

Measured or Makeshift?

Parliamentary scrutiny of the European Union



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Acronyms

COSAC	Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union
DSC	Departmental select committee
EAC	European Affairs Committee
EFRA	Environment, Food and Rural Affairs Select Committee
EM	Explanatory memorandum
ESC	European Scrutiny Committee
ESF	European Social Fund
EU	European Union
EUSC	European Union Select Committee
FCO	Foreign and Commonwealth Office
JHA	Justice and Home Affairs
MEP	Member of the European Parliament
MP	Member of Parliament
MSP	Member of the Scottish Parliament
NPO	National Parliament Office
QMV	Qualified majority voting
SO	Standing Order
UKRep	UK Permanent Representation to the European Union
OPAL	Observatory of Parliaments after the Lisbon Treaty

Contributors

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Foreword

Rt Hon David Lidington MP
Minister of State for Europe



The European Union is facing a crisis of democratic legitimacy. Record numbers of people in Britain and across Europe lack confidence in the EU and its institutions. As this government has argued consistently, national institutions – our national parliaments and our national governments – are the ultimate expression of democracy. That is why we want national parliaments to play a greater role in influencing and ultimately making decisions in the European Union. It's also why an effective parliamentary scrutiny system is so important.

I believe that three key principles should guide reform of our scrutiny system.

First, we should streamline the process, so that we focus on the most important questions and reduce the bureaucratic burden elsewhere.

Second, we should look to mainstream European scrutiny, so that we draw on the fullest range of expertise that Parliament has to offer.

Third, we should look at upstreaming the process, so that Parliament can influence Brussels at the very beginning of the decision-making process.

Making these changes to the scrutiny system, and entrenching a greater role for national parliaments in EU decision-making, will require a joint effort between government and Parliament – both here in the UK and across Europe. So the inquiries by the European Scrutiny Committee in the House of Commons and by the House of Lords' EU Select Committee into the role of national parliaments in the European Union are very welcome. This contribution to the debate from the Hansard Society couldn't be more timely.

Introduction

Dr Ruth Fox, Hansard Society

The UK's membership of the European Union affects almost every aspect of our national life, shaping policy and legislation. Assessing exactly how much of UK law is the result of EU measures is complicated but one of the most recent assessments by the House of Commons library suggested that between 1997 and 2009, 6.8% of primary legislation and 14.1% of secondary legislation had a role in implementing EU obligations. The Government has suggested that around 50% of UK legislation with a significant economic element originates from Brussels.¹ Yet there is growing concern that, despite their importance, many EU initiatives are not subject to sufficiently robust parliamentary scrutiny at Westminster and the necessary systems to enable such scrutiny to happen are not in place. As a result, there are real questions about a democratic deficit at the heart of our relationship with the European Union.

The last major study of European parliamentary scrutiny was undertaken by the House of Commons Modernisation Committee in the 2004-05 session, but only a few of its proposals were subsequently adopted.² In light of the renewed debate on this issue, the Hansard Society initiated a new strand of work last year to explore what further reforms might be required.

In an article in early 2012 in our journal, *Parliamentary Affairs*, we raised questions about the role of national Parliaments, including Westminster, in response to the sovereign debt crisis. The changes made to financial governance across the EU, including commitments to budgetary surveillance and co-ordination of economic policies, raised challenging questions about the principle of democratic accountability. We asked whether, in light of this, the time was perhaps opportune for national parliaments to proactively assert their collective influence by reconstituting the 'assises' (or Conference of the Parliaments) to debate the future direction of democratic accountability in the EU.³

'The European Union and the democratic deficit' was also the theme of our annual Parliamentary Affairs lecture, in April this year, given by Andrea Leadsom MP, Co-Chair of the All-Party Group on European Reform and joint founder of the EU Fresh Start Project.⁴

This collection of essays arises from a seminar we held a year ago to explore the specific question of how parliamentary scrutiny of European matters at Westminster might be improved. Participants

1 House of Commons Library, *How much legislation comes from Europe?*, Research Paper 10/62, 13 October 2010, p1.

2 House of Commons Modernisation Committee (2004-05), *Scrutiny of European Business*, HC 465-I.

3 R. Fox (2012), 'Europe, democracy and the economic crisis: is it time to reconstitute the 'assises'?', *Parliamentary Affairs*, Vol. 65, No. 2, pp. 463-469.

4 See <http://www.hansardsociety.org.uk/2013-hansard-society-parliamentary-affairs-annual-lecture/>

included MPs and Peers, academics, journalists, representatives from European Union institutions, as well as other think tank and civil society representatives. The seminar was addressed by the Europe Minister, the Rt Hon David Lidington MP, as well as the Chairs of the two key parliamentary committees, Bill Cash MP and Lord Boswell, and Gisela Stuart MP. All four of them have since kindly contributed to this publication.

The first chapter by Bill Cash, Chairman of the European Scrutiny Committee, explores how his committee scrutinises European issues and sets out a number of areas for potential reform. As he notes, the current system of scrutiny by MPs is largely based on that first put in place in the early 1970s. Given the changes to the EU and to the way the House of Commons now operates, it is time to review whether this model is any longer fit for purpose. His committee is undertaking such an inquiry and is expected to report before the end of the year. Given the critique set out in his chapter, and the issues raised in evidence to the inquiry, it would be remarkable if the committee did not recommend some fundamental changes. If so, it is to be hoped that the House collectively engages in a more positive way with the proposals than happened with the Modernisation Committee recommendations nearly a decade ago.

10 But our interest is in bi-cameral scrutiny of EU issues, not just improving scrutiny processes in the House of Commons. The House of Lords can call on great expertise and experience among its members and as the revising chamber it has much to offer when it comes to detailed forensic scrutiny of EU matters. Indeed, as was evident at our seminar, and as is detailed in the final chapter by Dr Ariella Huff and Dr Julie Smith, the scrutiny provided by the House of Lords European Union Committee is widely regarded as exemplary and its reports and recommendations are consequently influential in Brussels. The chair of the committee, Lord Boswell, sets out the approach he and his fellow committee members take in Chapter 2, which was written in December of last year, and highlights potential areas for improvement in the future. Since writing the chapter, Lord Boswell's committee has also announced a new inquiry into the role of national parliaments and how they can more effectively shape and influence decision-making at EU level.

The remaining chapters of this pamphlet touch on a range of issues relevant to both parliamentary inquiries.

In Chapter 3, Gisela Stuart MP draws on her previous experience as a government minister sent to negotiate directives in Brussels, as well as her time as the Parliamentary Representative on the Convention for the Future of Europe. She raises challenging questions about the purpose and *realpolitik* of European scrutiny and argues that parliamentarians need to be much clearer about what they want to achieve: do they simply want to be better informed, to actually shape decisions, or to make the government change its mind? Each answer would shape the contours of reform in different ways. Above all she argues for a mainstreaming of European matters by weaving what ministers do at EU level into the everyday fabric of Parliament. This could be advanced through regular departmental questioning of ministers on EU-related aspects of their policy briefs, and the elevation to cabinet rank of the Europe Minister post, who would then be answerable to Parliament

for all negotiations in Brussels.

In Chapter 4, Christopher Howarth of Open Europe argues that scrutiny without power is merely ritual. He contends that Parliament can have a greater impact on EU decisions, but only if it concentrates on the right areas and actions. Specifically he suggests it should focus on three areas. Firstly, on those decisions where the UK has the power to act on its own and where a parliamentary vote should therefore take place before assent is given to a measure where the UK has a veto. Secondly, on those areas where there is no veto but where it could nonetheless have a role in improving the UK's negotiating position. And finally, where it could seek to influence the EU decision-making process particularly through more engagement with parliamentarians and policy-makers in other countries and more effective and co-ordinated application of the 'yellow' and 'orange' card procedure provided to national parliaments in the Lisbon Treaty. Ultimately, however, he concludes that the effectiveness of scrutiny is indelibly linked to the UK's view of itself in the EU; what is therefore needed is a coherent, strategic view of where the country wants the EU to go and its place within it, arising from which Parliament can then more effectively scrutinise policy and hold ministers to account for it.

Chris Heaton-Harris MP and Robert Broadhurst highlight what they consider to be the inadequacies of the current EU system and the obstacles it poses for Parliament in Chapter 5, whilst reflecting that there are still ways in which Westminster could realise its potential and influence to a greater extent than it does at present. They particularly focus on the weaknesses in the House of Commons scrutiny system, noting that not enough MPs are actively involved in scrutiny of EU matters, and that the present structure of European committees prevent members building up and deploying knowledge and expertise. They argue for changes to Standing Orders to increase the number of debates on European documents each year and for greater co-ordination with departmental select committees. More radically, they also suggest that a new law might be introduced to require the government to abide by a resolution of the House instructing it to take a particular stance on an EU document in negotiations.

In the final chapter, Dr Ariella Huff and Dr Julie Smith of Cambridge University, reflect on how other parliaments scrutinise European issues. They compare and contrast the Westminster system with that in the Dutch Tweede Kamer, the Danish Folketing, the German Bundestag and the Irish Oireachtas. Drawing on their research as part of a pan-European project exploring the role of national parliaments after the Lisbon Treaty, they note that the House of Lords – alongside the Folketing – is one of two chambers recognised across Europe for the significance of its scrutiny. In contrast, the inadequacies of scrutiny in the House of Commons are laid bare. They conclude, however, that there is no single 'right' way to scrutinise EU affairs and that what works well in one parliament is not always effective in another: domestic political pressures, party dynamics and parliamentary culture all play their part.

Throughout the six chapters a number of common questions and themes emerge. What is the purpose of scrutiny and at what stage should parliamentarians therefore seek to exercise influence?

At present the system is largely one of document-based scrutiny that takes place once policy is decided. Should intervention take place at an earlier, more strategic stage, seeking to influence the development of policy, and providing an early warning system for government as well as holding it to account after the fact?

A number of the contributions debate the merit of enhancing the role of departmental select committees, particularly through the introduction of a *rapporteur* tasked with responsibility for focusing on the EU dimension of their work. Committee reports could carry real weight by helping to strengthen the evidence base used by ministers in their negotiations with EU partners. Some suggest that confirmation hearings by committees should be extended to include the post of the UK's Permanent Representation to the European Union (UKRep) and even our EU Commissioners. However, the workload of committees is already considerable and further work on EU issues might require more substantial resources than are currently available.

Improving the scrutiny of ministers at monthly departmental oral questions by setting aside specific time for coverage of European issues related to their policy areas is suggested in several of the essays. There is also widespread support for greater direct engagement between MPs and MEPs, and more broadly with EU institutions as a whole.

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The European Union is a hot political topic and there is no shortage of politicians willing to debate whether the UK should be 'in' or 'out', the future of the eurozone, and repatriation of powers. A common thread running throughout the pamphlet, however, is that too few MPs have a real understanding of how the EU works, and many more of them need to engage more actively with the detail – rather than the broad populist headlines – of the issues emerging from Europe. One participant noted during our seminar last year that too much of the European scrutiny agenda is driven by the 'black market scrutiny' provided by the media, particularly the tabloid press, which does not lend itself to effective scrutiny of the full range of EU issues of significance that affect the public. Parliamentarians need to take a more proactive role.

Each contributor to this essay collection comes at the issues from a different perspective and they have different views on Britain's role in Europe. A majority of the authors – though not all – might be said to occupy the more eurosceptic end of the political spectrum. We invited a wide range of politicians across all the major parties to our seminar in September 2012 but those who accepted came, in the main, from the eurosceptic perspective. Similarly, we invited a number of pro-Europeans to contribute to this pamphlet but, disappointingly, there were few expressions of interest. This underlines the concern that those engaging with the detail of European issues are drawn from too narrow a tranche of parliamentary representatives.

The ideas for reform outlined here are, however, not party-political, or pro-European or anti-European. Providing effective scrutiny of policy and laws is important whatever side of the debate you stand. Those who take diametrically opposed views on the EU and Britain's role in it, could nonetheless find plenty of common ground in reform of the processes and procedures needed to

underpin and improve scrutiny of European matters.

We hope these essays and the ideas and questions they raise will contribute to efforts to define that common ground for reform in the interests of both Parliament and the public in the future.

Is it time to reconstruct the European scrutiny system in the House of Commons?

Bill Cash MP, Chairman, European Scrutiny Committee

Perhaps the most remarkable feature of the European scrutiny system in the House of Commons is its longevity. In December 1972 the House appointed a select committee 'to consider procedures for scrutiny of proposals for European Community Secondary Legislation and to make recommendations', chaired by the Member for Northwich, Sir John Foster. That committee's main report, which was published in October 1973, set in place the key elements of the system we have today.

The Foster Report rightly observed that '[w]hat is under consideration is a part of the making and amending of the law of the UK, no less'⁵ and set out the principle that '[p]arliamentary oversight of these proposals necessarily involves at least two elements: information and the means of reaching and expressing conclusions on proposals before the Council has made a decision on them'.⁶ It therefore proposed the creation of a committee 'to inform the House as to any proposals of legal or political importance and to make recommendations as to their further consideration'. Its task would not be to debate the reasons for or against a proposal but to give the House the fullest information as to why it considered the particular proposal of importance and to point out the matter of principle or policy which it affects and the changes in UK law involved. As the European Community expanded into the European Union, more and more were the daily lives of the electorate directly affected by European legislation and qualified majority voting (QMV), under the European Communities Act 1972, not to mention the impact on our constitutional relationship with the EU, particularly since the Maastricht Treaty.

Since 1973, when so much has changed in the House – in particular the departmental select committee structure, which was introduced in 1979 – the role of my committee has remained largely unchanged. Is it now time to reconstruct the scrutiny system in the Commons?

My committee began its scrutiny inquiry in June 2012 in order to answer this question. The terms of reference include:

- the purpose of, and background to, the current scrutiny system in the House of Commons

5 House of Commons Select Committee on European Community Secondary Legislation (1972-73), *Second Report*, HC 463-I, paragraph 33.

6 *Ibid.*, paragraph 42.

(and how it compares to systems across the European Union);

- the European Scrutiny Committee's sifting role and its place in the wider context of House of Commons (and parliamentary) scrutiny, for example in relation to select committees, delegated legislation committees (transposition of directives into UK law), debates and questions on the floor of the House and primary legislation;
- the mechanism by which the committee refers documents to European committees, and the composition and performance of European committees;
- expectations, understanding and coverage of the scrutiny process within and outside Westminster;
- potential changes to the current Standing Orders establishing the European Scrutiny Committee and European committees, and the Scrutiny Reserve resolution, in the light of developments since the Lisbon Treaty;
- and the current system of government Explanatory Memoranda (EMs) for deposited documents.

A document-based system, with a scrutiny reserve

The Commons scrutiny system is document-based. It covers all 'European Union documents', as defined in the House's Standing Order No. 143 (SO143).⁷ It is worth noting that the terms used are somewhat out-of-date (as they do not reflect the changes introduced by the Treaty of Lisbon) but the Order is broad enough to still work reasonably well. In particular, the definitions used are clear and unambiguous and enable the committee to conduct scrutiny at different stages of the legislative process from Green Papers and Commission Communications, through to drafts of Regulations, Directives and Council Decisions.

Over 1,000 documents a year fall within these categories. Each must be formally deposited in Parliament within two working days of its arrival in the Foreign and Commonwealth Office. Within 10 working days of the deposit of a document, the government department that takes responsibility for it should submit an Explanatory Memorandum. The rules about what an EM is obliged to cover can be boiled down to two points. First, it needs to provide the reader with an explanation of what the document is about and should be self-standing. Second, it must state clearly the government's view on the proposal. We also ask that it cover the legal base, the extent of consultation, the timetable and any financial implications.

This is a crucial part of the scrutiny process; the EM constitutes the minister's evidence to Parliament. Like appearing before a select committee, the process of submitting an EM concentrates minds – both in the department that produces it and of the minister who signs it; it is a public document and a useful source of information and analysis.

The availability of EMs is, therefore, key, and the Minister for Europe made an important

commitment when he gave evidence to us in October 2012: 'We have had some problems with the government website [where EMs are available] ... The site is due to be re-launched early in November ... The new site is going to be capable of Google indexing, so people will be able to subscribe to alerts for memoranda that match topics in which they are interested. The website will also now include copies of ministerial letters to the committees, as well as copies of the EU documents.'⁸

This marks a significant development in the availability of information and we will be re-examining the content of our own website now the new government site is in place.⁹ The FCO has also raised with us the more complex question of whether the EM system should be 'streamlined' in some way, and we will be considering this during the inquiry.

The process I have described is a parliamentary one. Documents and EMs are presented both to the House of Lords and the House of Commons. But though we have the same incoming material, the two Houses have their own systems of scrutiny. The great advantage of this is that we do not duplicate each other's work, and there is close informal co-operation on many scrutiny matters, especially in ensuring that the government honours its scrutiny obligations to Parliament.

The Commons system has three principal elements: the European Scrutiny Committee; European committees; and departmental select committees.

European Scrutiny Committee

The European Scrutiny Committee is an all-party select committee appointed under Standing Order No. 143,¹⁰ with all the usual select committee powers. It has 16 members and a staff of 14. Legal advice is provided by Speaker's Counsel (European Legislation) and an Assistant Legal Adviser.

The committee's main role is to sift EU documents on behalf of the House, identifying those of political or legal importance and deciding which should be debated. We do not make a decision on the merits of each document, but, in assessing importance, we may well identify potential problems (as well as benefits) and question ministers about them.

Of the more than 1,000 documents we consider every year, we find about 500 to be of political or legal importance and report substantively upon them, recommend about 50 documents for debate in European committee, and around 10 for debate on the floor of the House. We also monitor business in the Council and review legal, procedural and institutional developments in the European Union that may have implications for the UK and for the House.

8 Oral evidence taken before the House of Commons European Scrutiny Committee, 31 October 2012, Minister for Europe, Q 37. See <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmeuleg/uc711-i/uc71101.htm>.

9 See <http://europeanmemoranda.cabinetoffice.gov.uk/>.

10 See Appendix I.

The committee meets every sitting Wednesday. On every one of – usually – 30 or so items of business (both European documents and letters from ministers) the committee has before it an analysis and recommendation from the committee staff. Once the briefing and discussion has been completed, the committee agrees its report. This may sound mechanical and routine but additional provisions ensure both flexibility and speed.

Flexibility is achieved by the wide definition of ‘European Union document’ in SO 143 and the following catch-all which it contains: ‘any other document relating to European Union matters deposited in the House by a minister of the Crown’.¹¹ As for speed, the scrutiny process can be very rapid: if the committee has the official text of a document and the government’s Explanatory Memorandum by noon on a Thursday, it will often report on the document the following Wednesday. A parallel provision means that if the official text of a document is unlikely to be available in time for scrutiny before a decision is reached in the Council, the government submits an ‘unnumbered Explanatory Memorandum’. This describes what is likely to be in the document and stands proxy for it: a proposal can be cleared on the basis of an unnumbered EM, and the EM may even be debated in place of the document.

Despite these best efforts, there are some problems that we are reviewing during the inquiry which particularly arise from certain categories of Common Foreign and Security Policy and Common Security and Defence Policy documentation.

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It is worth noting that a number of developments have essentially been ‘bolted-on’ to this document-based system with, I would say, varying degrees of success. These include Reasoned Opinions pursuant to Article 6 of Protocol (No. 2) on the Application of the Principles of Subsidiarity and Proportionality and the expression of opinions on Title V Opt-in and Schengen Opt-out decisions. Such motions are referred and debated in exactly the same way as a document, though in the latter case the government has given particular undertakings to how they will be treated (through undertakings given by Baroness Ashton in 2008 and the current Minister for Europe in 2011).

The committee sits in private to consider documents and in public when it is taking oral evidence from ministers, officials and others. This has been the case since 1973 other than a period in 2008 when part of its deliberations were held in public. We are returning to this issue during the scrutiny inquiry, in the context of increasing the public profile of the committee and the need to ensure the transparency of the scrutiny process – but the fact that in 2008, after eight months, the committee resolved that its deliberations should once again be held in private points to the fact that this was not a panacea.

The scrutiny reserve

The resolution of the House of Commons establishing the scrutiny reserve constrains ministers from giving agreement in Council to legislative proposals and certain other decisions which the European Scrutiny Committee has not cleared; and from giving agreement to any such proposal or decision which is awaiting consideration by the House. There are limited exceptions: if a proposal is confidential, routine or trivial; if the committee (usually for reasons of urgency or the protection of UK interests) has agreed that the resolution may be overridden; or for 'special reasons', provided that the minister explains those reasons to the European Scrutiny Committee (or the House) at the first opportunity after deciding to give agreement.

The resolution is fundamental to the House's scrutiny process. It imposes a general discipline on ministers and departments to provide EMs, to respond to the European Scrutiny Committee's requests for information and to arrange debates in advance of consideration by the Council. We monitor the operation of the resolution and review every six months a list of all overrides. We have in the past called ministers who override the resolution without what we regard as good cause to give oral evidence.

European Committees

The second component of the Commons system are the three European committees (A, B and C), appointed under Standing Order No. 119,¹² which each cover particular government departments. Once documents have been referred by the European Scrutiny Committee, the timing of the debate – which takes place on a government motion – is determined by the government.

Each committee has 13 members. A new membership is nominated by the Committee of Selection for each debate. Where practicable, the nominations include at least two members of the European Scrutiny Committee and at least two members from the relevant departmental select committee. Any Member of the House may attend and speak at a European committee, but may not move a motion, vote or be counted in the quorum. Any Member of the House may also table an amendment, and move it if the amendment is selected by the Chair.

The format of the committee includes a brief statement from a member of the European Scrutiny Committee explaining that committee's decision to refer the document, up to an hour of questions to the responsible minister or ministers, followed by a debate on an amendable government motion. After the debate, the question on the motion is put without debate on the floor of the House (with an additional opportunity to table amendments).

The European committee format has much potential. It brings together the processes of questions and debate. It is accessible to every Member of the House. It can demand a great deal of ministers;

they answer questions without notice, for an hour or even an hour and a half without the direct participation of civil servants. Yet the opportunities offered by this part of the scrutiny process have tended to be under-used.

The government noted in its memorandum to our inquiry that some debates 'have been sparsely attended or have been concluded very quickly'.¹³ In my opinion, the main reason for this lies in the fact that new Members are appointed for each document. Before 2005, the then European standing committees had permanent memberships of 13, appointed sessionally until 1998 and thereafter for the length of the Parliament. The situation changed following the 2005 general election, with a provision to nominate new Members to the committees for each debate. *Ad hoc* membership was made permanent from 1 January 2009 as part of a package of reforms to the House's scrutiny system that saw the committees renamed European Committees.

It is self-evident that Members turning up to a single committee meeting are unlikely to know the context of the document, how it originated and how it relates to previous measures that have been taken. We have argued for permanent memberships to be re-established and it is something that we are pursuing through the inquiry.

Departmental select committees

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The third part of the system is the departmental select committees (DSCs). Unlike in some other parliaments, the European Scrutiny Committee does not routinely refer documents to DSCs for scrutiny, although it has the power to require such a committee to provide its opinion on a particular document, within a specified time.

This is one of the most complex areas of the Commons system. Departmental select committees in the Commons are largely autonomous. They do not, as in so many other parliaments, have to look at legislation, or finance or European documents. The flexibility this provides is a great strength for the system, but the weakness is that coverage of European Union matters by the DSCs could be described as patchy. Indeed, when the Minister for Europe appeared before us he said: 'sometimes there is a reluctance there to take up the baton ... departmental select committees do need to take more seriously their strategic responsibility for an overview of both the formulation and implementation of EU level policy ... I am seeking ... a cultural change in the House to regard European business as mainstream ... In those circumstances, we would need to look again at the Standing Orders of the House to reinforce that the European aspect of a select committee's responsibilities is something that is core.'¹⁴

Much work is underway by departmental select committees and the Liaison Committee to improve

13 European scrutiny in the House of Commons – written evidence submitted by the Foreign & Commonwealth Office, on behalf of the Government (ESI 5), September 2012, paragraph 16. <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmeuleg/writev/euscrutiny/m05.htm>

14 Oral evidence taken before the House of Commons European Scrutiny Committee, 31 October 2012, Minister for Europe, Q 1 & Q 12. See <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmeuleg/uc711-i/uc71101.htm>.

coverage of European matters across committees. There have been some very good recent examples of responses from departmental select committees to our requests for opinions, for example from the Justice Committee on the European Union Data Protection framework proposals.

The Liaison Committee told us that it welcomes both the formal system of opinions and informal contacts. It suggested that 'the extent to which departmental select committees conduct inquiries into European issues will depend upon the Members' views on the value of such inquiries and the probability of recommendations being not only accepted by the government, but also affecting the outcome of negotiations in Brussels. There is therefore an additional and higher bar to pass before a committee commits time and resources to such an inquiry.' The committee also noted that 'resource constraints are an important consideration when discussing extending the work done by select committees. Members' time is often the most limited resource.'¹⁵

The Liaison Committee's memorandum continued that 'there may be merit in adopting the Scottish Parliament committee model of appointing a Member to act as a *rapporteur* to monitor developments in the European Union in their subject area.'¹⁶ We are keen to explore the Scottish Parliament model during our inquiry; and I see it as a potential way of resolving the inevitable tension between departmental select committee autonomy and the need to ensure that the most important European proposals are scrutinised with a depth that our committee cannot achieve.

At the same time ESC staff are reviewing the information they provide to and the links they have with DSCs, including re-establishing the informal network of EU 'contact points' on each select committee team. This is also tied into our National Parliament Office (NPO) in Brussels, the main purpose of which is to act as 'the eyes and ears' of the scrutiny committees and other committees of the two Houses. Since January 2013, all 28 national parliaments in the EU have been sending staff to Brussels for a similar purpose; the NPO has therefore become a valuable aspect of liaison between national parliaments.

Conclusions

In my view the current Commons system retains many of the strengths listed in the Select Committee on European Legislation's Report in 1996:¹⁷ wide coverage, from an early stage; written evidence from ministers on every document; rapid scrutiny and reporting; analysis of any document found to be of legal or political importance; public access to Explanatory Memoranda and the committee's reports; a process of written or oral questioning of government until the Scrutiny Committee has the information it needs to reach a decision on a document; debates on the most important documents; and a scrutiny reserve.

15 European scrutiny in the House of Commons – written evidence submitted by the House of Commons Liaison Committee (ESI 09), October 2012, paragraphs 7 & 10. <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmeuleg/writev/euscrutiny/m09.htm>.

16 *Ibid.*, paragraph 11.

17 House of Commons Select Committee on European Legislation (1995-96), *The Scrutiny of European Business*, HC 51.

However, as the pace of developments at the European Union level accelerates, so must the process of scrutinising them. Throughout this paper I have commented on some ideas for incremental change. I also believe that it is important to consider more radical options, and this is one of the reasons why our committee will be reviewing different scrutiny arrangements across the European Union. Systems evidently originate from the constitution and culture of their country, but there is much in the work of other committees across the EU that we can review and learn from.

Effective House of Lords scrutiny of the European Union

Lord Boswell, Chairman, European Union Committee

Note that this article was written in December 2012. Since it was written the European Union Committee has launched its own inquiry into the role of national parliaments in the EU.

The House of Lords has appointed a select committee to examine European affairs continuously since 1974, just a year after the United Kingdom joined what was then the European Economic Community.

Since then, the European Community has become the European Union, and EU law has become increasingly important to people, to businesses and to other organisations across the United Kingdom. Whatever view one takes about this, it is crucial for the UK Parliament to play a full and effective part in the scrutiny of this law.

The work of the House of Lords European Union Committee, which I chair, has also evolved considerably over the past four decades, but the committee's core task has remained the same: to examine European policies and proposed laws.

In this chapter, I explain the role of the committee, and the House as a whole, in the scrutiny of European policies; and offer some personal thoughts on how the House of Lords' European scrutiny work might be improved.

The European Union Committee

The House of Lords appoints the European Union Committee 'to consider European Union documents deposited in the House by a minister, and other matters relating to the European Union'.

The committee itself considers major issues such as treaty change, and appoints six sub-committees to cover groups of policy areas:

- Economic and Financial Affairs;
- Internal Market, Infrastructure and Trade;
- External Affairs;
- Agriculture, Fisheries, Environment and Energy;
- Justice, Institutions and Consumer Protection;
- Home Affairs, Health and Education.

Seventy-four Members of the House are currently members of the family of EU committees. Many of them join the committees with great expertise of EU matters, or the policy areas covered by their committee. All of them learn a great deal while they are on their committee. There is also a regular rotation of membership, to help ensure that experience is spread widely around the House.

The European Union committees seek:

- to influence and hold to account the UK government in their dealings with the EU;
- to influence the European Commission and other institutions such as the European Parliament;
- to engage with stakeholders;
- to inform the whole House of Lords, and contribute to debates, about key EU policies.

We do this by the detailed scrutiny of individual EU proposals; by holding in-depth inquiries into the most important areas of EU policy; and by participating in wider debate on EU issues.

How we do it: scrutiny work

The scrutiny of European Union documents, including proposals for legislation, is a key part of our job.

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The UK government have undertaken not to agree to legislative proposals in the Council of Ministers unless both Houses of Parliament have had the opportunity, through their scrutiny committees, to examine and comment on them. This 'scrutiny reserve' can be overridden in certain circumstances, but the government and the committee usually seek to co-operate to ensure that urgent proposals are scrutinised without infringing it.

The committee's scrutiny work is a huge undertaking. Every year, around 1,000 EU documents are deposited in Parliament. As Chairman, I assess each one of them, and decide whether it can be cleared from scrutiny immediately, or whether it should be referred to one of the sub-committees for detailed examination. Over half of the documents are usually cleared at this 'sift' stage, which allows the committees and their staff to focus on the most important proposals.

The sub-committees examine each proposal sifted to them. If they have serious concerns, they can arrange a meeting to question the responsible minister, on the record, about the proposal and the government's view. They can seek the views of individuals and organisations who may be affected by the proposal, before putting the committee's view to the government (this approach is referred to as 'enhanced scrutiny'). In the 2010-12 session of Parliament, the EU committees held 47 one-off hearings on important EU policies, questioning several UK government ministers, European commissioners, and others.

More often, the sub-committee will communicate with the minister in writing, to seek further

information or to set out any concerns about the proposal. Sub-committees can release a document from scrutiny when they have no further questions or comments to make to the government about a proposal.

This scrutiny work ensures that the UK government have thought through the implications of each document produced by the institutions of the European Union, and enables the House, through its scrutiny committees, to seek to influence the government's negotiating position.

How we do it: subsidiarity scrutiny

The 2009 Lisbon Treaty gave a specific duty to national parliaments to examine whether legislative proposals comply with the principle of subsidiarity: in other words, to consider whether the proposal would best be undertaken at the level of the European Union; or whether it would be more appropriately taken forward at the national or local level. Unless it can be demonstrated that EU level action adds value, such action should not be taken at that level. If at least a third of national parliaments issue a 'Reasoned Opinion' that a proposal does not comply with subsidiarity, a 'yellow card' is triggered, which requires the Commission to reconsider its proposal.

Thus far the House of Lords, acting on recommendations by the European Union Committee, has issued three 'Reasoned Opinions', though in none of these cases was a 'yellow card' triggered. However, in September 2012 we learned that the subsidiarity check by national parliaments could have a definite impact on EU legislation. A 'yellow card' was triggered for the first time, on a proposal on balancing the right of free movement and the right to strike, which the Commission has now withdrawn.

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How we do it: inquiries

The European Union committees hold detailed inquiries into the most important EU policies. This involves gathering evidence from those with an interest in the subject; carefully assessing this evidence; and then producing a report. Each report makes recommendations, which may be addressed either to the UK government or to the European Commission, or both. The committees seek to influence the UK government's view of, and role in, the development of policies; and they directly seek to influence and engage with the European institutions such as the Commission.

The committees produce a total of 15-20 reports per year. In recent sessions these have included reports ranging from major cross-cutting issues such as the eurozone crisis; to more specific policies such as the mobility of healthcare professionals in the EU, and the regulation of financial services; to foreign policy matters such as the EU's naval operation countering piracy off the Somali coast.

EU policies often develop slowly, and there are many participants including national governments, the Commission, the European Parliament, national parliaments, and various stakeholder groups.

It is, therefore, often difficult to determine what influence any one participant has on particular policies. However, feedback from UK ministers, European commissioners and others indicates that the committee's work does influence policy.

For example, at a meeting in September 2012, the Minister for Europe explained that the committee's 2011 report on the EU police mission in Afghanistan, which highlighted the need to focus on gender issues and human rights, to encourage the recruitment and training of female officers, and to invest in literacy, had been accepted by the UK government and the Commission, and had been followed up by the Afghan government.¹⁸

As an example of influence over a longer time period, in 2008 the committee reported on further reform of the Common Fisheries Policy.¹⁹ Many of the committee's conclusions concerning radical reform and decentralisation were reflected in the Commission's 2009 Green Paper on reform. In 2011, legislative proposals for reform were published which reflected those core messages. The current Commissioner for Maritime Affairs and Fisheries, Maria Damanaki, has indicated that the committee's report was one of the first texts that she read on assuming office, and she has confirmed that it influenced the Commission's chosen path of reform.

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The committee also contributes to the major debates which help to shape the Union. We produced two reports on the Multiannual Financial Framework for 2014 to 2020 – the EU's spending and money-raising budget for the next seven years. We did the bulk of this work before the issue hit the headlines, utilising the enormous expertise in our subject-specific sub-committees to examine the proposals in forensic detail. We gave broad support to the calls of the UK government and others for budgetary restraint, though we have consistently argued that attention must also be paid to the *quality* of EU spending, with a limited budget being concentrated on areas with maximum EU added-value and potential to support economic growth.

How we do it: exchanging views

The committee engages actively with bodies including the Commission, the European Parliament, national parliaments of other EU member states and the devolved assemblies of the United Kingdom. To give just one example, in 2011 one of our sub-committees conducted an inquiry into the mutual recognition of healthcare professionals, following concerns about unsuitable doctors practising in the UK. The chair of this inquiry has followed up the report by participating in conferences in Brussels considering possible changes to the relevant legislation.

The scrutiny process is extremely open, and benefits greatly from the input of the people and the organisations that are affected by the policies that we examine. In preparing our reports in the

18 House of Lords EU Committee (2010-11), *The EU's Afghan Police Mission*, HL Paper 87. <http://www.publications.parliament.uk/pa/ld201011/ldselect/lducom/87/87.pdf>.

19 House of Lords EU Committee (2007-08), *The Progress of the Common Fisheries Policy*, HL Paper 146-I. <http://www.publications.parliament.uk/pa/ld200708/ldselect/lducom/146/146.pdf>.

2010-12 session we sought out evidence from around 400 people and organisations in writing, and from over 300 witnesses in person. The output of our work, reports and correspondence with ministers, are all available online. However, we can do more to make our scrutiny work more widely understood.

It is very important to emphasise that the EU Committee forms only one part of the House's consideration of EU matters. Debates on the committee's reports enable all Members of the House, whether or not they are members of the EU Committee, to engage with important EU policies. All Members of the House can put questions to ministers about European matters, and initiate and take part in debates on European policies, and many of them do so.

European scrutiny is, of course, an important task for both Houses of Parliament. The House of Commons appoints a European Scrutiny Committee, currently chaired by Bill Cash MP, the work of which he has explained in the previous chapter. The two committees co-operate closely in order to ensure that the scrutiny system is as effective as possible.

The European Scrutiny Committee is currently conducting a formal inquiry into the Commons' EU scrutiny system, and I look forward to working with his committee to consider and take forward any recommendations which have implications for both Houses of Parliament.

Doing scrutiny better

In this second part of my chapter, I consider how the House of Lords European Union Committee, and the House as a whole, might raise its game in the scrutiny of European matters. The Committee keeps its working practices under review, and these are some of the themes that have emerged.

Effective engagement

One of the key priorities must be that we reach out effectively to understand the views of people and organisations who are affected by European legislation and policies. The normal process of seeking evidence will remain the main, invaluable, way to do this, but we should consider how this process can be complemented.

In early 2012, one of our sub-committees held a seminar for those in the UK with experience of how the European Social Fund (ESF) worked in practice, which it then used to inform its scrutiny of the ESF proposals in the 2014-2020 Multiannual Financial Framework. In November 2012, the External Affairs sub-committee held a very successful seminar involving those with experience of the new European External Action Service. These seminars allow a greater number of people to contribute than a traditional evidence session, and they also allow for an exchange of views between Members and experts in a less formal setting. I hope and intend that this work should continue in the future.

Parliamentary committees have also begun to take advantage of the possibilities offered by social media to communicate more effectively with a wide range of people, and I am eager for the European Union committees to play their part in this work.

Better engagement with the whole House

It is important that the whole House gets involved in EU scrutiny. The most obvious way that this happens is when the House debates reports from the committee. We need to think how we can encourage as many non-committee Members as possible to speak in debates on EU Committee reports – and in debates on all of our Committee reports. The committees must ensure that their work engages the interest of all Members of the House, and is intelligible to all Members. But equally the system by which debates are organised, which is largely outside the control of committees, must work to facilitate and encourage participation in debates. We should also consider what can be done to extend the consideration of European policy aspects into ‘mainstream’ policy debates.

Transparency

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I have argued that European scrutiny is an open process, in that all of our reports and correspondence are placed online, but I would be the first to admit that the process, though open, is not always easy to follow!

It would be very helpful if we could make it easier for anyone with an interest in a particular EU policy to be able to find, in a single place online, the various documents from EU institutions about that policy; the view of the UK government (which is set out in the Explanatory Memorandum which is produced for the two parliamentary scrutiny committees); and all the correspondence or reports by the scrutiny committees, and reports of any relevant parliamentary debates, as soon as they are available.

Engagement with European institutions

It is vital that we engage effectively with the EU institutions. In order to support this work, we have an excellent EU Liaison Officer in Brussels, who works closely with the small Commons Brussels team.

The Commission is making strides in improving its dealings with national parliaments, and I have been impressed with Commissioner Maros Šefčovič who is responsible for inter-institutional relations and administration. We are, however, working with other national parliaments to apply constructive pressure in order to improve the timeliness and the level of detail that the Commission provides in response to concerns raised by national parliaments.

With other national parliaments, we need to consider whether there are ways in which we can work more effectively together to scrutinise the Commission. In November 2012, one of our sub-committees held a video conference with a sister committee in the Dutch Parliament to discuss our respective approaches to the consistency of a new proposal with the principle of subsidiarity. Developing this sort of liaison is important. It is also crucial to understand how we can make more effective use of the regular meetings between chairpersons of national parliament committees (on, say, agriculture, economy, home affairs and other issues). Debates at these meetings which focus on specific proposals or pieces of legislation – such as the new Data Protection Directive – can lead to very helpful debate with each other, with the European Commission and, when present, the European Parliament.

The House of Lords EU Committee has sought to build effective relations with the European Parliament on the substance of policy and the future work of their respective committees, which has included holding joint meetings with our counterpart committees in the European Parliament to exchange views.

Media

Like all serious work in Parliament, it can be challenging to get our messages across through the media. However, it can be done. In the first week of May 2012 the committee published three major reports which were the subject of 19 articles in national and regional newspapers, over 20 reports in online and specialist media, and received coverage across broadcast media. More recently, a topical committee report on whether there should be quotas for the proportion of women on company boards was covered in international media including the *New York Times*. It is vital that we continue to think creatively about how we can build an effective media profile, in order to broaden understanding of our work, and of how European policies are developed and examined.

Role of the Government

Generally the scrutiny reserve works reasonably well, but we remain vigilant to ensure that there is no backsliding on the part of the government.

From July 2011 to June 2012, for example, there were 87 overrides of scrutiny in the Lords. For our part, the committee will try to avoid unnecessary overrides. But, for their part, all government departments must provide us with information quickly and fully in order to allow us to carry out our scrutiny work effectively, before proposals come up for decision within the Council. Some departments are very used to managing the scrutiny reserve – for instance the nature of the FCO's work means they inevitably deal with a number of last-minute documents – others with less experience can struggle to respond promptly to a forthcoming urgent Council decision. And government as a whole must be firm not to allow itself to be railroaded into agreeing proposals prematurely in Council, without allowing proper time for parliamentary scrutiny.

EU delegated legislation

The Lisbon Treaty introduced a new way for the EU to make delegated legislation. (In general terms, EU directives and regulations make up the body of EU primary legislation. The new process for creating secondary legislation under these directives and regulations will allow delegated and implementing acts to be implemented, with more limited provision for examination and scrutiny.)

The House of Lords has a good track record in scrutinising domestic delegated legislation. We must repeat this with EU delegated legislation, and agree with the government an effective procedure so that important items of EU delegated legislation are scrutinised by the UK Parliament; but that we are not buried in a mountain of minor rule changes.

Conclusion

The role of national parliaments in EU decision-making has grown in recent years and I expect this trend to continue.

In concluding, I suggest that, at a time of uncertainty and change in Europe, it is more important than ever that the House of Lords retains the ability, assisted by its European Union Committee, to understand, examine, challenge and influence the European policies of Her Majesty's Government, and the development of EU policy and law across the Union.

The politics of European scrutiny

Gisela Stuart MP

Some 10 years ago I was asked to chair a working group on national parliamentary scrutiny of EU legislation. The venue: Brussels. The occasion: the Convention on the Future of Europe. I visited a whole string of national parliaments from Finland to Portugal to see how they did it. I discovered the existence of COSAC (Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union) and even attended some of their meetings. Then, I talked to colleagues back here.

It was a journey of discovery and one I'd wish to share as I still think the debate is bedevilled by a lack of understanding of the politics that underpins the relationship between Parliament, member states and the EU.

Before becoming an MP I had taught European law. I had stood as a candidate for the European Parliament. When I was a health minister, I attended Council meetings and gave evidence to the European Committee. I thought I knew how it worked – but all I knew were the mechanics. Slowly and surely I was beginning to understand the politics.

Let's start by asking what it is we want to achieve by scrutiny at national level. Do we want to be better informed, shape the decision-making process or at times make the government change its mind? I accept that it's probably a mixture of all three, but what's the primary purpose?

If it's about being better informed, then taking evidence and having debates will help. Getting papers well in advance and being able to ask questions is essential. But given the often abstract nature and long timescales of the decisions, it is hard to find a willing audience for these debates and ministers are able to give generic answers which tell us little about impact and long-term consequences. And even if they do, it becomes a battle over predicting the future, rather than a contestable discussion.

If it's about shaping decisions, then Parliament enters the stage far too late to make a difference. At EU level the Commission initiates and discussions take place with officials of 28 countries, as well as informal talks with the European Parliament, before the early drafts even hit the ministerial in-tray here and ages before it gets anywhere near Parliament.

Initial drafts and suggestions go backwards and forwards and deals are struck. Conversations go something like this: 'We'll help you over tobacco if you give way on paternity rights', or 'Don't press on gender balance on company boards and we will be helpful on cross-border policing.'

This is a very important point as the trade-offs and negotiations go across departmental responsibilities and there will often be no logical connection. One country may have a general election and the main political opponent may push the current government on a particular issue. So some otherwise trivial issue becomes important for one member state and gains 'negotiating currency'. We aren't used to this in the UK system.

In some countries MPs are involved in these early negotiations but these tend to be smaller countries or ones where coalition governments are the norm rather than the exception.

If our purpose is about better information and making EU legislation part of the fabric of our national decision-making, then this is a worthy aim but difficult to achieve. Anything that has the words EU in the title leads to a glazing over of eyes, a realisation that there are few votes in it back in our constituencies and the formation of a small core of the initiated who deliver well-rehearsed speeches.

Or is it about making the government change its mind? Anyone who has experienced the *realpolitik* of whipped votes will know that in a parliamentary system like ours it is almost impossible to find a subject that would arouse such strong emotions for sufficient numbers of backbenchers to vote against their own side to bring about a defeat.

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Let's look more closely at the EU. The working group I chaired all those years ago first suggested a 'red card' mechanism which means that if a certain number of national parliaments objected to an EU proposal within a fairly narrow time window then the Commission would be required to withdraw the proposal and come forward with a new one. This was never accepted – not least because, as one Commissioner explained to me, it was an insult to the Commission to suggest that they could ever come up a proposal so out of step with the majority view.

Back in the mid-90s when John Major had to appease his Maastricht rebels, he insisted that the principle of subsidiarity and proportionality be included in the treaties. He also ordered a review of competences to be conducted across Whitehall in order to identify those things done by Brussels that should more appropriately be done by Westminster. And what happened? The principle of proportionality and subsidiarity is often invoked to show how the political decision-making process of the EU goes to great lengths to avoid stepping on the toes of national competences. But when I searched for evidence of compliance with the principle I found little; the only example was the rejection of an Animal Zoo Directive which was proposed by the UK during its first presidency in the Blair government. As to the review of competences – not much emerged if memory serves me right. But I am struck by a similar exercise taking place under the Cameron government. The reason for the review is the same as it was under Major; let's hope the outcome is more than history repeating itself, be it as comedy or tragedy.

Think tanks are looking at parliamentary scrutiny of EU decisions, the latest being Tobias Ellwood's

work for Open Europe.²⁰ The sensible recommendations include better timetabling, debating the Commission's Work Programme and Residency Priorities, dedicated oral parliamentary questions on EU matters and bringing together MPs and MEPs in a more co-ordinated way. But on their own, they miss the fundamental point – which is what are we trying to do?

Do we think national parliaments should be part of the institutional framework of the European Union separate from their national governments? If so, then national parliaments would need to establish networks more effective than COSAC and indeed exclude MEPs from it. The experience of COSAC is that whenever national parliaments collectively look like forming an opinion, the MEPs effectively caucus and scupper any such deals. The reason for that is fairly simple – the MEPs have one goal that unites them; to get more power. In addition, the national MPs who may be members of the government as well as the opposition parties at home have an unlimited supply of reasons to disagree.

I don't think that national parliaments should be part of the EU's institutional architecture. Nation states are represented by their national governments. They are the representation of the majority will of the country and it's not the role of national parliaments to second-guess their governments at EU level. I'd argue that Parliament's role is to scrutinise its own government's actions at EU level, rather than scrutinise the EU, but that's where we encounter some problems which need to be better understood:

- Overlapping time scales and electoral cycles. Someone, somewhere, is always having an election, and they certainly don't fit in with European elections (always fought on national issues), national elections and Commission programmes.
- Nothing ever goes away. An election here means a new party manifesto. Even if the government is re-elected, it's the new manifesto which matters and things can be, and frequently are, ditched. Nothing is ever ditched at EU level. The Commission programme does not have a delete button, even for a newly incoming programme. The best that can be hoped for is that an idea gets negotiated to death and political insignificance – for example, the Hallmarking Directive which was a favourite of the Italian government but much objected to in the UK.
- There is little 'real time accountability'. The 'decisions-implementation-impact' process takes such a long time, that, by the time we can make a judgment, those who took the decision can no longer be made to answer for it. The Schleswig-Holstein question now seems like an early precursor of the problem. When asked about the answer we are told that only three people ever understood the problem; one of them is now dead, the other has gone mad and the third has forgotten.

20 See T. Ellwood (2012), *Upgrading UK influence in the European Union: A strategy to improve upstream scrutiny of EU legislation* (London: Open Europe). <http://www.openeurope.org.uk/Content/Documents/Pdfs/upgradingukinfluence.pdf>.

So what should we do?

What ministers do at EU level needs to be woven into the everyday fabric of Parliament. We need to regularly question departmental ministers across Whitehall about negotiations they are involved in. This will be good for Parliament and for ministers. I doubt they themselves have too much of a grasp of the ins and outs of the system and being forced to be briefed on a regular basis will help.

When I was a minister in the Department for Health, having the EU brief as part of the portfolio was seen as having drawn the short straw. Tiring trips to Brussels and other places; briefings being prepared by officials who wanted things to run smoothly, which did not involve ministers expressing their own opinions; and, to be frank, having very little time to engage with the subject matter on a strategic rather than narrow tactical level.

As it happened it was an interesting time. I had to negotiate the extension of our opt-out of the Working Time Directive for junior doctors and we were dealing with getting the ban on the export of British beef lifted. Both experiences showed up the limitations of the current parliamentary arrangements.

34 As to the junior doctors – the process of the Working Time Directive started some 10 years before I got involved and the full impact on the NHS only kicked in a decade later. In other words, none of the people who made the decisions were any longer in place to be held accountable for them. The very essence of democratic accountability was lacking. I note that the House of Commons debated the NHS and the Working Time Directive in April 2012 but I am not aware that anything changed or happened as a result of it other than a sharing of pain and the usual blaming of 'Brussels'.

Attempting to get the beef ban lifted posed a problem of a different nature. A number of government departments had to agree a collective line while the lead department, in that instance, the Ministry of Agriculture, would strike the overall deal. There was a European Committee debate where I had to defend some 20 different measures, from ceiling height in slaughterhouses to the health and safety implications of animals being stunned with metal bolts. But there was absolutely no scope for any changes. Even if the committee had voted against the motion and it had gone to a vote on the floor of the House, the government would have got its vote through. Even the most rebellious backbencher would have seen the force of the argument – that this was a package which, even if some of the elements were pretty difficult to justify, simply could not be unravelled.

I am not arguing that this is wrong; I am simply saying we need to acknowledge the reality of it.

This may also be a good point to scotch the notion that one country or another always gets its way, because it doesn't get out-voted in the Council of Ministers. Whilst it might be factually true, it's a complete political myth. The Council rarely votes, and if a country loses, it's a sign of diplomatic failure. Our diplomats are clear that before you get defeated in public, you'd better give in – in

private.

If we agree that this is about scrutiny of what our government does at EU level on behalf of Parliament, then I would suggest one fundamental change – the creation of a Europe Minister, of cabinet (if not Deputy Prime Minister) standing who has their own ministerial question time session and who answers for all negotiations and dealings conducted in Brussels on behalf of all Whitehall departments. In essence, the work done by our permanent representative in Brussels (UKRep) becomes politically accountable. There is an argument for saying that departmental ministers should have a regular questions slot on matters relating to the EU, but given the cross-departmental nature and protractedness of these dealings, this would be too narrow. Only if Parliament is able to shed light on the decision-making process at that level, can it begin to understand what's going on and arrive at a view of whether it approves or not.

If such a change doesn't happen, then there are two other very simple things which need to be done. The European Scrutiny Committee has to deliberate in public. And the government needs to reinstate the regular debates ahead of EU Council meetings in government time.

At a time when our relationship with the EU is more troubled than ever, and when that very relationship is more important to us than ever before, to declare this 'backbench business' is almost all you need to know about what's wrong with the current arrangements.

What does putting Parliament back in control entail?

Christopher Howarth, Open Europe

What does Parliament seek to achieve when it scrutinises EU legislation? Often this is not clear. Why for instance do MPs expend time and effort in European committees seeking to understand and voice opinions on EU legislation in the sure knowledge that they will have no bearing on their outcome? Are they simply following a folk memory of legislative practice passed down through generations of parliamentarians or actually trying to achieve something? Parliament is sovereign and can always in theory say no, but if exercising their prerogative means either leaving the EU or paying fines for non-compliance then saying no remains an impractical nuclear option. Would for instance the UK Parliament decide to leave the EU if it had concerns about the finer points of, to take an example, Council Regulation (EC) No. 1198/2006 on the fisheries fund!

So when we talk about parliamentary scrutiny what do we mean? Scrutiny without power is not scrutiny, it is ritual. However, Parliament can have an important role in EU decision and law-making when it concentrates on the right areas and actions. These fall into three parts.

Firstly, Parliament can and should have influence over decisions where the UK has the power to act on its own. The UK has to decide on its own if it should agree to EU Treaty changes, opt-ins to Justice and Home Affairs (JHA) measures and other areas decided by unanimity such as the EU budget. These are all areas where UK parliamentary oversight is done with a real purpose and can, by holding the government to account, achieve real accountability.

Secondly, Parliament has a role in, and could improve, its scrutiny over the UK's negotiating position – even in areas where there is no veto – i.e. all policy areas subject to majority voting. In these cases Parliament, if consulted in time, could make a real input to the position put forward by the UK government and so presumably on the final outcome.

Lastly, Parliament may seek to influence other parts of the EU decision-making process. Parliamentary committees can submit their opinions to consultations run by the EU Commission, and MPs and committees can interact and seek to influence the European Parliament and work with parliamentarians in other states. This is obviously a time-consuming process and depends as much on informal networks and contacts as it does on formal scrutiny procedures but can have positive results. However, this raises the question of accountability, in cases where say a Lords' committee gives its opinion to the Commission it is unclear whose opinion is being voiced – it is not Parliament's as a whole, just a sub-section of parliamentary opinion.

There are things the UK could do better in all these three areas as set out below. However, there is only one real way to improve the accountability of EU decisions and that is to return powers and competencies to the UK. On this major question Parliament needs to make its views heard. That is a wider discussion, one that is taking place in a number of EU member states and growing in urgency. Any reading of British public opinion tells us that the British people feel increasingly disillusioned with the EU even to the point of wishing to leave it altogether. When asked why, the public may point to the cost, the intrusiveness, the lack of democracy but also to a general feeling of powerlessness in the face of an inevitable, ever-increasing mountain of irreversible EU law.

Improving the transparency and democratic accountability of the UK government's actions in the EU and of EU legislation, complementing a policy of returning powers to the member states, and improving the UK Parliament's influence on those decisions remaining at an EU level could improve the British people's view of the EU. The EU should feel like something the British people and their representatives can influence rather than something that is done to them. Real power and influence could also encourage MPs to invest more time in the EU decision-making and scrutiny process and so improve the general level of knowledge and debate.

Parliamentary votes before assenting to a measure where the UK has a veto

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The first main category over which Parliament has a role is that relating to areas where the UK has a veto or the power to make a unilateral decision. In these cases Parliament already has or can be given the power to approve UK policy or hold it to account but it could be improved.

At present the government, or a minister acting on the government's behalf, can in a meeting in Brussels bind the UK into irreversible decisions, by agreeing to a measure that will ultimately form a part of EU law. The measure itself will then be sent to the UK Parliament for implementation but by that stage little can be done and Parliament effectively has to assent. One improvement would be to change parliamentary procedure so that where the UK has a veto and can seek prior parliamentary approval it should do so. This is already the case for most treaty changes but is not the universal rule.

One large area of decision-making that this principle should be extended to is the UK's decisions to opt-in to EU Justice and Home Affairs (JHA) measures.

Earlier this year Parliament voted to support the government's decision to use its treaty right to opt-out of 130 existing EU crime and policing matters, subject to the 2014 'block opt-out'. However, the government simultaneously expressed its intention to opt back in to around 35 of them. At present it is unclear if the government will allow individual votes on these measures or grant sufficient parliamentary time for scrutiny. Decisions to opt back in to these measures and any future decisions to opt in to JHA measures are clearly not subject to sufficient scrutiny or, in the most part, the

'referendum lock' on the transfer of powers to the EU. The government can irrevocably bind the UK by opting in to measures subject to EU law before the UK Parliament has had a chance to vote or even scrutinise measures.

There should therefore be binding mandatory parliamentary votes on each individual JHA measure before the government can opt-in. This should apply to measures originally subject to the 'block opt-out' as well as to any new measures. Parliament should also reinforce and extend the 'referendum lock' so that all these measures are covered by its tests.

The current 'referendum lock', itself a great step forward in democratic accountability, could also be strengthened by removing the 'significance condition' that allows a referendum not to be held on certain treaty changes that transfer power to the EU.

Scrutiny over the UK's negotiating position in areas where there is no veto

The vast majority of EU measures or laws are, however, decided by qualified majority voting (QMV). Proposals for such measures will pass through the House of Commons European Scrutiny Committee (ESC) (and Lords' equivalent) and, if judged of major political importance, they will be sent to either European Committee A, B or C for debate. Once debated, the government will put a motion before the House of Commons Chamber that becomes a resolution of the House, if agreed by MPs (without a debate).²¹ However, European Committees have a temporary membership, are separate from the departmental select committees and have little time or incentive to build up expertise.

One way of improving the scrutiny process would be to scrap the European Committees and give responsibility for the scrutiny of these documents to the respective departmental select committees. This would allow a permanent build-up of expertise and departmental knowledge and place EU policy within the mainstream of the departments. It would be important in any change to ensure that the resulting resolutions remain resolutions of the whole House. A different solution would be to maintain the current system while making the membership of the European Committees permanent.

A further way of improving the role of the committees would be to put the 'scrutiny reserve' on a statutory footing. The 'scrutiny reserve', dating back to 1984, is a rule whereby the government is blocked from agreeing to EU proposals that have not been scrutinised by Parliament. However, the current resolution includes an 'override' whereby the government can agree to a proposal still under scrutiny if it meets one or more of a number of conditions (including the ambiguous 'special reasons'), which in practice cover all proposals. This 'override' has been used quite often for all manner of proposals from the unimportant to the UK's participation in EU peacekeeping measures. If the 'scrutiny reserve' were put on a statutory basis ministers could not agree in the Council of

Ministers to EU proposals before Parliament had had time to scrutinise the proposal.

Another way to improve the ESC would be to widen its mandate. The ESC is currently document-based allowing it to scrutinise proposals, draft EU laws and policy documents emanating from the EU. However, its mandate is limited to deciding whether a document is 'politically important' so it will not voice its opinion as to the merits or not of a particular proposal. If the ESC's mandate were widened it could potentially give opinions on the suitability of individual proposals, a wider view of the government's European policy and make suggestions for future policy.

To aid this process it would be helpful if there were a recognised timetable for government to notify the ESC of EU proposals. It is a common complaint of Parliament's (and of the UK more generally) when dealing with EU proposals that full scrutiny is only given once a proposal is in a fully-formed legislative state when procuring amendments or affecting opposition is more difficult. A procedure whereby Parliament is forewarned of proposals at an early stage, when their opinions could still count, could improve this. Notifying the ESC could explicitly be made an obligation of the UK's permanent representation to the EU (UKRep).

To complement this improvement, another upgrade for the ESC (or MPs) could be to give them the power to force a Chamber debate. At the moment, if the ESC wishes to initiate a House of Commons Chamber debate the government can override its decision. Removing this block on the ESC's ability to initiate such a debate on a document or policy area would significantly improve its ability to hold the government to account.

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The ESC could also meet in public as a default rule unless they decide otherwise. At present the ESC does not sit in public, unless taking evidence, despite a previous successful attempt to make the ESC deliberate in public. Holding ESC sessions in public could allow for greater transparency. However, making the committee sit in public could also affect the ability of the committee to seek the advice of clerks, (something easier to do in private), and the ability to discuss matters such as a government position at a forthcoming Council with those concerned. As a default rule, holding meetings in public would increase transparency and accountability, however, this should be left to the discretion of the committee. Also in the cause of transparency, MPs and Lords could be forced to register entitlements to pensions from the EU institutions.

However, the ESC can only seek to catch proposals and draft regulations and directives. Once these have been passed, Parliament's role is currently very limited. In the case of directives, a UK department will 'transpose' the EU law into UK law under the EU Act and it will end up in Parliament before the House. In the case of the 'negative procedure', there will not even be an automatic vote before it forms a part of UK law. This can give rise to 'gold plating' whereby an EU law is added to in the implementation stage before being enforced – effectively escaping scrutiny. In these cases an automatic rule that all transposed directives with a significant impact assessment burden are sent to the committee to check if they have been transposed correctly could help reduce the impact of EU law.

As a last resort the government should also grant time to allow the dis-application of specific EU regulations. Where a piece, or a part of a piece of legislation is considered overly onerous to the UK, such as the application of the Working Time Directive to the NHS, Parliament should be given the ability to voice its opinion and, if it chooses, dis-apply the legislation in contravention of EU law. At present this would require a full Act of Parliament. If sufficient MPs request this course be considered, parliamentary time should be given by the government to allow for a dis-application of a specific regulation.

Measures aimed at giving Parliament more influence over other areas of EU decision-making

The Lisbon Treaty's introduction of the new subsidiarity procedure intended to include the national parliaments in the EU's work. This so-called 'yellow card' and 'orange card' procedure, in theory at least, allows national parliaments the ability to refer measures back to the Commission for consideration. This has only arguably been successfully invoked once (the Monti II Regulation) but is still tracked by a dedicated website. There could be scope to see whether this procedure is genuine and taken seriously by the EU Commission.

To use this procedure more effectively, the UK Parliament will need to co-operate closely with other parliaments in order to have a hope of reaching the requisite nine states. Although it would require EU treaty change, the process could potentially be strengthened by giving the national parliaments a veto and a lower threshold, a so called 'red card'.

The European Parliament is another institution where the UK Parliament could improve its influence. Too often the work of MEPs is done in isolation to that of the national parliaments. This problem has grown as the European Parliament's powers have expanded with the Lisbon Treaty. Key decisions such as on the Working Time Directive are not followed or sufficiently scrutinised in the UK. In order for the UK Parliament to use its influence it could create a new committee or an ESC sub-committee to scrutinise the work of the European Parliament and the UK's MEPs. This could have the power to summon individual UK MEPs and request others to explain the agenda, votes and their political stances, shedding light on this institution and bringing MEPs into the political mainstream.

Another way to improve the profile of European issues within Parliament and government would be to create a Secretary of State for Europe in the Cabinet with overall responsibility for European policy and have a dedicated question time. At present, the UK's European policy is split between the Foreign and Commonwealth Office (FCO), Cabinet Office and individual departments, with a Minister for Europe sitting in the FCO responsible to the Foreign Secretary. Having a Minister for Europe in the Cabinet would allow the minister to act as the focus for European policy bringing together the three main strands. This new status could involve new European question times in both Houses of Parliament.

Another innovation could be to give the ESC the right to conduct 'confirmatory hearings' for senior UK appointments, including the head of UKRep, the UK Commissioner and European Court of Justice, with the power to block unsuitable appointments. This could be added to a new power to summon ministers, and officials to give evidence. At present, the ESC can and does invite ministers and others to give evidence. However, it is unable to summon ministers, officials or others involved in UK policy. Consideration could also be given, due to its importance, to making the Head of UKRep a ministerial position accountable to Parliament, although there could be practical difficulties.

However, influence cannot be created through new UK structures alone; it would take the willingness of UK parliamentarians to invest the time needed in creating networks and knowledge – this would take a cultural change in MPs' career outlooks. As well as giving MPs more power, another way to get MPs involved is to ensure that political parties reward MPs who take an interest in EU scrutiny. At present, the importance of EU scrutiny is not rewarded in either the media or in terms of promotion. If the parties required engagement in EU affairs as a prerequisite of promotion or noted and rewarded it, a greater enthusiasm for this important work might be engendered.

Lastly, a final area where MPs' input could be asked for is within the government's review of the EU's competences. This review is a positive measure but is largely being conducted by civil servants with little parliamentary input. The government could perhaps allow its work to be scrutinised by a standing committee of MPs in order to give it a higher profile.

Conclusion

All these proposals outlined could contribute to improving accountability over EU decision-making. However, the question of how to upgrade the UK Parliament's decision-making processes and influence is ultimately linked to the UK's view of itself in the EU. Parliament, and thus the UK, needs to form a strategic view of where it wants the EU to go and its place within it. A part of the success of the French and German push for EU integration in the last century was the way in which they managed to articulate a coherent view at all levels of the EU decision-making machine. The UK needs to project a similarly coherent view of what it wishes to attain in the EU that UK diplomats can seek to gain approval for. This should be based on the devolution of powers in non-core areas from the EU to the member states as well as improving the role of national parliaments.

The history of EU decision-making has shown that powers exercised at an EU level are the most unaccountable and difficult to change. We can and should seek to improve the scrutiny of EU legislation but the only real solution is to return powers to Westminster and other national capitals. Once the government has a stated policy on the EU and specific objectives by which to judge it, Parliament can then set to work and scrutinise its policy and hold it to account.

Improving Commons scrutiny of the EU – while we work on a new UK-EU relationship

Chris Heaton-Harris MP and Robert Broadhurst

There is no hiding from EU legislation. The kind of light bulbs you can use at home; the makeup of the fuel your car runs on; the frequency of your bin collections; the price of a bag of sugar; the things you have to do in the name of health and safety; how high your electricity bills are – all this and much more is regulated or directly affected by EU laws passed in Brussels, Strasbourg and Luxembourg. This is not to mention that EU legislation also controls matters such as (to name but a few) the right of nationals of other EU countries to live in the UK, the extent to which British fishermen can fish off the British coast, our trade with countries outside the EU, important elements of employment law, the extradition of British citizens to other EU states and many aspects of financial services.

Despite this, EU legislation is not subject to Parliament's consent.²² The result is that a great deal of the legislation governing the British people is generated by the EU, outside Parliament's control. Most British people do not support this arrangement, which is understandable given that it bypasses the legislature they and their fellow citizens elect and can hold to account.

Parliament's marginalisation arises, first and foremost, because the national parliaments of EU member states have only a peripheral role in the EU's institutional architecture. The typical process for making an EU law involves a proposal being tabled by the European Commission, which must then be agreed by the Council of the EU ('the Council') and, usually, by the European Parliament. As a rule, the only direct involvement national parliaments have is through the 'subsidiarity early warning system'.

'Subsidiarity' is the principle that the EU should only act if the objectives of the action can be better achieved at EU level, rather than by the EU member states themselves. It has, in theory, been an integral part of EU law for 20 years. However, it is a flexible notion in practice, and has not stopped the EU intervening in ever more areas of policy.

The Lisbon Treaty, which came into force in December 2009, established the so-called 'early warning system' for subsidiarity, involving member states' national parliaments. Under this system, a national

²² Setting aside very rare exceptions that are covered by the European Union Act 2011. This statement also assumes that the UK abides by its obligations under the EU treaties.

parliament (or one of its chambers) can issue an opinion to the EU institutions that a proposal for a certain type of EU legislation breaches the principle of subsidiarity. If a third of the votes allocated to national parliaments under this system are cast to say that a proposal infringes subsidiarity, the institution responsible for the proposal (usually the European Commission) must review it. This is called the 'yellow card'. However, the proposal can subsequently be re-tabled in exactly the same form, and the EU legislative process continues. If a majority of national parliaments' votes are cast to say that a proposal breaches subsidiarity, and the EU's 'ordinary legislative procedure' applies to the proposal, the 'orange card' is invoked. In this case, the proposal must be reviewed by the Commission, which can nevertheless re-table it in precisely the same form. If the Commission does this, the Council and the European Parliament must consider whether the proposal violates subsidiarity (which is something they should be doing anyway, under the EU treaties). The final decision on whether the proposal proceeds lies with them. One last point: for national parliaments' votes to count in this process, they must be delivered within eight weeks of the relevant EU proposal being made.

The eagle-eyed reader will see that this convoluted system does not give national parliaments, even when acting collectively, any actual power to stop an EU proposal. There is no 'red card'.

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A 'red card' that could be flashed to block an EU proposal if a certain number of national parliaments so wished would be an improvement on the current situation. However, when considering this idea we need to recognise that it would often be an uphill struggle to muster the opposition of a significant number of national parliaments, particularly if this had to be done within a limited timeframe. Quite rightly, each member state's parliament has its own agenda and priorities, and the sheer quantity of EU proposals would make effective control through such a system very hard. In almost four years since the existing system took effect, the 'yellow card' has been invoked once and the orange card not at all. Importantly, a 'red card' that required the support of a number of national parliaments would still leave Parliament unable to control the flow of EU legislation governing matters in the UK.

The other possible route through which Parliament could control proposed EU legislation is by overseeing the actions of the UK government in the Council of the EU. The Council, as a rule, includes a voting representative of the British government, giving ministers a direct role in EU law-making that Parliament lacks. A system in the UK by which the government's actions at EU level were controlled by the House of Commons – as the democratically elected and accountable Chamber – could offer Parliament an indirect but decisive role in the mass of EU legislation.

However, here we hit another obstacle arising out of the EU's present treaty rules. Most EU legislation is now decided in the Council by qualified majority voting, meaning the British government can be outvoted. In other words, the government no longer has control over the great majority of EU proposals that go on to bind the UK – which means Parliament cannot exercise such control via ministers.

With the EU's present nature, then, Parliament will usually be relegated to trying to influence EU proposals, without being able to exert control over which EU measures form the law of the land.²³ While we work within this system, we should examine whether Parliament is maximising its influence over EU decision-making.

Should the subsidiarity warning mechanism present any serious opportunities to challenge objectionable EU proposals, Parliament should be ready to seize these. However, given the central shortcomings of this system described above, it is probably not the best use of parliamentarians' scarce time to devote great energies to issuing formal subsidiarity opinions.

There is broad consensus that the approach of the House of Lords to EU scrutiny can be effective in influencing EU proposals, or at least the UK government's position on EU measures. The House of Lords EU Select Committee and its sub-committees tend to target a relatively small number of proposals or policies and run in-depth inquiries into them. Such an approach sits well with that Chamber's role as a forum for additional consideration of issues, which can involve specialists in the field.

By contrast, it is widely accepted that the EU scrutiny system in the House of Commons needs reform. While the constraints of the existing EU structure apply, the Commons should be exerting the greatest possible influence on EU measures that impact the lives of MPs' constituents. It is clear that the House is not currently fulfilling this role.

That said, there are two key strengths of the current system in the Commons:

- the existence of the European Scrutiny Committee, as a body of MPs at the 'coal face' of EU scrutiny and well-supported by specialist staff; and
- the comprehensive coverage of all types of EU document that may have significant repercussions (or at least, the aim of such coverage).

The EU produces an enormous number of documents. Some of these are important proposals for legislation, or papers suggesting major policy changes. Others are routine, uncontroversial reports or minor, technical laws. A comprehensive system of EU scrutiny requires a filtering mechanism to highlight documents of significance that should be a priority for MPs' efforts. The importance of a document, though, is often a subjective judgement. The evaluation of EU documents' importance, for the purposes of Commons scrutiny, should therefore be in the hands of MPs, as elected representatives. By and large, this 'sifting' role is currently performed well by the European Scrutiny Committee; there is no apparent need for this to change.

However, EU scrutiny in the Commons suffers from three basic defects:

23 To reiterate, this assumes that the UK abides by its obligations under the EU treaties.

- A clear opinion of MPs on an EU proposal is often not produced until the proposal has progressed a considerable way through EU decision-making. This seriously reduces the influence the House can have on the formation of an EU law or other commitment.
- Not enough MPs are actively involved in EU scrutiny. This activity is too important and laborious to be left solely to members of the European Scrutiny Committee.
- The House has insufficient control over what HM Government is doing on behalf of the UK. Partly as a result of this, there is little interest outside Parliament – including from the media – in the House’s regular scrutiny of often important EU documents. It is also a major factor that makes investing large amounts of time and effort in EU scrutiny unattractive to many MPs.

A range of reforms is needed to tackle these problems.

Let us begin with the European Scrutiny Committee (ESC). The ESC is typically the first to consider EU documents deposited in the Commons for scrutiny. The committee should be in the habit of adopting a clear political opinion on the rights and wrongs of EU proposals, where its members hold such an opinion and this does not duplicate the work of departmental select committees (discussed below). The ESC does sometimes produce these opinions, but it might be held back from doing so more systematically by the idea that it is not supposed to opine on the ‘merits’ of EU documents, and is instead focused on grading their importance. To dispel any doubt about the committee’s ability to put forward political opinions on the substance of EU documents, the Standing Order of the House founding the ESC (SO No. 143)²⁴ could be amended.

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The aim of this would be to ensure that the MPs on the ESC could regularly send a clear message to the government and the EU institutions about EU proposals, at a relatively early stage in the EU policy formulation and decision-making process. The ESC’s views are likely to carry authority as the findings of an EU-specialist, cross-party committee.

The House would also benefit from augmenting the role of departmental select committees (DSCs) in EU scrutiny, drawing on their policy specialisation. Each DSC focuses on the work of a government department, and is also supposed to scrutinise EU developments in that area. The extent to which DSCs have examined EU matters has varied. The ESC could make more use of its existing power to require an opinion on an EU document from a House committee with relevant policy expertise. The House Standing Order on DSCs could also be altered, to enable these committees to appoint a dedicated EU sub-committee if they wished, in addition to the single sub-committee that is currently open to them. This might increase DSCs’ capacity to deal with EU issues. As a complement to the more document-based scrutiny of the ESC, one area where DSC input could be particularly valuable is examining EU developments in the relevant policy field that have not yet taken official documentary form, but which are nevertheless being raised in public and/or official discourse.

Where it believed this was warranted by the importance of an EU document, the ESC could refer the matter for a debate in the House, as it does now.

Given the quantity of important EU documents, not all debates on them could take place in the Commons Chamber without placing excessive pressure on the Chamber's time. This is the rationale for the three existing European Committees, which allow debates on EU documents in the House, in public, away from the Chamber. All MPs can participate in these debates, in addition to the 13 MPs that form each European Committee's membership. A minister is always present to speak for, and answer questions on behalf of, the government.

However, European Committees are not currently realising their potential, in terms of holding the government to account for its position on EU documents. It seems the main cause of this is the *ad hoc* nature of the committees' memberships, with different MPs selected for each debate.

Instead, European Committees should have members selected for the duration of a Parliament, which was the case between 1998 and 2005. This would allow committee members to build up knowledge of an area, in terms of EU and domestic policy, enabling them to hold the government to account more effectively.

A key criticism the previous government levelled at European Committees with standing memberships was that it was difficult to persuade MPs to serve on them. Currently each European Committee deals with a very large range of policy areas. As well as reverting to standing membership, the number of European Committees could at least be doubled. This would enable the workload of each committee to be cut radically, helping to ensure that the time of members was not overburdened. When the former Commons Modernisation Committee inquired into EU scrutiny in the House, it found that attendance by European Committee members (when standing membership was in place) was much better in the committee that met less frequently.²⁵ Increasing the number of European Committees would also draw more MPs into their membership, helping to make EU scrutiny more mainstream in the House, and would enable each committee to focus better on narrower policy fields. Each European Committee's membership could include at least one member of the ESC and one member of each of the DSCs whose subject areas were covered, to ensure liaison between these committees.

European Committee meetings agree a resolution on the EU document before them. After this, the government puts a motion on the document to the whole House, which is decided without debate. However, the House's Standing Orders do not stipulate that the motion put to the Chamber be the resolution agreed by the European Committee. This undermines the purpose of European Committees and should be changed.

Some EU documents are sufficiently important to warrant a debate in the Commons Chamber, with

the public and parliamentary profile this brings. However, the House's Standing Orders do not currently recognise a right for the ESC to require a debate in the Chamber, rather than in European Committee. This does not follow the logic of the ESC being the House's main means of determining the importance of EU documents, independently of the government.

To remedy this, the Standing Orders could allocate a minimum number of debates in the Chamber that the ESC could require on EU documents each year. In some years the committee might not use all of these slots, in others it might request more debates.

This could be complemented by a right for 70 or more backbench MPs, including at least 30 from the largest party in government in the House, to require a debate in the Chamber, in government time, on an EU document that had not yet been finally agreed at EU level. This would reflect the fact that scrutiny of EU matters can and should also be carried out by MPs not on the ESC, and that the ESC might not always pick up on a document that was of importance to other Members of the House.

We now come to the crunch. What control does the House of Commons have, on behalf of the British people, over the United Kingdom's position on EU documents deemed particularly important?

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The House's consideration of documents referred for debate culminates in a resolution of the Commons. Politically, it is not possible for the government simply to ignore a resolution of the House. However, ministers are not legally bound to follow resolutions, and have chosen not to do so in the past.

As such, there is a strong argument for a new Act of Parliament that required the government to abide by a resolution of the House (adopted by the Chamber) that instructed it to take a certain stance on an EU document, in EU negotiations.

To ensure a resolution of the House could be agreed in good time, the Standing Orders could set down time limits between when an EU document was referred for debate and when a motion was put to the House for decision. The House would be entitled to change its opinion on an EU document as negotiations progressed, and the government would always be able to propose a new resolution on the matter. The requirement to abide by a House resolution could come with a caveat that allowed the government to diverge from the resolution if to do so was necessary (in the minister's opinion) to uphold an important UK interest, there had been a material change in the EU negotiating context since the resolution was adopted, and it was not possible to come back to the House for its approval of the new stance before a final position had to be taken at EU level. Where such divergence from a House resolution took place, the new Act could require the minister responsible to make an oral statement to the House, on the justification for this course of action.

There are other matters that need addressing in the Commons EU scrutiny system. The House does not receive all the EU documents it should, for instance, and the rule that ministers should not agree to an EU document that the House is still scrutinising ought to be tightened up and placed on a

statutory footing (this final point was a Conservative Party pledge at the last general election).

It is fitting to end, though, by returning to the bigger picture. EU legislation has a deep and wide-ranging impact on the lives of the British people, yet, under the terms of our EU membership, Parliament usually has no control over it. In his ground-breaking speech in January on Conservative EU policy, the Prime Minister said his fourth principle for reform of the EU, and the UK's place within it, was 'democratic accountability.' He said: '...we need to have a bigger and more significant role for national parliaments. There is not, in my view, a single European demos. It is national parliaments, which are, and will remain, the true source of real democratic legitimacy and accountability in the EU.'²⁶ He is, of course, completely right. The Conservative Party should strive to deliver a new UK-EU relationship that enables Parliament, accountable to the British voter, to have the final say on the laws of our land.

Parliamentary scrutiny of Europe: what lessons from our neighbours?

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Europe is one of the most politically contentious issues in 21st century British politics. Rather than adapting to the accepted norms of membership, the public, politicians and media have adopted increasingly sceptical rhetoric over the 40 years since accession, especially since the heated Maastricht Treaty ratification process in 1992/3. This scepticism – some would say ‘realism’, others ‘phobia’ – has been most notable in a recent series of parliamentary debates on Europe ranging from the backbench debate on an EU referendum held on 24 October 2011, an emergency debate on the Treaty on Stability, Co-ordination and Governance in the Economic and Monetary Union ahead of the March 2012 European Council meeting and a debate on the EU Multiannual Financial Framework in autumn 2012. These debates have been heated and have demonstrated to a certain extent the depth of feeling on European issues among British parliamentarians. Such high-profile debates tend to attract the headlines and may well affect public opinion, but they typically shed more heat than light on either the detailed substance of European policy or the real implications of the UK’s ongoing relationship with Europe. While many MPs are keen to burnish their eurosceptic credentials, the numbers with a solid understanding of the EU are far smaller. There is a danger of overt populism reducing the effectiveness of meaningful scrutiny. However, in practice, the real work of scrutinising European legislation is thus done away from the floor of the House in the EU Scrutiny Committee, usually with little attention from the media and often behind closed doors. Indeed, as it was put in one meeting ‘This is an activity conducted by consenting adults in private.’²⁸

In contrast to the Commons, the House of Lords is one of two European chambers, the other being the unicameral Danish Folketing, renowned for the significance of their role in European scrutiny. Many peers have considerable experience of the European Union prior to entering the Lords, membership of the European Scrutiny Committee is highly sought-after and the reports it produces are read far beyond the UK. Yet both Houses of Parliament have recently faced the need for some changes to their working practices thanks to the introduction of the Lisbon Treaty, which sought in part to re-empower national parliaments which had repeatedly seen their influence diminish in treaty reform from the time of the Single European Act (1986) onwards. While one may contest the appropriateness of the EU giving powers to national parliaments which they never knowingly ceded, it is undeniable that parliaments have begun to review their procedures since the introduction of the

27 This paper draws on the authors’ research as part of the ESRC-funded Cambridge component of the OPAL project, ‘National Parliaments after the Lisbon Treaty: Domestic Watchdogs or Autonomous Players?’ (EU-ParlWatch) (ESRC grant number: RES-360-25-0061), which is undertaken in collaboration with colleagues in the Universities of Cologne, Maastricht and Sciences Po. Where not specifically referenced, sources were off-the-record interviews with parliamentarians and clerks and meetings held under the Chatham House Rule.

28 Meeting organised by the Konrad Adenauer Stiftung and the University of Cambridge in the House of Commons on 12 November 2012 as part of the OPAL project.

Lisbon Treaty in late 2009, or in some cases earlier. Similarly, the UK system has come under scrutiny itself, as the Europe Minister, House of Commons Liaison Committee and the European Scrutiny Committee have all looked at the issue over the last 12 months.

This short paper looks at the nature of scrutiny from a comparative perspective, noting the strengths and weaknesses of the systems used in a variety of EU member states. It does not seek to be exhaustive but rather highlights some areas of what might be considered best practice. In particular we look at the cases of Denmark, long held to be one of the most powerful parliaments with respect to European policy, the Netherlands and Ireland which have increasingly sought to devolve European policy to departmental committees as a way of 'mainstreaming' the issue – with mixed experiences.

European Scrutiny in Westminster

The two Houses of Parliament boast different types of scrutiny systems, each of which offers particular advantages and disadvantages. The greatest strength of the Commons system is its comprehensive nature; the European Scrutiny Committee (ESC) must consider *all* EU documents, from Commission Green Papers to draft legislation, on behalf of the House as a whole.²⁹ The ESC clerks divide documents into three categories based on their level of significance, with each level

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requiring a different degree of scrutiny and/or discussion. The ESC does not issue opinions regarding the substance of policy, but instead simply recommends particular issues for debate either in *ad hoc* European Committees, which despite having 'European' in their title are non-specialist, or on the floor of the House; opinions sent to the Commission, meanwhile, are limited to the question of whether the committee believes that any given legislative initiative violates the principles of subsidiarity and/or proportionality.

Departmental select committees play little role in EU scrutiny. The ESC does forward documents to them but there is no requirement that the select committees react to the documents. Whether they do so depends heavily on the interests of the chairs and committee members, and most appear to take little systematic interest. A key exception is the Environment, Food and Rural Affairs Committee (EFRA), whose chair is a former MEP. That committee has effectively integrated EU scrutiny into its business, as might be expected given that environmental and agricultural policies are very long-standing EU competences. Despite the prevalence of a European dimension in much UK legislation, however, there is little evidence that Europe has come to form part of the day-to-day work of select committees aside from EFRA; Europe has not been 'mainstreamed'. The result, as we argued in evidence to the European Scrutiny Committee is that the '*ad hoc* and unsystematic nature of DSC involvement in scrutinising EU policy [means] DSCs currently have little incentive to work together to ensure effective oversight of policies that may be relevant to more than one committee'.³⁰ Moreover, the system fails adequately to scrutinise ministers' activities in European ministerial meetings. Apart from post-European Council statements from the Prime Minister and follow-up questions, there is no

29 See Chapter 1 for more detail on the House of Commons scrutiny system.
30 European scrutiny in the House of Commons – written evidence submitted by Dr Ariella Huff and Dr Julie Smith (ESI 6), September 2012, paragraph 8. <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmeuleg/writev/euscrutiny/m06.htm>.

systematic approach to finding out either what ministers plan to do before they attend ministerial meetings or what they have done on their return.

The House of Lords EU Select Committee (EUSC), which has six sub-committees, is less comprehensive than the Commons in its approach to scrutiny but does conduct in-depth inquiries into particular policy areas and comments on the substance of EU-level policy decisions.³¹ The initial review of EU documents is similar to that in the House of Commons, but with the additional layer of the 'chairman's sift', whereby the EUSC chairman makes the final decision about which documents to recommend for further scrutiny. Scrutiny on most issues is carried out by one or more of the sub-committees, although the EUSC as a whole may examine cross-cutting issues such as institutional reform or the Multiannual Financial Framework. In contrast to the Commons, the results of this scrutiny, usually in the form of reports, are typically recommended to the entire House for debate and often sent to the European institutions in Brussels as well.

On the face of it, these two systems appear complementary, with one offering a broad, comprehensive overview of the EU's legislative programme, the other providing more focused, in-depth and detailed policy scrutiny. However, although the two Houses maintain relatively close contact with one another, particularly at staff level and through their respective representatives in Brussels, the two chambers and their respective committees are free to decide their own programmes and strategic priorities.³² As a result, while the two systems may work in parallel, they cannot in practice be said to work in tandem. Do any other parliamentary systems work more effectively?

Looking abroad: lessons and best practice

A number of other national parliaments across Europe have undertaken changes and reforms to their own scrutiny processes in recent years, responding both to the Treaty of Lisbon and to domestic pressures and developments. Many of these can offer lessons for Westminster and potential examples of best practice.

Perhaps the furthest-reaching example of widespread reform can be found in the Netherlands, which introduced a 'decentralised' system of scrutiny in 2006. These reforms were driven in part by a desire to take advantage of the increased powers that Lisbon has given to national parliaments, and in part by the belief that, after the shock of the Dutch 'no' vote on the Constitutional Treaty, the Parliament should be making a greater effort to scrutinise European affairs. In the Dutch lower chamber, the Tweede Kamer, sectoral committees are each fully responsible for scrutiny in their own area of expertise, with the European Affairs Committee taking a cross-cutting, overseeing role. The committees decide what policy areas to prioritise in any given year based on the Commission's work

31 See Chapter 2 for more detail on the House of Lords scrutiny system.

32 In common with other EU member states both Houses of Parliament have representatives in Brussels, two in the case of the Commons and one from the Lords. These representatives meet regularly with their counterparts from other member states and may well exchange documents and other information with them.

programme, and they are also responsible for initiating the decision to send a Reasoned Opinion on breaches of subsidiary or proportionality to the Commission (on the basis of the new Lisbon rules). Moreover, ministers are accountable directly to the relevant sectoral committee, and must appear before their committee in advance of Council meetings to explain the Dutch government's positions on the various issues on the Council's agenda. Although the Tweede Kamer committees do not have the formal power to issue binding mandates to ministers, their opinions are considered to be politically binding to the extent that they are thought of as *de facto* mandates.

Since its implementation, this decentralised system has been quite successful in engaging more MPs in debate over European affairs and, as a result, in increasing the visibility of EU affairs within the Tweede Kamer. It has also enabled better scrutiny of EU policy, with MPs who have expertise in specific areas able to apply their knowledge to scrutinising policy at the European level. However, its implementation has required the commitment of significant resources, particularly with respect to staff and the creation of an effective system for sifting and distributing documents. The decentralised scrutiny system is made possible by a dedicated staff of 11, who are all specialists in EU affairs and are responsible for supporting the EU-related activities of the sectoral committees. The EU staff, which includes the Tweede Kamer representative in Brussels, work together as a cross-cutting unit, in contrast to the *rapporteur* system that had been in place before the reforms, whereby each committee had one clerk with an interest in EU affairs on top of his or her existing portfolio (this approach is still in place in the upper chamber, the Eerste Kamer). In this way, they are able to ensure that scrutiny of EU affairs in the chamber has some coherence and continuity despite decentralisation. This is an approach advocated by some for the UK, and is one that already works well in Scotland as well as France and Belgium.³³

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The Danish Folketing, often cited as a model 'strong' parliament, takes a very different approach to EU scrutiny. Rather than empowering sectoral committees, the Folketing places all scrutiny powers solely in the hands of the European Affairs Committee (EAC). Sectoral committees are sent relevant documents and proposed legislation and may be invited to give their opinions and input to the EAC (indeed, if the EAC requests input from a sectoral committee, the committee is bound to oblige), but the EAC remains solely responsible for decision-making. The key pillar of the Danish system is the EAC's ability to issue formal, binding oral mandates to ministers in advance of Council meetings and negotiations on any issues considered to be important. This mandating system operates across all policy areas, including those outside the Ordinary Legislative procedure (e.g. the Common Foreign and Security Policy).

The Danish system is considerably less resource-intensive than the Dutch approach, in that it requires significant expertise only from those MPs whose membership in the EAC demonstrates a clear interest in EU affairs. However, the ability to issue binding mandates – the foundation upon which the scrutiny system is built – is based on the Folketing's particular tradition of minority governments requiring significant negotiation and political debate at all levels. In a majoritarian

33 Source: contributions to the Konrad Adenauer Stiftung / University of Cambridge meeting in the House of Commons on 12 November 2012.

parliament like the House of Commons, where the government is drawn from the majority party or coalition, the introduction of a mandating system would probably leave little role for the opposition since, recent backbench rebellions aside, the governing party or coalition parties would in general be expected to approve ministers' policies with little likelihood of the opposition affecting the outcomes of any mandate.³⁴ Moreover, although it empowers Parliament significantly *vis-à-vis* government, a mandating system can also deprive the government of flexibility and freedom to negotiate and manoeuvre at European level.

In light of the specific circumstances surrounding the Danish case, the trend in several parliaments appears to be more in line with the Dutch reforms. However, given the significant investment required to maintain a fully decentralised system such as that in the Tweede Kamer, some resource-strapped parliaments have attempted to pick and choose certain elements of a decentralised system in whichever ways seem most appropriate for their own contexts. The Irish Oireachtas, for example, which has a Joint EU Affairs Committee on which members of both the upper and lower chambers sit, has undertaken a series of reforms in recent years aiming to involve larger numbers of MPs and committees in the scrutiny process. It has made sectoral committees partially responsible for EU scrutiny and introduced EU-specialist *rapporteurs* to each committee in order to help with this process. It also now requires the Taoiseach (Prime Minister) to appear before Parliament in advance of Council meetings. However, the Oireachtas, like many other parliaments – including the Tweede Kamer – has struggled to match its own timelines with those at European level, often struggling to scrutinise particular policies or proposals before they have already been agreed in Brussels. The Irish have run into significant obstacles relating to the attempt to develop strategic priorities so as to maximise the effectiveness and political salience of the scrutiny process. The Oireachtas has also faced problems in engaging members, an issue in many ways related to the question of strategic priorities as the focus has sometimes been on documents or policies in which MPs have not shown particular interest. Thus, the positive effects seen in the Netherlands do not automatically accrue as a result of mainstreaming European policy.

Introducing a *rapporteur* system may provide a way for the House of Commons to involve DSCs more systematically in the scrutiny process without committing the types of resources that the Dutch have put into reforming the Tweede Kamer. The experiences of other parliaments suggest mixed results. In Germany, for example, the Bundestag has experimented with a *rapporteur* system but found that it did not create significantly more interest in European affairs except on particularly controversial or politically contentious issues. By contrast, the Scottish Parliament has a decentralised EU scrutiny system in which select committees are supported by *rapporteurs*, and experts believe that there has been a significant spillover effect in raising awareness of, and interest in, EU issues among MSPs.

Finally, another aspect of scrutiny in which other parliaments might offer lessons for the House of Commons relates to the role of MEPs. Here, again, there is a great deal of variation across Europe.

³⁴ The vote of 31 October 2012 on the 2014-2020 Multiannual Financial Framework, which saw the government defeated ahead of the November 2012 European Council as Conservative rebels joined forces with Labour MPs, may indicate that even the UK system might allow sufficient flexibility to make a mandating system meaningful, but the particular circumstances of coalition government mean it is unwise to generalise at this stage.

The British Parliament keeps MEPs very much at arm's length, with MEPs excluded completely from the domestic scrutiny process. In some chambers, like the Bundestag, MEPs are welcome to participate in and contribute to European Affairs Committee meetings, though they may not vote, and experience suggests that in practice they do not often make use of their attendance and speaking privileges. The Folketing EAC places further restrictions on the involvement of MEPs in meetings – they may attend, but not speak – but the EAC and Danish MEPs also meet in private once a month. Similarly, MEPs may attend but not speak in EAC meetings in the Tweede Kamer, but they are invited to participate in the chamber's annual debate on European affairs. Given that the Treaty of Lisbon gave greatly enhanced powers to the European Parliament, maintaining close connections with MEPs can give national parliaments more potential opportunities to influence the EU legislative process. Thus, it is possible to involve MEPs more closely in domestic affairs – if only to keep them briefed on the particular issues that may be of importance to Parliament – without giving them too powerful a voice in the scrutiny process.

Conclusions

56 The range and variety of scrutiny systems across European national parliaments and the fact that systems which appear similar in design do not work as well in some states as others suggests that there is no one 'right' way to scrutinise EU affairs. Each approach has developed in response to specific sets of domestic pressures, including party-political dynamics and long-standing perceptions of each chamber's role *vis-à-vis* government as well as in reaction to the changing role of the EU and of national parliaments within it. They do, nevertheless, offer several instructive lessons and examples for those interested in reforming the UK system.

Whether and to what extent scrutiny can be improved depends on the will of parliamentarians and parliamentary clerks. If they are not willing to engage and develop a better understanding of European affairs, structural changes will be pointless. The bottom line is that in order to deal with both the volume of scrutiny and the increasing political salience of the EU we do need a system that brings more MPs into the fold on a more systematic basis, which could most effectively be done via greater involvement of DSCs. This could be done through a *rapporteur* system as seen in the Scottish Parliament and elsewhere. Although this would not go as far as the decentralisation of the Dutch system it is likely to be more feasible. After all, would the House be willing to commit the sort of resources for European scrutiny that the Netherlands have done? We assume not.

One change that could be introduced with little cost and which would enhance scrutiny of European affairs and the ability of Parliament to hold ministers to account is to require ministers to attend scrutiny committees before and after Council meetings – and to give their answers in public session. This would have a threefold advantage in overcoming the problems identified at the outset of this paper. First it would engage a wider group of parliamentarians in the detail of European matters, rather than the almost hysterical rhetoric that sometimes pervades plenary debates. Secondly, it would ensure ministers were held to account on European matters far more effectively than at

present. Finally, since ministers would be involved in meetings in open session one might expect the media to begin to cover European affairs more systematically, thereby potentially enhancing the level of public debate on the EU in Britain.

Appendix I

House of Commons Standing Order

No. 143

(1) There shall be a select committee, to be called the European Scrutiny Committee, to examine European Union documents and

(a) to report its opinion on the legal and political importance of each such document and, where it considers appropriate, to report also on the reasons for its opinion and on any matters of principle, policy or law which may be affected;

(b) to make recommendations for the further consideration of any such document pursuant to Standing Order No. 119 (European Committees); and

(c) to consider any issue arising upon any such document or group of documents, or related matters.

The expression 'European Union document' in this order and in Standing Order No. 16 (Proceedings under an Act or on European Union documents), No. 89 (Procedure in general committees) and No. 119 (European Committees) means

(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 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 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.

(2) The committee shall consist of sixteen Members.

(3) The committee and any sub-committee appointed by it shall have the assistance of the Counsel to the Speaker.

(4) The committee shall have power to appoint specialist advisers either to supply information which is not readily available or to elucidate matters of complexity within the committee's order of reference.

(5) The committee shall have power to send for persons, papers and records, to sit notwithstanding any adjournment of the House, to adjourn from place to place, and to report from time to time.

(6) The quorum of the committee shall be five.

(7) The committee shall have power to appoint sub-committees and to refer to such sub-committees any of the matters referred to the committee.

60 (8) Every such sub-committee shall have power to send for persons, papers and records, to sit notwithstanding any adjournment of the House, to adjourn from place to place, and to report to the committee from time to time.

(9) The committee shall have power to report from time to time the evidence taken before such sub-committees.

(10) The quorum of every such sub-committee shall be two.

(11) The committee shall have power to seek from any committee specified in paragraph (12) of this order its opinion on any European Union document, and to require a reply to such a request within such time as it may specify.

(12) The committees specified for the purposes of this order are those appointed under Standing Order No. 152 (Select committees related to government departments) including any sub-committees of such committees, the Select Committee on Public Administration, the Committee of Public Accounts, and the Environmental Audit Committee.

(13) Unless the House otherwise orders, each Member nominated to the committee shall continue to be a member of it for the remainder of the Parliament.

Appendix II

House of Commons Standing Order

No. 119

(1) There shall be three general committees, called European Committees, to which shall stand referred for consideration on motion, unless the House otherwise orders, such European Union documents as defined in Standing Order No. 143 (European Scrutiny Committee) as may be recommended by the European Scrutiny Committee for further consideration.

(2) If a motion that specified European Union documents as aforesaid shall not stand referred to a European Committee is made by a Minister of the Crown at the commencement of public business, the question thereon shall be put forthwith.

(3) Each European Committee shall consist of thirteen Members nominated by the Committee of Selection in respect of any European Union document which stands referred to it, and the Committee of Selection may nominate the same membership in respect of several documents.

(4) In nominating the members of a European Committee, the Committee of Selection shall have regard to the qualifications of the Members nominated and to the composition of the House; and where practicable it shall nominate at least two members of the European Scrutiny Committee and at least two members of the select committee appointed under Standing Order No. 152 whose responsibilities most closely relate to the subject matter of the document or documents.

(5) The quorum of a European Committee shall be three, excluding the chair.

(6) Any Member, though not nominated to a European Committee, may take part in the committee's proceedings and may move amendments to any motion made as provided in paragraphs (9) and (10) below, but such Member shall not make any motion, vote or be counted in the quorum; provided that a Minister of the Crown who is a Member of this House but not nominated to the committee may make a motion as provided in paragraphs (9) and (10) below.

(7) The European Committees, and the principal subject matter of the European Union documents to be referred to each, shall be as set out below; and, in making recommendations for further consideration, the European Scrutiny Committee shall specify the committee to which in its opinion the documents ought to be referred; and, subject to paragraph (2) of this order, the documents shall be referred to that committee accordingly

European Committees	Principal subject matter
	Matters within the responsibility of the following Departments
A	Energy and Climate Change, Environment, Food and Rural Affairs; Transport; Communities and Local Government; Forestry Commission; and analogous responsibilities of Scotland, Wales and Northern Ireland Offices.
B	HM Treasury (including HM Revenue & Customs); Work and Pensions; Foreign and Commonwealth Office; International Development; Home Office; Ministry of Justice (excluding those responsibilities of the Scotland and Wales Offices which fall to European Committee A); together with any matters not otherwise allocated by this Order.
C	Business, Innovation and Skills; Children, Schools and Families; Culture, Media and Sport; Health.

(8) The chair may permit a member of the European Scrutiny Committee appointed to the committee under paragraph (4) above to make a brief statement of no more than five minutes, at the beginning of the sitting, explaining that committee's decision to refer the document or documents to a European Committee.

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(9) The chair may permit Ministers of the Crown to make statements and to answer questions thereon put by Members, in respect of each motion relative to a European Union document or documents referred to a European Committee of which a Minister shall have given notice; but no question shall be taken after the expiry of a period of one hour from the commencement of the first such statement: provided that the chair may, if he sees fit, allow questions to be taken for a further period of not more than half an hour after the expiry of that period.

(10) Following the conclusion of the proceedings under the previous paragraph, the motion referred to therein may be made, to which amendments may be moved; and, if proceedings thereon have not been previously concluded, the chair shall interrupt the consideration of such motion and amendments when the committee shall have sat for a period of two and a half hours, and shall then put forthwith successively

- (a) the question on any amendment already proposed from the chair; and
- (b) the main question (or the main question, as amended).

The chair shall thereupon report to the House any resolution to which the committee has come, or that it has come to no resolution, without any further question being put.

(11) If any motion is made in the House in relation to any European Union document in respect of

which a report has been made to the House in accordance with paragraph (10) of this order, the Speaker shall forthwith put successively

(a) the question on any amendment selected by him which may be moved;

(b) the main question (or the main question, as amended);

and proceedings in pursuance of this paragraph, though opposed, may be decided after the expiration of the time for opposed business.

(12) With the modifications provided in this order, the following Standing Orders shall apply to European Committees: No. 85 (Chair of general committees); No. 88 (Meetings of general committees); and No. 89 (Procedure in general committees).

Selected bibliography / resources

HOUSE OF COMMONS

European Scrutiny Committee

<http://www.parliament.uk/escom>

Guide to EU Institutions and Legislation (July 2013)

[http://www.parliament.uk/documents/commons-committees/european-scrutiny/EU%20Institutions%20Guide%20\(Revised%20July%202013\).pdf](http://www.parliament.uk/documents/commons-committees/european-scrutiny/EU%20Institutions%20Guide%20(Revised%20July%202013).pdf)

The European Scrutiny System in the House of Commons (October 2012)

<http://www.parliament.uk/documents/commons-committees/european-scrutiny/ESC%20Guide%20Revised%202012.pdf>

HOUSE OF LORDS

European Union Committee

<http://www.parliament.uk/business/committees/committees-a-z/lords-select/eu-select-committee/>

Short Guide to the European Union Committee (2012)

<http://www.parliament.uk/documents/lords-committees/eu-select/EUCbooklet.pdf>

The European Union Scrutiny System in the House of Lords: A Short Guide (2013)

<http://www.parliament.uk/documents/lords-committees/eu-select/Lords-EU-scrutiny-process.pdf>

House of Commons & House of Lords Library Briefings on European Issues

<http://www.parliament.uk/briefing-papers/european-union/>

CABINET OFFICE & FCO

Guide to Parliamentary Scrutiny of EU Documents

<http://europeanmemoranda.cabinetoffice.gov.uk/files/content/parliamentary-scrutiny-overview-1306.pdf>

Parliamentary Scrutiny of EU Documents: Guidance for Departments (August 2013)

<http://europeanmemoranda.cabinetoffice.gov.uk/files/content/parliamentary-scrutiny-departments-1306.pdf>

European Explanatory Memoranda

<http://europeanmemoranda.cabinetoffice.gov.uk>

UK Permanent Representation to the European Union (UKRep)

<https://www.gov.uk/government/world/organisations/uk-representation-to-the-eu>

EU RESOURCES

European Commission

http://ec.europa.eu/index_en.htm

EU Council

<http://www.consilium.europa.eu/homepage?lang=en>

EU Council – Register of Public Documents

<http://www.consilium.europa.eu/documents/access-to-council-documents-public-register?lang=en>

European Parliament

<http://www.europarl.europa.eu/portal/>

EUR-LEX: Access to European Union Law

http://eur-lex.europa.eu/RECH_menu.do?ihmlang=en

PRE-LEX: Monitoring of the decision-making process between EU institutions

<http://ec.europa.eu/prelex/apcnet.cfm?CL=en>

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