcome the positive response which the report has received in a number of quarters. For example, during committee stage of the Bill the Lord President, Baroness Ashton of Upholland stated: "I have 50 pieces of paper covered in quotations, many from leaders of other European states and from all over the place. I do not intend to use them. I intend to quote only Members of your Lordships' House and another place. I pay great tribute to, and will use substantially, the reports of the European Union Select Committee in another place, the committee in your Lordships' House and the Constitution Committee."<sup>2</sup>

#### *Annual Policy Strategy (APS)*

18. In 2007 the Select Committee carried out an inquiry on the Commission's APS for the first time and has repeated the exercise this year. The APS provides an opportunity to consider the Commission's intentions as early in the legislative process as possible. The main aim of the Committee's report which was published on 23 July 2008 was to influence the Commission's Legislative and Work Programme which will be published in November.
19. The Committee criticised the Government's Explanatory Memorandum on the Annual Policy Strategy for not giving enough detail of the Government's views on the European Commission's proposals. The Committee recommended wider consultation on the document. The Committee made clear that this should include Treasury scrutiny of the financial allocations in the APS to inform the Government's response to the European Commission.

#### *Solvency II*

20. Sub-Committee A carried out an inquiry examining the Commission's proposals to reform the regulation of the European Insurance and Reinsurance industry. The proposed Directive will have far-reaching consequences for the insurance industry, not least as it will change the amount of money companies have to hold in order to be deemed solvent. The proposals will introduce a regulatory system which is similar to that already introduced by the Financial Services Authority (FSA) for firms operating in the United Kingdom. The Sub-Committee largely welcomed

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<sup>1</sup> [http://www.parliament.uk/parliamentary\\_committees/lords\\_press\\_notices/pn130308eu.cfm](http://www.parliament.uk/parliamentary_committees/lords_press_notices/pn130308eu.cfm)

<sup>2</sup> HL Deb 22 April 2008 col 1422

the proposals but highlighted several issues that were yet to be resolved such as the calculations firms should employ when valuing the risk inherent in their business.

### *European Trade Policy*

21. Sub-Committee A has also been carrying out an inquiry on European trade policy. In particular, the Sub-Committee has been looking at whether there has been a move away from attempting to negotiate multilateral trade agreements such as the Doha round and towards bilateral agreements. The Sub-Committee is also examining whether trade liberalisation is threatened by protectionist responses to the global economic downturn, and is looking at the proposed Economic Partnership Agreements (EPAs) which the Commission is currently negotiating with developing countries. As part of the inquiry the Sub-Committee visited Brussels and Geneva and took evidence from a number of witnesses including Commissioner Mandelson and the Director-General of the World Trade Organisation. The report is due to be published in November.

### *European Regional Policy*

22. Sub-Committee A also conducted a short inquiry into European Regional Policy. This was undertaken as part of a series of work to prepare for the Commission's proposals for the European budget in the period after 2014. The Sub-Committee concluded that the current distribution of 20% of regional funding to the most prosperous 80% of regions was inefficient and that all of the funding should be targeted at the poorest regions. The Sub-Committee also found that the administration costs of the funding are not unreasonable, and that there is an appropriate balance between regions being able to propose specific projects and the application of Europe-wide priorities.

### *Single Market*

23. Sub-Committee B conducted an inquiry into the Single Market to coincide with the debate arising from the European Commission's review of the Single Market. Its report "The Single Market: Wallflower or Dancing Partner?" was published on 8 February 2008. The Sub-Committee chose to concentrate on three areas of the Single Market: the energy industry, financial services and telecoms. Evidence was taken from a wide range of witnesses, and included two visits to Brussels and a video link session to take evidence from an independent French energy company. The press release and foreword of this report were translated into French and German in order to improve their profile in Europe.
24. Sub-Committee B also carried out an inquiry into the proposed EU renewable energy target of 20% by 2020. The Committee looked into the achievability of the target and its regulatory consequences. As part of the inquiry the Committee took evidence from a number of witnesses in Westminster and Brussels. The Committee also sailed out to the Scroby Sands wind farm owned by E.ON off the coast at Great Yarmouth, saw the turbines at Avonmouth docks and visited the homes of two customers of Good Energy who have micro-generation facilities fitted.

*The EU and Russia*

25. Sub-Committee C carried out an inquiry examining the relationship with Russia at the outset of the new Russian Presidency. The Committee visited Moscow as part of the inquiry and held a number of meetings including with the Deputy Minister of Foreign Affairs responsible for EU-Russia Relations. The Committee's report which was published on 22 May 2008 calls on the EU to continue to build on its long term relationship with Russia and to pursue a policy of engagement at all levels and across all policy areas to develop the necessary bilateral co-operation using a hard-headed and unsentimental approach. The Sub-Committee, however, expresses concern about Europe's dependence on Russian energy and comments that Russia's "near abroad" where both the Russians and the EU have close geopolitical interests is a particularly sensitive area and should be treated as such by both.
26. The Sub-Committee concludes that all indications are that President Medvedev's presidency will be characterised by a high degree of continuity with the policies of President Putin. It supports President Medvedev's stated aim to strengthen the rule of law in Russia but warns that it remains to be seen what concrete steps he will take to achieve this.
27. The inquiry preceded the crisis in Georgia in August 2008. The debate on 10 October gave the House an early opportunity to discuss those events in the broad context provided by the report.

*Future of the Common Agricultural Policy (CAP)*

28. Sub-Committee D carried out an inquiry looking at the Commission's "Health Check" proposals for the reform of the CAP. In its report which was published on 6 March 2008 the Sub-Committee argues that farm subsidies in their present form are a poorly-focused policy instrument. Payments to farmers and landowners are being used as a proxy for the attainment of social, economic, and environmental goals that should instead be targeted directly, whether at the national or EU level.
29. The Sub-Committee therefore advocates a phased reduction in farm subsidies from 2014, and proposes that a significant proportion of the funds thereby released should be channelled into the rural development element of the CAP—which already exists, but currently consumes only about a fifth of total spending on the CAP. Rural development should cease to be equated with the fortunes of the agriculture industry and should instead address the broader challenges and opportunities facing Europe's rural areas.

*Progress of the Common Fisheries Policy (CFP)*

30. Sub-Committee D also carried out an inquiry examining the progress of the CFP since it was reformed in 2002 with the aim of contributing to ongoing negotiations on new CFP legislation. As part of this inquiry the Committee visited Peterhead where it held evidence sessions open to the public.
31. In its report published on 22 July 2008, the Sub-Committee concluded that the CFP's "dismal reputation" is warranted on several counts: an intricate and extensive regulatory regime has failed to protect fish stocks; compliance is poor and enforcement uneven; many segments of EU fishing fleets experience poor profitability; and fisheries management is carried out through an over-centralised, top-down legislative process that has alienated stakeholders and overburdened the European Commission.

32. The Sub-Committee argue that the root cause of the CFP's poor performance on biological and economic indicators has been EU Member States' reluctance to bring the size of their fishing fleets into line with available fishing opportunities. It notes that the UK has demonstrated a much greater commitment to getting the balance right than other Member States, and praises the decommissioning that has taken place in Scotland.

*Initiation of EU legislation*

33. Sub-Committee E conducted an inquiry into the initiation of EU legislation including the sources of ideas for legislation and the processes through which ideas are developed into formal proposals for legislation. The Sub-Committee's report was published on 24 July 2008. The conclusions supported the Commission's right of initiative, concluded that the present arrangements involve an appropriate balancing of interests between European institutions, but encouraged the Commission to take account of national as well as international stakeholders, encouraged the development of a strong common law profile within and in relation to the Commission, recommended that lobbying be transparently regulated, and urged that consideration be given to the creation of a cadre of specialist legislative drafters within the Commission.

*Frontex*

34. Sub-Committee F carried out an inquiry into Frontex, the European external borders agency. The Committee's report, published on 5 March 2008, called on the Government and the Schengen nations to take steps to ensure that the United Kingdom participates more fully in the development and operations of Frontex. The report recognises that while full Schengen States take the view that freedom of movement within the EU should take priority over border security, the United Kingdom's position in taking the opposite view is undermined by the need to improve the way its borders are at present safeguarded. The Committee argue that the highest priority should be given to remedying this, but see no reason for the Government to alter its decision not to opt in to the Schengen agreement.
35. The Committee believes that Frontex, whose tasks, staff and budget have doubled in each year of its existence, should be allowed a period of consolidation of its current tasks. Frontex should not, at least for the present, acquire its own operational assets, and Member States should not pledge vessels and other operational assets unless they are able to make them available on request. The Committee also believe that a fairer way must be found of calculating and granting financial assistance to those States which, like Malta, bear a disproportionate share of the burden of illegal immigration.

*European Police Office (Europol)*

36. Sub-Committee F has recently completed an inquiry into Europol which is the body responsible for supporting the Member States in combating serious and organised international crime. It was originally set up by a Convention between Member States, but agreement was reached at the Justice and Home Affairs Council on 18 April 2008 to establish Europol as an Agency of the EU. The Decision will extend the mandate of Europol to criminal conduct which is not strictly related to organised crime. The Sub-Committee's inquiry was therefore timely in examining Europol's current role and operating environment and how these will change under the new legal framework.

37. In its report, which was published on 12 November 2008, the Sub-Committee are concerned that four-fifths of the information exchanged by liaison officers stationed at Europol is exchanged without going through Europol or being entered on its database, and so without being accessible to the majority of Member States. This is due to a lack of trust, and the Committee make suggestions as to how this might be improved. The Sub-Committee welcome the fact that Europol's work is now based on Organised Crime Threat Assessments, planning for future threats rather than reacting to past events. However, it is particularly critical of the management structure of Europol which is complex and cumbersome, and which the Decision does little to improve.

#### *Protecting the consumers of timeshare products*

38. Sub-Committee G conducted an inquiry into the Commission's proposals for a new directive which would give consumers of timeshare and related holiday products greater contractual rights. The aim of the directive was to protect consumers from the consequences of unsolicited approaches by sellers, some of which may involve misleading information and aggressive sales techniques. The report was published on 18 December 2007 and provides a thorough analysis of issues raised by the directive. The report was well received by both the European Parliament and the Government who indicated that it was useful in taking forward the UK's negotiations on the new Directive which is now scheduled for adoption by the Council of Ministers in December 2008.

#### *Organ Donation*

39. Sub-Committee G then conducted an inquiry into the merit of the Commission's proposals for action aimed at increasing the supply of donor organs across the EU. It looked at the current state of organ transplant provision in the UK and other European countries and concluded that the directive would assist in improving provision in the EU. The report was published on 2 July 2008. The report also stressed that any directive should include significant flexibility to allow scope for clinical judgement and patient choice: for a patient who requires an urgent organ transplant to avoid imminent death, the clinical criteria for judging the acceptable quality of an organ will be different from those for a patient who can afford to wait longer for a transplant. The Committee has received a number of favourable responses to the report including from the Department of Health taskforce studying organ donation issues.

#### **One-off Hearings**

40. While the bulk of our inquiries are conducted by the Sub-Committees the Select Committee has a more general role which includes hearing oral evidence on the outcome of each European Council and the priorities for each EU Presidency.
41. Over the past year we heard from Jim Murphy MP, the then Minister for Europe, on 15 January, 25 March and 15 July on the outcome of the December, March and June European Council Meetings.
42. We also routinely hear evidence from the Ambassador to the UK of the incoming Presidency of the EU. His Excellency Mr Iztok Mirošič gave evidence to the Committee on the priorities of the Slovenian Presidency on 29 January 2008 and His Excellency Mr Maurice Gourdault-Montagne set out the priorities of the French Presidency on 10 June 2008.

43. Sub-Committee C also holds regular one-off hearings on various aspects of foreign and defence policy. For example, over the past year the Sub-Committee heard from the Minister for Europe on recent developments in European foreign policy on 23 January and 3 July, and from MoD officials on European defence policy on 26 June.
44. The Committee has published reports on all of these evidence sessions.

### Working with the European Commission

45. In September 2006 the Commission launched the “Barroso Initiative” which commits the Commission to improving its consultation with national parliaments on all Communications and proposals. National parliaments are now encouraged to submit opinions, to which the Commission has undertaken to respond where appropriate.
46. The Commission’s 2007 Annual Report on its relations with national parliaments states that “In 2007 the Commission’s new approach to strengthening its relations with national parliaments made significant progress.”<sup>3</sup> During the period November 2006 to December 2007 the Commission received 168 opinions regarding 82 Commission texts from 27 national Parliaments in 19 Member States. Of these 168 opinions 18 were from the House of Lords.
47. During the period of this report we submitted 9 reports to the Commission for a response and these are listed in Table 2. In our 2006 and 2007 Annual Reports we welcomed the “Barroso Initiative” and once again we wish to emphasise our support for continuing to develop the relationship between national parliaments and the Commission.

**TABLE 2**

#### Reports sent to the Commission

Report title	Sent to the Commission	Response received
Protecting the consumers of timeshare products	December 2007	March 2008
The Single Market: Wallflower or Dancing Partner? Inquiry into the European Commission’s Review of the Single Market	February 2008	Awaited
Frontex: the EU external borders agency	March 2008	October 2008
The Future of the Common Agricultural Policy	March 2008	June 2008
Increasing the supply of donor organs within the European Union	July 2008	October 2008
The Progress of the Common Fisheries Policy	July 2008	October 2008
The Commission’s Annual Policy Strategy for 2009	July 2008	Awaited
Initiation of EU Legislation	July 2008	Awaited
The EU’s Target for Renewable Energy: 20% by 2020	October 2008	Awaited

<sup>3</sup> COM (2008) 237, Annual Report 2007 on relations between the European Commission and National Parliaments

48. We also welcome the willingness of the Commission to supply written evidence and to meet us and our sub-committees in relation to inquiry work.

### **Working with Other Parliaments**

49. A key aspect of our role is close working relations with other parliaments including the European Parliament. Co-operation between national parliaments on EU scrutiny has grown in formality and scope, and we are at the forefront of activity within this area. The main formal grouping is the Conference of Community and European Affairs Committees of Parliaments of the European Union (COSAC) which meets twice a year with each meeting preceded by a meeting of the respective Chairmen. The 38th COSAC meeting was held on 14–16 October 2007 in Lisbon; the 39th COSAC meeting was held on 6–8 May 2008 in Brdo, Slovenia; the Chairman attended both along with other Members of the Committee and he also attended the Chairmen's meetings.
50. The Committee and its Sub-Committees also seek to work closely with the European Parliament. Our Brussels-based Liaison Officer is housed in the premises of the European Parliament and has daily contact with officials from the other national parliaments of the Union. In this field his role is twofold: he reports back to us on the results of scrutiny activities in other national parliaments and keeps others informed of our activities. He is working both through COSAC and through bilateral contact, to improve the effectiveness of the network of national parliaments' staff in Brussels so that more, and more useful, information is shared systematically.
51. The Liaison Officer systematically distributes substantive reports within the European Parliament including to all UK MEPs. We have also recently begun providing translations of the introductions and conclusions to some reports. So far, Sub-Committee B has provided French and German translations of its Single Market and Renewable Energy reports which were sent to all French, German and Austrian MEPs and to these national parliaments.
52. There are also joint parliamentary meetings (JPMs), convened jointly by the parliament of the Presidency country and the European Parliament, in which we take an active role. In the last year the Chairman and Members of the Committee have attended a JPM on the Western Balkans and a JPM on immigration as well as the 4th JPM on the Lisbon Strategy and the 4th JPM on the future of Europe.
53. We and our Sub-Committees are also active participants in a number of joint committee meetings convened by the parliament of the Presidency country and/or the relevant committee of the European Parliament.

### ***Working with the Devolved Institutions***

54. We communicate with our counterparts in the devolved institutions and the Chairman attends the UK European Committee Chairs meetings which include the House of Lords and the House of Commons as well as the Scottish Parliament, Welsh Assembly and the Northern Ireland Assembly. The group has met twice in the last year, here at Westminster in November 2007 and in Edinburgh in June 2008.
55. There is also contact between the Sub-Committees and their counterparts in the devolved institutions. For example, as part of its inquiry on the CAP Sub-Committee D took evidence in Edinburgh from the Scottish Cabinet Secretary for Rural Affairs and from Members of the Scottish Parliament.

### CHAPTER 3: PROCEDURAL MATTERS

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56. During the past year the Committee has looked at a number of procedural matters in relation to its work.

#### *The UK Opt-In*

57. One of the key issues to emerge from our inquiry on the impact of the Lisbon Treaty was parliamentary scrutiny of opt-in decisions. Currently, proposals for legislation on visas, asylum and immigration (in the first pillar, under Title IV of the TEC) are adopted by qualified majority voting (QMV). However, the legislation only applies to the UK if the Government notifies the Council that it intends to opt in to the legislation within 3 months of the proposal being made, or following the adoption of the legislation. Third pillar matters, on police and judicial cooperation (under Title VI of the TEU) generally need unanimity. The Treaty of Lisbon would merge the two pillars. This would mean that nearly all legislation in both areas would be subject to QMV and would apply to the UK only if the Government opted in.
58. Parliamentary scrutiny of opt-in decisions therefore assumed greater significance during the course of our inquiry and during the passage of the European Union (Amendment) Act 2008. This resulted in an undertaking by the Government that if, during the first 8 weeks of the 3 month period, we published a report on the proposed opt-in recommending a debate, time would be made for one; that the debate would be on an amendable motion, allowing for a vote; and that the Government, although not bound by the views expressed, would take note of them. The Government's undertaking can be found at Appendix 4.
59. Once it became clear, following the referendum in Ireland, that the Treaty of Lisbon would not come into force as expected, the Chairman wrote to Baroness Ashton of Upholland, the then Leader of the House, asking if the Government's undertakings would apply to the current opt-in arrangements in the first pillar. Baroness Ashton replied stating that "We do not believe ... that it is appropriate to decouple these opt-in specific scrutiny arrangements from the Lisbon Treaty, and introduce them for the existing Treaties in the absence of clarity as to whether or not Lisbon will enter force."

#### *Scrutiny Overrides*

60. An override occurs when the Government give agreement in the European Council or Council of Ministers to any EU proposal which is still held under scrutiny. The full text of the Scrutiny Reserve Resolution as agreed by the House of Lords on 6 December 1999 can be found at Appendix 2.
61. Tables 3 and 4 below list scrutiny overrides which occurred between July and December 2007 and between January and June 2008. Between July and December 2007 there were 16 overrides which is less than during the same period in the previous year when there were 24 overrides. Between January and June 2008 there were 8 overrides which is similar to the same period in the previous year when there were 9 Overrides.

**TABLE 3****Lords scrutiny overrides July–December 2007**

<b>Dept</b>	<b>Subject matter</b>	<b>Cause of override</b>
DEFRA	Stockholm Convention on Persistent Organic Pollutants	Late deposit of document
DEFRA	Common rules for direct support schemes under the Common Agricultural Policy	Late deposit of document. During recess.
DCMS	Agreement between the EC and the Swiss Confederation in the audiovisual field	Late deposit of document. During recess.
FCO	Further measures in support of the effective implementation of the mandate of the International Criminal Tribunal for the former Yugoslavia (ICTY)	Late deposit of document. During recess.
FCO	Agreement between the EU and New Zealand on the participation of New Zealand in the EU Police Mission in Afghanistan	Late deposit of document. During recess.
HMT	Amending Budget No. 7 to the general budget for 2007	Late deposit of document
DfID	Arrangements for goods, originating in certain states within the African, Caribbean and Pacific Group of States, provided for in Economic Partnership Agreements	Late deposit of document
BERR	The accession of the Republic of Cape Verde to the World Trade Organisation	Late deposit of document
DEFRA	Introduction of electronic identification for sheep and goats	Late deposit of document
HO	A uniform format for residence permits for third-country nationals	Late deposit of document. The Government agreed to a general approach.
MoJ	Protection of personal data processed in the framework of police and judicial cooperation in criminal matters	The Government agreed to a general approach while retained under scrutiny.
HO	Stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime	The Government agreed to a general approach while retained under scrutiny.
HO	Improvement of cooperation between the special intervention units of EU Member States in crisis situations	Late deposit of EM
Health	Products containing genetically modified maize 59122	The Government supported the proposal while under scrutiny
Health	Products containing genetically modified maize 1507	The Government supported the proposal while under scrutiny
Health	Products containing genetically modified maize Nk603	The Government supported the proposal while under scrutiny

TABLE 4

## Lords scrutiny overrides January–June 2008

Dept	Subject matter	Cause of override
FCO	EU military operation in the Republic of Chad and in the Central African Republic	EM deposited after agreement
FCO	Agreement between the EU and the Republic of Cameroon on the status of the EU-led forces in transit within the territory of the Republic of Cameroon	EM deposited after agreement
FCO	Agreement between the EU and the Republic of Chad on the status of EU led forces in the Republic of Chad	EM deposited after agreement
BERR	Community position within the General Council of the World Trade Organization on the accession of the Republic of Ukraine to the World Trade Organization	Late deposit of document and EM deposited after agreement
DfID	Position to be adopted on behalf of the Community within the Food Aid Committee as regards the extension of the Food Aid Convention 1999	Late deposit of document
FCO	Restrictive measures against Iran (Common Position 2008/479/CFSP)	EM deposited after agreement
FCO	Restrictive measures against Iran (Article 7(2) of Regulation (EC) no.423/2007)	EM deposited after agreement
BERR	Council Decision on establishing the EC position within the Ministerial Council of the Energy Community	EM deposited after agreement

62. While wishing to emphasise that we take all overrides very seriously, we welcome the Government's commitment to working closely with us and this is reflected in the relatively small number of overrides.

*General Approach*

63. In our Annual Report 2007 we said that “if a Minister agrees to a General Approach in Council, before scrutiny has been completed, a scrutiny override is committed.”<sup>4</sup> We, therefore welcome the Minister for Europe's letter to the Chairman dated 1 July 2008 confirming that the Government, with immediate effect, will interpret the Scrutiny Reserve Resolution “to include the stage of ‘general approach’ for the purposes of defining an agreement under the terms of the resolution.”

<sup>4</sup> Annual Report 2007, 36<sup>th</sup> Report (2006–07), HL181

*Fundamental Rights Analysis*

64. Sub-Committee F was also successful in ensuring that a fundamental rights analysis is included in EMs in cases where the Government indicate that they do not propose to opt-in.

*Subsidiarity*

65. The subsidiarity principle is regularly considered as part of the routine scrutiny process. For example, Sub-Committee E identified subsidiarity concerns in relation to a Communication on the role of Eurojust and the European Judicial Network in the fight against organised crime and terrorism in the EU.
66. In addition to routine scrutiny we participated in two subsidiarity checks conducted by COSAC. Sub-Committee E participated in the COSAC subsidiarity check on a Framework Decision combating terrorism and did not find any breach of the subsidiarity principle.
67. Sub-Committee G participated in the COSAC subsidiarity check on a proposal for equal treatment legislation. The Sub-Committee consulted the devolved institutions. A response from the Welsh Assembly was received within the 8 week deadline and included in our response. We did not find any breach of the subsidiarity principle but noted that the Welsh Assembly considered that the justification was insufficiently detailed. Due to parliamentary recesses neither the Scottish Parliament nor the Northern Ireland Assembly was able to consider the proposal within the 8 week deadline.

## APPENDIX 1: EUROPEAN UNION COMMITTEE'S TERMS OF REFERENCE

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### 13 November 2007

Moved, That a Select Committee be appointed to consider European Union documents and other matters relating to the European Union.

That 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.

That the committee have power to appoint sub-committees and to refer to them any matters within its terms of reference; that the committee have power to appoint the Chairmen of sub-committees, but that the sub-committees have power to appoint their own Chairmen for the purpose of particular inquiries; that the quorum of each sub-committee be two;

That the committee have power to co-opt any member to serve on a sub-committee;

That the committee have power to appoint specialist advisers;

That the committee and its sub-committees have power to adjourn from place to place;

That the committee have leave to report from time to time;

That the reports of the committee shall be printed, regardless of any adjournment of the House;

That the evidence taken by the committee or its sub-committees in the last Session of Parliament be referred to the committee or its sub-committees;

That the evidence taken by the committee or its sub-committees shall, if the committee so wishes, be published.

## APPENDIX 2: SCRUTINY RESERVE RESOLUTION

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### 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.

### APPENDIX 3: REPORTS PUBLISHED IN THE LAST YEAR

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#### *Session 2007–08*

Evidence from the Minister for Europe on the June European Council (28th Report, Session 2007–08, HL Paper 176)

<http://www.publications.parliament.uk/pa/ld200708/ldselect/ldeucom/176/176.pdf>

Renewable Energy: the EU's 20% by 2020 Target (27th Report, Session 2007–08, HL Paper 175); to be debated

<http://www.publications.parliament.uk/pa/ld200708/ldselect/ldeucom/175/175.pdf>

Working Time and Temporary Workers: toward EU agreement (26th Report, Session 2007–08, HL Paper 170)

<http://www.publications.parliament.uk/pa/ld200708/ldselect/ldeucom/170/170.pdf>

Current Developments in European Foreign Policy (25th Report, Session 2007–08, HL Paper 169)

<http://www.publications.parliament.uk/pa/ld200708/ldselect/ldeucom/169/169.pdf>

Priorities of the European Union: Evidence from the Ambassador of France and the Minister for Europe (24th Report, Session 2007–08, HL Paper 155)

<http://www.publications.parliament.uk/pa/ld200708/ldselect/ldeucom/155/155.pdf>

The Commission's Annual Policy Strategy for 2009 (23rd Report, Session 2007–08, HL Paper 151); to be debated

<http://www.publications.parliament.uk/pa/ld200708/ldselect/ldeucom/151/151.pdf>

Initiation of EU Legislation (22nd Report, Session 2007–08, HL Paper 150); to be debated

<http://www.publications.parliament.uk/pa/ld200708/ldselect/ldeucom/150/150.pdf>

Progress of the Common Fisheries Policy (21st Report, Session 2007–08, HL Paper 146); to be debated

<http://www.publications.parliament.uk/pa/ld200708/ldselect/ldeucom/146/146.pdf>

Current Developments in European Defence Policy (20th Report, Session 2007–08, HL Paper 145)

<http://www.publications.parliament.uk/pa/ld200708/ldselect/ldeucom/145/145.pdf>

The Future of EU Regional Policy (19th Report, Session 2007–08, HL Paper 141); to be debated

<http://www.publications.parliament.uk/pa/ld200708/ldselect/ldeucom/141/141.pdf>

The 2009 EC Budget (18th Report, Session 2007–08, HL Paper 140)

<http://www.publications.parliament.uk/pa/ld200708/ldselect/ldeucom/140/140.pdf>

Increasing the supply of donor organs within the European Union (17th Report, Session 2007–08, HL Paper 123); to be debated on 14 November 2008

<http://www.publications.parliament.uk/pa/ld200708/ldselect/ldeucom/123/123i.pdf>

Current Developments in European Foreign Policy: Burma (16th Report, Session 2007–08, HL Paper 118)

<http://www.publications.parliament.uk/pa/ld200708/ldselect/ldeucom/118/118.pdf>

The Passenger Name Record (PNR) Framework Decision (15th Report, Session 2007–08, HL Paper 106)

<http://www.publications.parliament.uk/pa/ld200708/ldselect/ldeucom/106/106.pdf>

The European Union and Russia (14th Report, Session 2007–08, HL Paper 98); debated on 10 October 2008

<http://www.publications.parliament.uk/pa/ld200708/ldselect/ldeucom/98/98.pdf>

The euro (13th Report, Session 2007–08, HL Paper 90)

<http://www.publications.parliament.uk/pa/ld200708/ldselect/ldeucom/90/90.pdf>

Current Developments in European Foreign Policy (12th Report, Session 2007–08, HL Paper 75)

<http://www.publications.parliament.uk/pa/ld200708/ldselect/ldeucom/75/75.pdf>

Priorities of the European Union: Evidence from the Minister for Europe and the Slovenian Ambassador (11th Report, Session 2007–08, HL Paper 73)

<http://www.publications.parliament.uk/pa/ld200708/ldselect/ldeucom/73/73.pdf>

The Treaty of Lisbon: an impact assessment (10th Report, Session 2007–08, HL Paper 62); debated on 1 April 2008

<http://www.publications.parliament.uk/pa/ld200708/ldselect/ldeucom/62/62.pdf>

Frontex: the EU external borders agency (9th Report, Session 2007–08, HL Paper 60); debated on 18 June 2008

<http://www.publications.parliament.uk/pa/ld200708/ldselect/ldeucom/60/60.pdf>

Current Developments in European Defence Policy (8th Report, Session 2007–08, HL Paper 59)

<http://www.publications.parliament.uk/pa/ld200708/ldselect/ldeucom/59/59.pdf>

The Future of the Common Agricultural Policy (7th Report, Session 2007–08, HL Paper 54); debated on 5 June 2008

<http://www.publications.parliament.uk/pa/ld200708/ldselect/ldcom/54/54.pdf>

Solvency II (6th Report, Session 2007–08, HL Paper 42)

<http://www.publications.parliament.uk/pa/ld200708/ldselect/ldcom/42/42.pdf>

The Single Market: Wallflower or Dancing Partner? – Inquiry into the European Commission’s Review of the Single Market (5th Report, Session 2007–08, HL Paper 36); debated on 14 March 2008

<http://www.publications.parliament.uk/pa/ld200708/ldselect/ldcom/36/36.pdf>

Current Developments in European Foreign Policy: the EU and Africa (4th Report, Session 2007–08, HL Paper 32)

<http://www.publications.parliament.uk/pa/ld200708/ldselect/ldcom/32/32.pdf>

Protecting the consumers of timeshare products (3rd Report, Session 2007–08, HL Paper 18)

<http://www.publications.parliament.uk/pa/ld200708/ldselect/ldcom/18/18.pdf>

Green Paper on Succession and Wills (2nd Report, Session 2007–08, HL Paper 12)

<http://www.publications.parliament.uk/pa/ld200708/ldselect/ldcom/12/12.pdf>

Current Developments in European Trade Policy (1st Report, Session 2007–08, HL Paper 8)

<http://www.publications.parliament.uk/pa/ld200708/ldselect/ldcom/8/8.pdf>

#### **APPENDIX 4: STATEMENT ON JHA OPT-INS BY THE RT HON THE BARONESS ASHTON OF UPHOLLAND, LEADER OF THE HOUSE OF LORDS ON 9 JUNE 2008**

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For the benefit of Peers who intend to speak during the Report Stage of the EU Treaty (Amendment) Bill (2nd Day), I am writing to place the attached statement on JHA Opt-Ins in the Library of the House of Lords.

##### Statement on JHA Opt-ins

The Government believes that it is important for the EU Scrutiny Committees, and Parliament as a whole to have a clear idea of the Government's approach to JHA; individual JHA measures should be seen in this context. The Government is keen to ensure that the views of the Scrutiny Committees, benefiting from expertise in the area and having a strategic overview of the UK policy on the EU and our engagement on Justice and Home Affairs business, inform the Government's decision making process. As such, the Government therefore commits:

- To table a report in Parliament each year and make it available for debate, both looking ahead to the Government's approach to EU Justice and Home Affairs policy and forthcoming dossiers, including in relation to the opt-in and providing a retrospective annual report on the UK's application of the opt-in Protocol;
- To place an Explanatory Memorandum (EM) before Parliament as swiftly as possible following publication of the proposal and no later than ten working days after publication of the proposal. That EM would set out the main features of the proposal, as now, and, in particular, to the extent possible, an indication of the Government's views as to whether or not it would opt-in. Where the Government is in a position to provide them at that stage, the EM will also cover the factors affecting the decision. The European Scrutiny Committees of the two Houses will then be able to fully review the proposal and, where it has been possible to give a view, the Government's approach to the opt-in;
- Provided that any such views are forthcoming within 8 weeks of publication, to take into account any opinions of the Committees with regard to whether or not the UK should opt-in;
- The Committees, as with all proposals, can call a Minister to give evidence and can make a report to the House, if they wish with a recommendation for debate, on a motion that would be amendable (other debates in the Lords to take note of Committee reports are not usually amended).
- For the Commons, such a debate would usually be in Committee. In the Lords, where a Committee determines that a decision on whether or not to opt-in to a measure should be debated, the Government will undertake to seek to arrange a debate through the usual channels.
- As a general rule, except where an earlier opt-in decision is necessary, not to override the scrutiny process, by making any formal notification to the Council of a decision to opt-in within the first 8 weeks following

publication of a proposal<sup>5</sup>. Where the Government considers an early opt-in to be essential, it will explain its reasons to the Committee as soon as is possible. The Government will continue to keep the Committees fully informed as negotiations develop;

- To ensure that a Minister is regularly available to appear before the Scrutiny Committees in advance of every Justice and Home Affairs Council.

This package of measures will be reflected in a Code of Practice, to be agreed with the Scrutiny Committees, setting out the Government's commitment to effective scrutiny. The Government believes that the Scrutiny Reserve Resolution should also be amended, or a new resolution brought forward, to incorporate these commitments.

This will be reviewed three years after the entry into force of the Treaty to ensure that the enhanced scrutiny measures are working effectively.

We believe that this package, in addition to the strengthened role for national parliaments in the Treaty, strikes the right balance between ensuring that the Government can exercise the opt-in effectively within the Treaty deadline, whilst ensuring that Parliaments views are fully considered.

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<sup>5</sup> An example of where an early opt-in may be necessary is on the opt-in to the final text of a readmission agreement. These are often concluded very close to meetings with the third states concerned, to be signed at the meeting. In order to allow signature at the meeting, the Government undertakes to EU partners to complete the domestic opt-in process quickly.