

# Restoring Parliamentary Authority

## EU Laws and British Scrutiny

Theresa May

Nicholas Timothy

**POLITEIA**

2007

First published in 2007  
by  
Politeia

22 Charing Cross Road  
London WC2H 0QP  
Tel: 020 7240 5070 Fax: 020 7240 5095  
E-mail: [info@politeia.co.uk](mailto:info@politeia.co.uk)  
Website: [www.politeia.co.uk](http://www.politeia.co.uk)

© Politeia 2007

Policy Study No. 58

ISBN 978-1-900525-89-3

Cover design by John Marenbon

Printed in Great Britain by:  
Hobbs the Printers Ltd  
Brunel Road  
Totton  
Hampshire  
SO40 3WX

## THE AUTHORS

The Rt Hon Theresa May is Shadow Leader of the House of Commons and has been Member of Parliament for Maidenhead since 1997. She was Chairman of the Conservative Party between 2002 and 2003, is a Member of the Privy Council and has served in the Shadow Cabinet since 1999.

Nicholas Timothy is Chief of Staff to Theresa May.

## CONTENTS

	Foreword: Parliament is Not Sovereign	1
I	The Lie of the Land	2
II	The Westminster Weakness: Parliament, Government and the Scrutiny System	7
III	How Other Countries Scrutinise	15
IV	Putting Things Right	17
V	Restoring Parliamentary Sovereignty	20
	Appendix	21

## Foreword: Parliament is Not Sovereign

---

The European Union is responsible for part or all of a vast number of UK laws. More than 1,000 documents deposited in Parliament every year have their origins in the EU. Estimates of the proportion of domestic laws that originate in the EU vary from 50 to 70 per cent. Parliamentary scrutiny of these documents is fundamental if our democracy is to remain strong and healthy.

The nature of the EU – the existence of supranational institutions such as the European Commission, and ‘qualified majority voting’ (which means UK ministers can be outvoted in the Council of Ministers) – makes it difficult for the UK Parliament to hold ministers to account. Academics and politicians describe this problem as the ‘democratic deficit’.

But more than that, the UK’s system of scrutiny for European legislation is poor and there is an urgent need for improvement. While the House of Lords Committee does excellent work on general European policy, the Commons Committee to which the task of detailed scrutiny falls, lacks teeth and is overwhelmed by the volume of its work. This paper therefore focuses on the role of the Commons, rather than that of the Lords.

This is not a paper about the future of the European Union itself, or of Britain’s role in the EU. Rather it seeks to identify the weaknesses in the system of Parliamentary scrutiny. It proposes measures that will, for the first time, provide proper accountability, and in so doing restore the balance between Parliament and ministers.

# I

## The Lie of the Land

---

The problem of scrutinising European Union legislation owes much to the nature of the EU – its institutions, government and legislation.

### **Council, Commission and Parliament**

The EU rests on a number of treaties negotiated by Member States since the 1957 Treaty of Rome, which create a legislative framework. The EU operates both between national governments and above them with the Council of the European Union acting as the main decision-making body.<sup>1</sup> The Council represents the member states, with one minister from each of the EU's national governments attending its meetings. It is divided into nine different sections or 'departments', with different membership, according to the policy it considers.<sup>2</sup>

Each minister in the Council is empowered by the treaties to commit his or her government and it is for the respective national parliaments to ensure democratic accountability and to hold ministers to account. The Presidents and Prime Ministers of the member states, together with the President of the European Commission, gather at meetings of the 'European Council' up to four times a year. These meetings set overall EU policy and resolve issues that could not be settled by the ministers at normal Council meetings.

Proposals for new European laws are drafted by the European Commission – which itself is appointed every five years<sup>3</sup> – and then presented to the European Parliament and the Council. The Commission acts as the EU's executive arm, implementing decisions made by the European Parliament and Council. Its members are nominated by the national governments, adopted by the Council and approved by the European Parliament, while the President is agreed by all member states.<sup>4</sup> The Commission attends all the sessions of Parliament, where it must clarify and justify its policies.<sup>5</sup> In theory, the Commission remains politically accountable to the European Parliament, which has the power to dismiss the whole Commission.

---

<sup>1</sup> The Council has existed in one form or another since the creation of the 'Special Council of Ministers' in the European Coal and Steel Community, which was established in the 1951 Treaty of Paris.

<sup>2</sup> Employment, Social Policy, Health and Consumer Affairs; Competitiveness; Transport, Telecommunications and Energy; Agriculture and Fisheries; Environment; Education, Youth and Culture

<sup>3</sup> A new Commission is appointed within six months of the elections to the European Parliament.

<sup>4</sup> The procedure is as follows. The Council adopts the list of nominees by qualified majority and communicates it to the European Parliament for approval. The European Parliament then interviews each nominee and votes its opinion on the whole team. Following the European Parliament's vote of approval, the new Commission is formally appointed by the Council, acting by qualified majority.

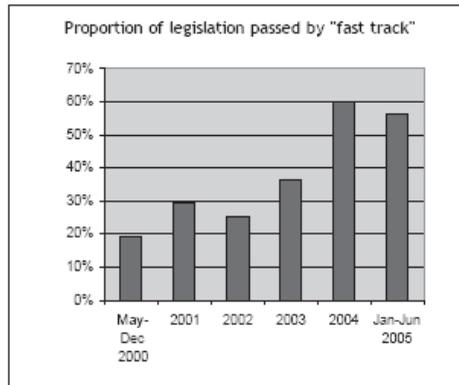
<sup>5</sup> It also replies regularly to written and oral questions posed by MEPs.

However, this is only like to happen in the most extreme circumstances and there are concerns about the Commission's lack of accountability.<sup>6</sup>

The European Parliament is the only directly elected EU institution. As such it brings some democratic legitimacy, but because the EU does not have a single, popular, political identity, the European Parliament cannot, alone, resolve the democratic deficit. It may have an important role to play, but because the EU is, and must remain, an association of nation states, its democratic legitimacy must come from national parliamentary democracy.

There are in any case concerns about the lack of scrutiny provided by the European Parliament. Where there is agreement in the Council, EU legislation can be adopted immediately after its first reading in the European Parliament. Use of this 'fast track' procedure has increased in recent years, and now accounts for more than half of legislation decided using the co-decision procedure:<sup>7</sup>

Figure 1



In addition to the Council, the Commission and the European Parliament, there is the European Court of Justice, in which each member state is represented by a judge. The Court interprets and applies European Union law,<sup>8</sup> ensures that national courts do not give conflicting rulings and makes sure that member states and institutions obey the law.

<sup>6</sup> It can dismiss the whole Commission by adopting a motion of censure. Individual members of the Commission must resign if asked to do so by the President, provided the other Commissioners approve.

<sup>7</sup> Open Europe, *Getting a Grip: Reforming EU Scrutiny at Westminster*, April 2006, pp.6-7. The 'fast track' procedure was introduced in the Treaty of Amsterdam.

<sup>8</sup> The Court is composed of one judge per member state, so that all 27 of the EU's national legal systems are represented. However, the Court rarely sits as the full court, instead sitting as a 'Grand Chamber' of thirteen judges, or in chambers of five or three judges. The judges and advocates-general are appointed to the Court of Justice by joint agreement between member states. Each is appointed for a term of six years, which may be renewed.

## 'Pillars' and Voting

The Maastricht Treaty divided the governance of the European Union into three main areas or administrative sections known as 'pillars'. They are the 'Community' pillar,<sup>9</sup> the 'Common Foreign and Security Policy' pillar,<sup>10</sup> and the 'Police and Judicial Cooperation in Criminal Matters' pillar.<sup>11</sup> The pillar structure determines how a piece of legislation is passed, and by which bodies.<sup>12</sup>

The abandoned European Constitution of 2004 had proposed that the three pillars should be merged, although some specific procedures would have been retained for the Common Foreign and Security Policy.<sup>13</sup> In practice, this would have meant a move away from intergovernmental policy-making. For example, it would have given the EU competence to define and implement a common foreign and security policy, including the 'progressive framing' of a common defence policy.

So as things stand, European legislation is passed in different ways. For example, a measure can become law without unanimous support from member states through qualified majority voting (QMV). Unlike other international organisations, in the European Union, QMV means that member states can be outvoted and must abide by the subsequent decision. QMV is largely limited to the Community pillar, although elsewhere majority decisions are allowed on certain issues if they are based on earlier unanimous decisions. In a number of areas, legislation is subject to a 'co-decision procedure' where the European Parliament is more directly involved, a system introduced in the Maastricht Treaty and simplified in the Treaties of Amsterdam and Nice.<sup>14</sup> In this procedure the Council cannot disregard the opinion of the Parliament.<sup>15</sup>

The structure of the European Union and the nature of its decision-making processes therefore make full democratic accountability difficult to achieve. The European Commission, as a supranational institution, cannot be held to account by a single national parliament. And the European Parliament has limited powers

---

<sup>9</sup> The Community Pillar relates to the European Community, the European Atomic Energy Community, and the former European Coal and Steel Community. On these matters, only the Commission can submit proposals to the Council and Parliament. A qualified majority is sufficient for a Council Act to be adopted.

<sup>10</sup> The Common Foreign and Security Pillar comes under Title V of the Treaty on European Union. This pillar is subject to the intergovernmental procedure. The right of initiative is shared between the Commission and the Member States, and unanimity in the Council is usually necessary.

<sup>11</sup> The Police and Judicial pillar comes under Title VI of the Treaty on European Union. Like the second pillar, this third pillar is subject to the intergovernmental procedure, with unanimity in the Council required, and the right of initiative shared between the Commission and the Member States.

<sup>12</sup> Over the years responsibilities have often been reallocated between the different sections. For instance the Treaty of Amsterdam transferred the free movement of EU persons from the third pillar to the first.

<sup>13</sup> Text of *The Treaty establishing a Constitution for Europe*, <http://www.eurotreaties.com/constitutiontext.html>

<sup>14</sup> See Appendix B

<sup>15</sup> If both institutions continue to disagree, a separate 'conciliation committee', made up of representatives of the Council and of Parliament, has to arrive at a text that is acceptable to the two institutions. If the Conciliation Committee also fails to reach a conclusion the instrument is deemed not to have been adopted.

and legitimacy to do the job itself. The Council's system of 'qualified majority voting' means that ministers can be outvoted, and this also makes it difficult for national parliaments to hold ministers to account.

### **How European Legislation Works**

European legislation takes one of three forms. Regulations are of general application, binding in their entirety and are directly applicable in all member states. Directives are binding on each member state, but the form and method of transposing them into national law is up to each member state. Decisions, which are made by the European Court of Justice, are binding in their entirety.<sup>16</sup>

Some measures can only be agreed at EU level, such as those concerning the European Community (and related first pillar areas). Other measures, such as those relating to Foreign Policy and Policing or Judicial matters (second and third pillars), fall under what is known as 'shared competence', meaning that they can be agreed at either EU or national level. In these areas the principle of 'subsidiarity' applies, which is supposed to mean that decisions are taken at a level as close as possible to Europe's citizens, although the principle has rarely inspired practice.<sup>17</sup>

How European legislation comes into effect also varies. Regulations have direct effect on all member states and are therefore binding on governments. The only role that Parliament can have is to make representations to, and hold to account, government ministers, before the regulation is debated and agreed in Europe.<sup>18</sup> Directives are transposed into national law in one of three ways, by Act of Parliament, by an Order in Council<sup>19</sup> or by statutory instrument (SI).<sup>20</sup>

Orders in Council (and regulations made under the 1972 Act) are subject to annulment, which means in practice that they do not need to be passed by Parliament. Other SIs may or may not require Parliamentary approval before coming into force.

The volume of EU legislation is, as the House of Commons Modernisation Committee concluded, 'enormous'.<sup>21</sup> Over 1,000 pieces of European legislation

---

<sup>16</sup> <http://www.europarl.europa.eu>

<sup>17</sup> In practice, this principle has remained elusive and there are criticisms of its reliability and effectiveness. There have been no occasions of legislation being turned down at any stage of the European legislative process. Neither has the UK Parliament turned down a position agreed by the Council of Ministers based on the principle of subsidiarity.

<sup>18</sup> Section 2(1) of the European Communities Act 1972

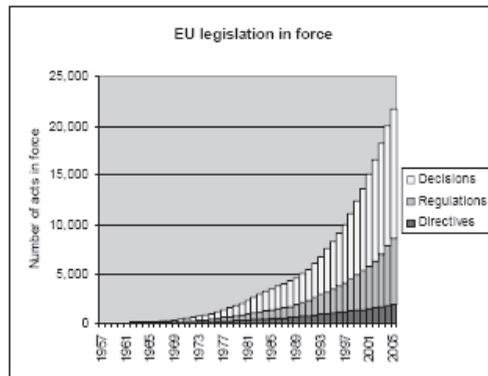
<sup>19</sup> Or regulations under Section 2(2) of the European Communities Act 1972 ('the ECA'), which enables the Government to make provision for implementing any Community obligation of the UK. There are some limits to this power, set out in Schedule 2 to the Act. These include the prevention of its use to impose or increase taxation, to confer any power to make further secondary legislation, and others.

<sup>20</sup> This is made under some other act which confers appropriate powers to make secondary legislation.

<sup>21</sup> House of Commons Modernisation Committee, *Scrutiny of European Business*, 22 March 2005, pp.12-13

are deposited in Parliament and considered by the European Scrutiny Committee every year. Such a weight of documentation has been described as ‘censorship by mass’.<sup>22</sup> The EU is estimated to produce approximately four pieces of secondary legislation each week, regardless of whether national parliaments are sitting.<sup>23</sup>

**Figure 2**



So not only do the institutions of the EU make democratic accountability difficult to achieve, European legislation itself is voluminous and has a momentum of its own. It is therefore difficult to control or scrutinise.

National parliaments of the member states currently have no direct formal role in the passage of EU legislation, except in implementing directives. Their influence is based on their right to hold to account members of their own national governments, through their membership of the Council. The main purpose of the scrutiny system in the United Kingdom is to ensure that Parliament has opportunities to influence and hold to account ministers for their activities in the Council. Only government ministers are directly accountable to Parliament. None of the European Union institutions is answerable to any national parliament.<sup>24</sup>

At every level, the EU makes it difficult for member states to scrutinise European laws. As the United Kingdom remains a nation state, the Westminster Parliament must remain sovereign. Parliament must therefore be empowered so that it can properly scrutinise European legislation.

<sup>22</sup> Mr Chris Huhne, then a Member of the European Parliament, and now a Liberal Democrat MP, cited in House of Commons Modernisation Committee, *Scrutiny of European Business*, 22 March 2005, pp.12-13.

<sup>23</sup> Open Europe, *Getting a Grip: Reforming EU Scrutiny at Westminster*, April 2006, p.4

<sup>24</sup> Department of the Clerk of the House, *The European Scrutiny System in the House of Commons*, 2005

## II

### The Westminster Weakness: Parliament, Government and the Scrutiny System

---

If the nature and processes of the European Union make it difficult for national parliaments to scrutinise EU legislation, we in Westminster do not make it any easier. This is because the existing process for scrutinising European law is woefully inadequate. While the House of Lords Committee does excellent work on general European policy, the Commons' European Scrutiny Committee lacks teeth and is overwhelmed by the volume of its work.

#### **The European Scrutiny Committee's Limitations**

The role of the House of Commons European Scrutiny Committee (ESC) is to oversee a sifting process, rather than provide an analysis of the merits of the legislation involved. It assesses the legal and political importance of each document and decides which should be debated. Often, the Committee requests further written information from the minister, sometimes more than once, before it decides to clear a document.<sup>25</sup> In practice, the Committee does a good job of sifting through the many documents that come before it, but the subsequent process of scrutiny is insufficient. This process needs to be strengthened.

The European Research Group has provided a sample of the many documents in an average quarter (22 November 2006 until 28 February 2007) which it says have been erroneously deemed as being of no legal or political significance by the Committee. These are cleared immediately with virtually no scrutiny. There is no debate, and there are no substantive reports to the House on their implications. This year, for example, measures included employment directives on the protection of workers, excise duties on certain imports, environmental measures, and foreign policy decisions on Bosnia, Herzegovina and Zimbabwe. (See the selection in Table 1 below.<sup>26</sup>)

---

<sup>25</sup> The European Scrutiny Committee is defined by Standing Order No 143. For the text of the Standing Order, see Appendix C. The Committee's scrutiny system is primarily document-based. A document is deposited in Parliament usually within two working days of its receipt in London. These documents range much further than just legislative proposals; they also include submissions to the European Council or European Central Bank; common strategies under Title V or VI of the Treaty on European Union; any document published by the European Commission for submission to another European Union institution; and any document relating to EU matters deposited in the House by a Minister of the Crown. The category of deposited documents is wider in the UK than in most other European Member States. In Finland, only proposals for legislation within the Parliament's sphere of competence must be deposited by the Government; other categories of document are deposited at the Government's discretion and are subject to a less rigorous procedure. There are similar arrangements in France and the Czech Republic. Second and Third Pillar items are also deposited before the UK Parliament but not in every Member State.

<sup>26</sup> European Research Group, *The system of scrutinizing European legislation in the House of Commons and some of its failings*, March 2007, pp.6-8

## Overriding Parliament's Objections

Underpinning the UK system is the 'Scrutiny Reserve'. This means that ministers cannot agree a proposal which is still 'subject to scrutiny' in Parliament.

**Table 1 Sample of Measures Deemed by the ESC to be of no Legal/Political Significance**

Social and employment measures	
1	Draft Directive on the protection of workers from the risks related to exposure to asbestos at work
2	Draft Directive on the protection of employees in the event of the insolvency of their employer
3	Draft Directive concerning the minimum safety and health requirements for the use of work equipment by workers at work
Trade policy measures	
4	Draft Council Regulation imposing a definitive anti-dumping duty on imports of ethanolamines originating in the United States of America
5	Draft Council Regulation terminating the partial interim review of anti-dumping measures on imports of silicon originating in the Russian Federation
6	Draft Council Regulation amending Council Regulation (EC) No.74/2004 imposing a definitive countervailing duty on imports of cotton-type bedlinen originating in India
7	Draft Council Regulation extending the definitive anti-dumping duty imposed by Regulation (EC) No.398/2004 on imports of silicon originating in the People's Republic of China to imports of silicon consigned from the Republic of Korea whether declared as originating in the Republic of Korea or not
8	Draft Council Regulation amending the Annex to Regulation (EC) No 2042/2000 imposing a definitive anti-dumping duty on imports of television camera systems originating in Japan
9	Draft Council Regulation imposing a definitive anti-dumping duty on imports of television camera systems originating in Japan following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No.384/96.
10	Draft Council Regulation imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of tartaric acid originating in the People's Republic of China
11	Draft Council Regulation extending the definitive anti-dumping duty imposed by Regulation (EC) No. 769/2002 on imports of coumarin originating in the People's Republic of China to imports of coumarin consigned from Indonesia or Malaysia, whether declared as originating in Indonesia or Malaysia or not
Environmental measures	
12	Commission Communication on the assessment of national allocation plans for the allocation of greenhouse gas emission allowances in the second period of the EU Emissions Trading Scheme accompanying Commission Decisions of 29 November 2006 on the national allocation plans of Germany, Greece, Ireland, Latvia, Lithuania, Luxembourg, Malta, Slovakia, Sweden and the United Kingdom in accordance with Directive 2003/87/EC
13	Draft Council Decision establishing the position to be adopted on behalf of the European Community with regard to a proposal for amendment of the Kyoto Protocol to the United Nations Framework Convention on Climate Change

14	Draft Council Regulation amending Regulation (EC) No.2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy
15	Draft Council Regulation laying down conservation and enforcement measures applicable in the Regulatory Area of the Northwest Atlantic Fisheries Organisation
Foreign policy measures	
16	Council Joint Action extending and amending the mandate of the European Union Special Representative in Bosnia and Herzegovina
17	EU Common Position concerning restrictive measures against Zimbabwe

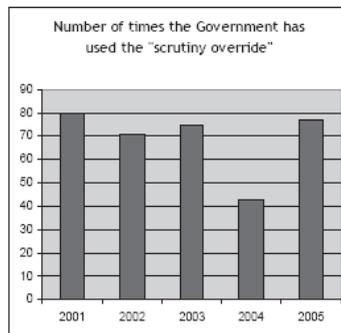
This might be because the European Scrutiny Committee has not completed its scrutiny work, or because the document is awaiting debate.<sup>27</sup>

The Scrutiny Reserve is not defined in statute and ministers have the power to override it, on the condition that they subsequently explain their reasoning to the European Scrutiny Committee.

Parliament therefore has no power over the positions ministers take in Brussels on European proposals, because even if the whole House of Commons objected to a European proposal, the Government could still support it in the Council of Ministers.

Since official figures were first collected in 2001, the Scrutiny Reserve has been overridden 346 times.<sup>28</sup> Some of the most controversial pieces of recent legislation have been exempted in this way, including the EU arrest warrant and the creation of the European Defence Agency.<sup>29</sup>

**Figure 3**



<sup>27</sup> The scrutiny reserve resolution can be found at Appendix D.

<sup>28</sup> To put this into context, the committee considers about 1,000 documents per year. It finds around 500 to be of legal or political importance, and reports substantively on them. It recommends about forty documents for debate in the European standing committees, and around three on the Floor of the House (<http://www.parliament.uk/documents/upload/TheEuroScrutinySystemintheHoC.pdf>)

<sup>29</sup> Open Europe, *Getting a Grip: Reforming EU Scrutiny at Westminster*, April 2006, pp.5-6

The Government often justifies itself by claiming that the timing of legislation by other member states makes it necessary to use the override to avoid undue delay in the Council. But the Government used the override 22 times during its own EU Presidency in the second half of 2005 – when it controlled the timings of meetings and decisions itself.<sup>30</sup>

The Reserve does not require ministers to give information about their negotiating position in advance of decisions made at the Council. The ESC monitors the operation of the Reserve, and has a policy of calling Ministers who override it without good cause to give oral evidence. However, by this stage, Parliament has obviously lost its opportunity to influence the Government's position in the Council.

When Joan Ryan, the former Home Office minister, approved the Council's decision on the transfer of prisoners before it had been debated, the Committee produced a critical report, but Ms Ryan issued her defence and remained in her post. The ESC had expressed concern about three main issues. First, whether there was a need for the proposal given the existence of the Council of Europe Convention. Second, whether it was right to provide for the compulsory transfer of prisoners. Third, whether the UK should maintain the safeguard of dual criminality. Regarding the latter issue of dual criminality, Joan Ryan confirmed to the Committee that it could result in a British national, convicted abroad, being transferred back to the UK against his will and imprisoned here for conduct which was not criminal in this country. Due to these concerns, the Committee ruled that the decision should be debated by the House of Commons before the Government agreed the proposal. Despite several warnings from the ESC, Joan Ryan attended the Council meeting five days before the debate, and afterwards declared: 'the Council ... secured a general approach on a Framework Decision which will provide for the exchange of prisoners between Member States'.<sup>31</sup>

### **Other Weaknesses**

*The Opportunity for Parliament to Scrutinise Comes Too Late* The Committee becomes aware of proposed European legislation around two years in advance. Although the Committee does not receive proposals in detail this far in advance, it gives the opportunity for preparatory work. In addition, the Government has a responsibility to ensure that the Committee is aware of European consultation exercises at the earliest possible opportunity.

However, it is a common complaint that the opportunity to scrutinise European legislation comes too late for it to have any significant impact on the legislation itself. This is because the information the Committee receives in advance is

---

<sup>30</sup> Open Europe, *Getting a Grip: Reforming EU Scrutiny at Westminster*, April 2006, p.6

<sup>31</sup> <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmeuleg/41-xix/4103.htm#a6>

insufficiently detailed. By the time the Committee receives proposals in full, they are already too well-developed for the ESC's recommendations to carry any weight.

*The Government's In-Built Majority* The ESC has sixteen members, of whom nine are Labour, five are Conservatives, one is a Liberal Democrat and one is a Scottish Nationalist. This matters, because the Government's in-built majority means that the Committee regularly clears documents which ought to be debated by the House. In the following sample of cases (from between 22 November 2006 and 28 February 2007), members of the ESC, usually Conservative, tried to ensure that the documents would be debated in European standing committees, but were voted down by the Labour majority:

**Table 2 Sample of Documents where a Debate in the Standing Committees was Opposed**

1	Commission Communication: Action Programme for reducing administration burdens in the European Union
2	Commission Communication to the Spring European Council: Implementing the renewed Lisbon Strategy for growth and jobs — a year of delivery
3	Draft Council Regulation establishing a rapid response and preparedness instrument for major emergencies
4	Draft Council Decision establishing a Community Civil Protection Mechanism

*ESC Deliberation in Private* The European Scrutiny Committee takes evidence in public but deliberates in private. Legislation at European level is itself passed in a remarkably secretive fashion; it is surely undesirable that it should be scrutinised in a similarly secretive way by Parliament.

In December 2003, the ESC wrote to the Leader of the House of Commons asking for the standing orders to be changed so that, when it was considering which documents to recommend for further debate and which to clear for scrutiny, it could deliberate in public. The Modernisation Committee agreed to this principle in 2005 as long as the ESC did not object. Although the ESC subsequently dropped its request, the Modernisation Committee still believes there can be some benefits from some public access to deliberative meetings which relate to the sifting process.

*Weak European Standing Committees* Documents recommended by the Scrutiny Committee for debate are referred to one of the three European Standing Committees. The fact that there are only three Standing Committees means that there can only be limited departmental expertise on each of them. For instance, Standing Committee 'B' deals with the following issues: Treasury (including HMRC); Work and Pensions; Foreign and Commonwealth Office; International Development; Home Office; Department for Constitutional Affairs (excluding

those responsibilities of the Scotland and Wales Offices); together with any matters not otherwise allocated to a European Standing Committee.<sup>32</sup>

Moreover, average attendance at the Standing Committees consists of around eight or nine of the committees' 'core' members, and other Members of the House attend only rarely. If this secondary stage of scrutiny is to be improved, we need a process that combines rigour, expertise, and seriousness from those who are responsible for it.

Peter Hain admitted, when Leader of the House of Commons: 'the European Standing Committees have not worked out as it was hoped. It is hard to persuade Members to serve on them. Few other Members think them worth attending. Their proceedings have a ritualistic quality, and are largely devoid of much political interest; yet they consume a lot of time and effort. There is a very strong case for reform.'<sup>33</sup>

*Ignoring the Committees' Amendments* Once the Standing Committee has reported its resolution, its Chairman makes a formal oral statement to the Committee on the agreed resolution. This is then put to the House as a Government motion. Although the Committee may amend the original resolution put forward to it by the Government, this does not necessarily have an impact on what is put before the House: the Government may table its original form of the motion, the amended form, or something else entirely.<sup>34</sup> The vote can be taken forthwith without debate, although amendments can be tabled and, if selected by the Speaker, debated and voted upon. Any division is usually a deferred one. Once the House has voted the document is cleared. Therefore, many European documents are passed without any substantive debate on the floor of the House and often without knowledge of the European Standing Committee's amendments or concerns.

In theory, the system allows for rigorous scrutiny of EU documents in Committee and on the floor of the House. In truth, it has failed. The procedure is often used as an example of the weakness of the scrutiny in the House of Commons. This in turn is used to explain why only a limited number of Members take an interest in the regular scrutiny of European legislation.

---

<sup>32</sup> They deal with the following topics:

- Committee A: Environment, Food & Rural Affairs; Transport; Communities and Local Government; Forestry Commission; and analogous responsibilities of the Scotland, Wales and Northern Ireland Offices
- Committee B: Treasury (including HMRC); Work and Pensions; Foreign and Commonwealth Office; International Development; Home Office; Department for Constitutional Affairs (excluding those responsibilities of the Scotland and Wales Offices which fall to European Standing Committee A); together with any matters not otherwise allocated to a European Standing Committee
- Committee C: Trade & Industry; Education and Skills; Culture, Media & Sport; Health

<sup>33</sup> Open Europe, *Getting a Grip: Reforming EU Scrutiny at Westminster*, April 2006, p.5

<sup>34</sup> Modernisation Committee, *Scrutiny of European Business*, 16 March 2005, <http://www.publications.parliament.uk/pa/cm200405/cmselect/cmmodern/465/465i.pdf>, p.19

*Too Few Documents Debated* The ESC does, in a few cases, recommend that a document should be debated on the floor of the House rather than in Standing Committee. However, it does not automatically follow that a debate will then take place. Debates only take place if the Government is willing to provide the time. Standing orders provide that debates last for an hour and a half, but the Government can agree to hold longer debates at the request of the ESC.

In an average year, the Committee considers about 1,000 documents. It finds about 500 to be of political or legal importance, and reports substantively upon them. It recommends about fifty documents for debate in European Standing Committees, and about six for debate on the floor of the House:<sup>35</sup>

**Table 3 Documents Examined**

Year	Documents examined	Documents deemed to be of legal/political significance	Documents recommended for debate in Standing Committee	Documents recommended for debate on Floor of House	Debates in Standing Committee	Debates on floor of house
2002	1220	535	77	9	33	2
2003	1080	535	43	5	26	1
2004	1002	559	50	3	34	2
2005	843	407	51	8	31	2
2006	1002	494	43	7	28	4

*Too Little Time for Debate* Until 1985, oral questions on European issues on the floor of the House of Commons were routine. Yet despite the importance of European legislation, there is now no allotted time for questions relating to the European Union in the House of Commons.

*The ESC Can Only Call British Ministers* The ESC cannot call European politicians or officials to give evidence. While MPs, peers and British MEPs meet through the 'Tripartite', a cross-party group which meets three times per year, there is nothing in the European treaties that allows for European politicians or officials to be held accountable by the national parliaments of member states. However, there is no reason why the Committee should not be able to invite them.

*No Scrutiny During Recess* The ESC meets only when the House of Commons is sitting. During the summer the Chairman of the Committee sifts relevant documents, but if important issues arise, the Committee is unable to debate them.

---

<sup>35</sup> European Research Group, *The system of scrutinizing European legislation in the House of Commons and some of its failings*, March 2007, Table A: Scrutiny of Documents by the ESC, 2002-2006, p.4. Figures provided by ESC clerks. Clerks confirmed that the difference between the number of documents recommended for debate and the number of debates is due to more than one document being examined at some debates. The 2005 General Election disrupted the scrutiny process, hence the lower than normal figure for documents examined in that year.

The Government uses the override even more than usual on business which is placed under scrutiny during the summer recess. Parliament is usually in recess for around sixteen weeks per year, but the European Commission is only closed during August. So for twelve weeks each year, the EU can produce proposals that cannot be scrutinised by Parliament. In 2005, the Council of Ministers adopted proposals during recess, which had not been cleared by the ESC, on 68 occasions.<sup>36</sup>

*No Formal Arrangement to Scrutinise New Treaties* Given the obvious weaknesses in the British system of scrutiny, the absence of any formal arrangement for Parliament to respond to important European decisions, such as treaties, is painfully serious.

In response to the establishment of the Convention on the Future of Europe, a new Committee, the Standing Committee on the Convention, was set up in June 2002. Its remit was to consider reports from the United Kingdom Parliamentary representatives to the Convention. The Committee consisted of the representatives themselves and members of the ESC and the Foreign Affairs Committee. Any other Member of the House was allowed to attend and speak. Members of the House of Lords were allowed to participate in the Committee's proceedings on the same basis as the MPs who were not core members of the Committee.

In 2003 when the Standing Committee had finished its work on the Convention, a successor, the Committee on the Inter-Governmental Conference, was established. This Committee followed identical procedures to the Committee on the Convention, but with Ministers, rather than the Convention Representatives, attending to answer questions.

These Committees set a good precedent, but the Convention was of course a one-off, and the Committees were not a permanent feature of the British system of scrutiny. The Government recommended that a successor Committee be established as a permanent part of the EU scrutiny system, but this has not yet happened. For the 2007 European Reform Treaty, and the earlier Brussels Inter-Governmental Conference which brokered the original agreement, no such procedure was in place.

These are the weaknesses inherent in the UK's system of scrutiny. They are many and they are serious. But there is no reason for them to persist. As the next chapter shows, there are many scrutiny systems in other EU member states that are far more robust.

---

<sup>36</sup> Open Europe, *Getting a Grip: Reforming EU Scrutiny at Westminster*, April 2006, p.8

# III

## How Other Countries Scrutinise

---

Some EU member states have stronger and more transparent arrangements that give their national Parliaments more control over European measures. Denmark, for example, obliges ministers to obtain a mandate for negotiation from the Danish Parliament's European Affairs Committee. The Danish system is discussed in more detail below.

In other countries too there is greater scrutiny in advance of Council meetings with national Parliaments or their Committees mandating their Governments. In Finland, the Grand Committee mandates the Government before Council meetings. In Sweden the Advisory Board discusses the Government's position prior to the Council of Ministers. In Austria too, the *Hauptauschuss* and *EU-Ausschuss* decide on mandates on behalf of Parliament. They issue voting instructions for the Council of Ministers. A full table setting out the arrangements across the EU member states is in Appendix F.

*The Danish European Affairs Committee* In Denmark, ministers must appear before the European Affairs Committee of the Folketing to obtain a mandate for negotiation. The Danish Accession Act (section 6(2)) states:<sup>37</sup>

The government has a duty to inform 'the European Affairs Committee of the Folketing of proposals for Council resolutions that will be directly applicable in Denmark or for whose fulfilment the assistance of the Folketing is required'.

'The government shall consult the Market Committee of the Folketing in questions relating to EC policy of a major importance so that the regard for the influence of the Folketing as well as the freedom to negotiate are respected'.

'Prior to negotiations in the EC Council of Ministers on decisions of a wider scope, the government submits an oral mandate for negotiation to the Market Committee. If there is no majority against the mandate, the government negotiates on this basis'.

---

<sup>37</sup> The European Affairs Committee of the Folketing, *Parliamentary control of government policy in the EU*, July 2002. [http://www.euo.dk/upload/application/pdf/e45978e6/euu\\_engelsk.pdf](http://www.euo.dk/upload/application/pdf/e45978e6/euu_engelsk.pdf)

### **Gaining a mandate in the Danish European Affairs Committee**

- The Committee has seventeen members and twelve deputies.
- The Committee meets every Friday through the year, except August, to discuss the meetings held by the Council of Ministers the following week.
- Initially, ministers present less controversial issues, for which they do not need to request a mandate.
- Then, the minister declares how the Government intends to vote and requests a mandate from the Committee.
- No formal vote is held but if the Committee Chairman concludes at the end of discussions that there is not a majority in favour of the Government's position, there is no mandate for negotiation.
- In deciding whether there is a majority against or in favour, the Chairman has to take into account the size of the party represented by each Committee member. The mandate for negotiation is only rejected if spokesmen for parties with a total of ninety seats (more than half the 179 seats in the Folketing) or more have expressed their opposition to it.
- These meetings are held in private.
- Afterwards, the Committee publishes a 'decision protocol' setting out on which items on the agenda the Government presented a mandate for negotiation. The specific mandate is not revealed.
- The relevant minister sends a summary of the Council meeting to the Committee. The summary is available to the public. The Secretariat General of the Council also sends out a press release.
- The two documents are used by the Committee to check that the minister has kept to the mandate. The Committee can ask further questions, or call the minister for evidence. If it is unhappy, the Committee can trigger a debate in the Folketing, followed by a vote of censure.

# IV

## Putting Things Right

---

On European matters, the relationship between government and Parliament is not unbalanced; it is broken. Radical change is needed to allow Parliament and its scrutiny committee to fulfil its role. In particular there should be:

**Statutory Scrutiny Reserve:** The Scrutiny Reserve should be put on a statutory basis, so that ministers are required to come before the European Scrutiny Committee before negotiations at the European Council. It would therefore be impossible to override it. Ministers should have to set out their negotiating positions to the Committee, and gain its approval. It makes sense for this to be conducted in private, so that ministers are not put at a disadvantage in Council negotiations. The minutes of these meetings could then be made public after the negotiations are complete. This system would need to be backed by clear sanctions, such as a formal censure or the resignation of the minister in question.

This would work along similar lines to the Danish model set out above, although the Committee would need to recognise that there would be occasions on which ministers would need to be given a degree of flexibility.

**A Fixed Timetable for Advance Notice:** There should be a fixed and clear timetable to enable the Committee to scrutinise any proposals. At the moment, by the time the ESC receives proposals in detail, they are already too well-developed for the Committee's recommendations to have any influence. To be effective, this timetable must operate between the original publication of the proposals in their earliest form, and their agreement in the Council of Ministers. It is only in this time-span that there can be a degree of effective scrutiny. Undoubtedly, some will argue that this scrutiny will slow down the European legislative process. But proper scrutiny takes time, and that is a price worth paying for democratic oversight.

**Power to Force a Debate and Vote:** Documents that are important enough to be referred by the ESC to a Standing Committee can still be passed without any substantive debate on the floor of the House and often without wider knowledge of the European Standing Committee's amendments or concerns. This is because if the Standing Committee does not agree a motion with the Government, a Government motion is always tabled. If there is no agreement between the European Scrutiny Committee and the Government, the House should vote on both the Government's motion, and the resolution favoured by the Committee. The Committee should have the right to force a longer debate and vote on the floor of the House for particularly controversial measures.

**Power to Challenge the Decision of the ESC:** The Government has an in-built majority on the European Scrutiny Committee, and there have been occasions when Labour MPs have used their majority to block the referral of documents to Standing Committees. However, it would be odd for the largest party in Parliament to form a minority grouping on the Committee; it is appropriate for the governing party to retain its majority. Other measures proposed here which open up the process and give the Committee more muscle should ensure that the majority enjoyed by the governing party is not abused.

However, if there is strong feeling that the majority has been abused, there should be an escape valve. There should be a procedure for an appropriate number of MPs to table a motion challenging the Committee's decision and force a vote on the floor of the House. The procedure should be a last resort and be limited to serious issues that are in the national interest. The threshold should therefore be high (for example, 150 MPs).

**Public Deliberation:** The ESC takes evidence in public but deliberates in private. Given that European legislation is passed in such a secretive way, it is surely appropriate that it should at least be scrutinised in an open manner. The ESC should deliberate in public, although it makes sense to ensure that ministerial negotiating positions remain secret until after the subsequent meeting of the Council of Ministers. Concerns have been expressed that holding meetings in public might lead to its members feeling pressed to recommend more documents for debate than strictly merit it. This seems unlikely to be a serious problem, and is not used as an excuse for such secrecy in other Parliamentary business.

**Stronger Standing Committees:** The European Standing Committees suffer from a lack of departmental expertise and poor attendance. It does not seem appropriate to increase the number of Standing Committees. This might seem to be one way of addressing the issue of expertise, but if the existing three Committees are only poorly attended, increasing the number of Standing Committees would exacerbate the problem of attendance.

One solution might be for one member of each Departmental Select Committee to sit as a member of the corresponding Standing Committee, or vice versa. This would ensure an easy flow of knowledge and expertise between the two bodies, but the improvement in expertise caused by such a reform would be limited. A more practical solution would be to give the European Scrutiny Committee the power to require the relevant Departmental Select Committee, or a small, specialist sub-group of the Committee, to scrutinise the detail of a particular piece of legislation. This would mean the abolition of the European Standing Committees, and might require larger memberships and greater resources for Departmental Select Committees.

**More Time for Debating European Issues:** Given the significance of European legislation for life in Britain, it is odd that European issues are debated so rarely on the floor of the House. The Minister for Europe is only called to account during Questions to the Foreign Secretary. It would therefore add to the scrutiny process if Questions to the Minister for Europe were introduced.

**Parallel Times for Sitzings of the ESC and EU Sessions:** At present, the ESC meets only when the House of Commons is sitting. During the summer, the Chairman sifts relevant documents, but the Committee is unable to debate them. In 2005, the Council of Ministers adopted 68 proposals during recess, which were not cleared by the ESC. In domestic policy, it would be unthinkable that the Government should pass law without consulting Parliament; so it should be in European legislation. The European Scrutiny Committee must therefore sit as long as EU institutions are in session.

**ESC Powers to Call EU Witnesses:** The ESC cannot call European politicians or officials to give evidence. But given their important role in European policy-making, and their obviously different perspectives to British ministers, it makes sense for the Committee to call them to give evidence. While there is nothing in the European treaties that allows for European politicians or officials to be held accountable by the national parliaments of member states, there is no reason why the Committee should not be able to invite them. Indeed, the British Government might push for this to be made explicit in future treaties. A regular meeting with UKREP officials would add to the transparency of the process, as would meetings with European Parliament rapporteurs and the lead UK MEPs.

**Formal Arrangements for Responding to New European Treaties:** There are currently no formal arrangements for Parliament to respond to important European decisions, such as treaties. Arrangements were put in place for Standing Committees to scrutinise the Convention on the Future of Europe and the subsequent Inter-Governmental Conference. The Government recommended that a successor Committee be established as a permanent part of the EU scrutiny system, but this has not yet happened. Such a Committee should be established, and the Prime Minister should be compelled to make a statement to the House before, as well as after, Intergovernmental Conferences. Any future treaty that involves the transfer of further powers from Britain to the EU should be subject to a referendum.

# V

## Restoring Parliamentary Sovereignty

---

Our feeble system of scrutiny undermines Parliament's ability to check or restrain the Government's actions in Europe. In our constitution, Parliament is supposed to be sovereign, but this weakness means that in practice it is not. We therefore need a system that gives Parliament real powers over ministers, enough time to scrutinise new EU laws, and the transparency to restore public trust in the process.

### Conservative Proposals

1. A statutory Scrutiny Reserve, so that ministers gain Parliamentary approval before negotiating in the Council of Ministers – accepting the need, where appropriate, for ministers to be given flexibility in negotiations
2. A fixed timetable for the government to notify the European Scrutiny Committee of new proposals
3. New powers for the Scrutiny Committee to force a debate and vote, in the House of Commons, if it does not agree with government motions
4. New powers for MPs to challenge the Scrutiny Committee and force a debate on the floor of the House
5. Public meetings of the European Scrutiny Committee
6. An end to the failed European Standing Committee system
7. Time allocated to European issues to be debated on the floor of the House, through Oral Parliamentary Questions to the Minister for Europe
8. New sitting times for the European Scrutiny Committee, to match those of the European institutions
9. European politicians and officials to be invited to give evidence to the Scrutiny Committee
10. A new process for intergovernmental negotiations and new European treaties: a committee for new treaties, Prime Ministerial statements *before* as well as after IGCs, and referendums on treaties that transfer further powers from Britain to the EU

## Appendices:

---

**A: The Procedures**

**B: Co-Decision Procedure**

**C: Orders of Reference of the European Standing Committee**

**D: Resolution of the House of 17 November 1998**

**E: Scrutiny in the House of Lords**

**F: Scrutiny Systems in Other Parliaments**

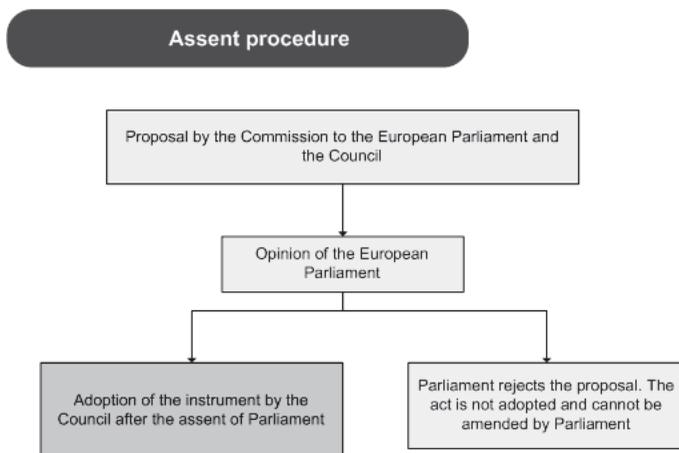
### Appendix A: Procedures<sup>38</sup>

The decision-making procedures comprise the consultation procedure, the cooperation procedure, the co-decision procedure and the assent procedure.

#### 1. Assent procedure

The assent procedure, which was introduced by the Single European Act, gives Parliament the possibility of expressing its approval or disapproval of certain Council instruments. There are certain matters on which the Council cannot legislate unless Parliament gives its consent by an absolute majority of its members. The assent procedure, which represents as it were a right of veto for Parliament, was originally intended to apply only to the conclusion of association agreements and the examination of applications to join the European Community. The areas in which the assent procedure applies at present are as follows:

- enhanced cooperation (Article 11(2)),
- specific tasks of the ECB (Article 105(6)),
- amending the Statute of the European System of Central Banks (Article 107(5)),



---

<sup>38</sup> [http://eur-lex.europa.eu/en/droit\\_communaire/droit\\_communaire.htm](http://eur-lex.europa.eu/en/droit_communaire/droit_communaire.htm)

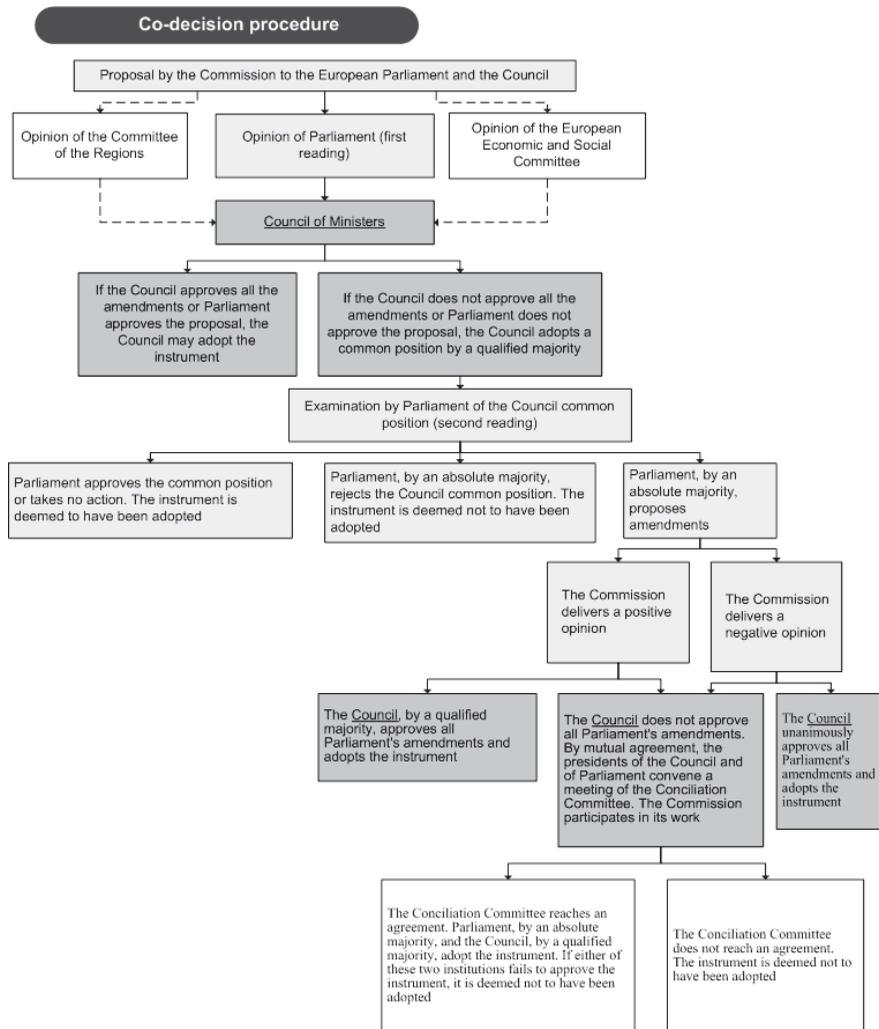
- Structural Funds and the Cohesion Fund (Article 161),
- uniform procedure for elections (Article 190(4)),
- certain international agreements (Article 300(3)),
- violation of human rights (Article 7 of the Treaty on European Union),
- accession of new Member States (Article 49 of the Treaty on European Union).

## *2. Co-decision procedure*

The co-decision procedure, which was introduced by the Treaty on European Union, was conceived as an extension of the cooperation procedure. Under this procedure, the Council cannot adopt a common position if the process of conciliation with Parliament fails. If no agreement is reached, the legislative process is liable to be broken off.

Co-decision has become by far the most important procedure in legislative practice. It concerns the following areas:

- non-discrimination on grounds of nationality (Article 12),
- combating discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation (Article 13(2)),
- freedom of movement and of residence (Article 18(2)),
- free movement of workers (Article 40),
- social security for migrant workers (Article 42),
- right of establishment (Article 44(1), Article 46(2), Article 47(1) and (2)),
- visas, asylum, immigration and other policies relating to the free movement of persons (Article 67(4) and (5)),
- transport (Article 71(1), Article 80),
- the internal market (Article 95),
- employment (Article 129),
- customs cooperation (Article 135),
- social policy (Article 137(2)),
- equal opportunities and equal treatment (Article 141(3)),
- implementing decisions relating to the European Social Fund (Article 148),
- education (Article 149(4)),
- culture (except recommendations) (Article 151(5)),
- public health (Article 152(4)),
- consumer protection (Article 153(4)),
- trans-European networks (Article 156),
- industry (Article 157(3)),
- economic and social cohesion (Article 159),
- European Regional Development Fund (Article 162),
- research and technological development (Article 166(1), Article 172),
- vocational training (Article 150(4)),
- the environment (Article 175(1) and (3)),
- development cooperation (Article 179(1)),
- political parties at European level (Article 191),



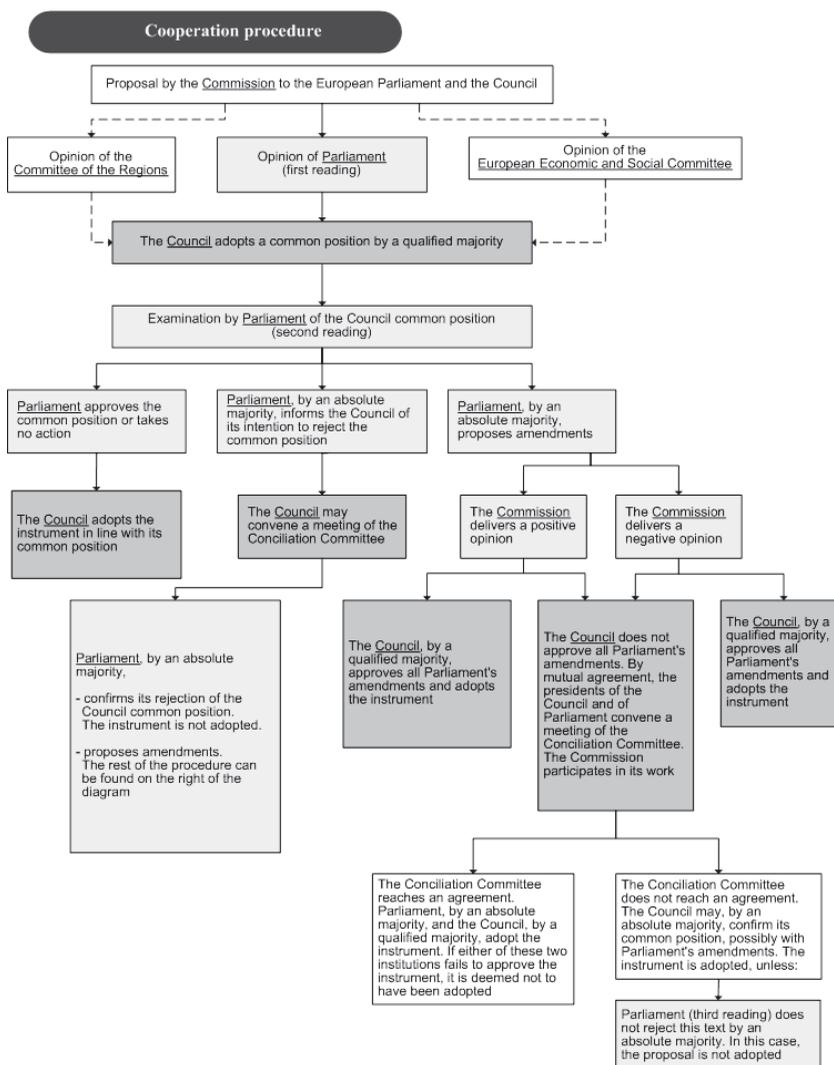
- access to the institutions' documents (Article 255(2)),
- fraud (Article 280),
- statistics (Article 285),
- establishing a supervisory body for data protection (Article 286).

### 3. Cooperation procedure

The cooperation procedure was introduced by the Single European Act to step up the role of the European Parliament compared with the consultation procedure. Parliament can make amendments to a Council common position but, unlike the co-decision procedure, the final decision lies with the Council alone.

The cooperation procedure applies exclusively to the following areas:

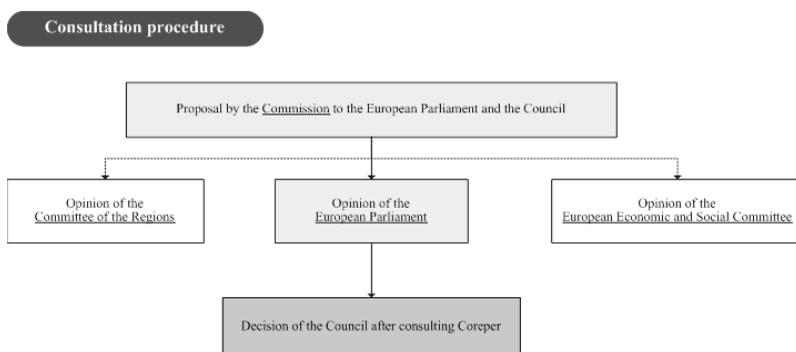
- rules for the multilateral surveillance procedure (Article 99(5)),
- prohibition on privileged access to financial institutions (Article 102(2)),
- prohibition on assuming liability for Member States' commitments (Article 103(2)),
- measures to harmonise the circulation of coins (Article 106(2)).
- Since the entry into force of the Treaty of Amsterdam, all other areas previously subject to this procedure have come under the co-decision procedure.



#### 4. Consultation procedure

Since the introduction of the cooperation procedure and the co-decision procedure, the importance of the consultation procedure has declined. The characteristic feature of the consultation procedure is a division of tasks between the Commission and the Council that can be summed up in the phrase ‘the Commission proposes, the Council disposes’. However, before the Council can take a decision, certain stages have to be completed, in the course of which, besides the Commission and the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions may also have their say, depending on the subject of the regulations in question.

The consultation procedure now applies only to cases that are not expressly subject to the cooperation or co-decision procedures.



#### Appendix B: Co-Decision Procedure

Treaty establishing the European Community (Nice consolidated version) – Part Five: Institutions of the Community – Title I: Provisions governing the institutions - Chapter 2: Provisions common to several institutions - Article 251 - Article 189b - EC Treaty (Maastricht consolidated version) - Article 251 –

1. Where reference is made in this Treaty to this Article for the adoption of an act, the following procedure shall apply.
2. The Commission shall submit a proposal to the European Parliament and the Council.

The Council, acting by a qualified majority after obtaining the opinion of the European Parliament:

- if it approves all the amendments contained in the European Parliament’s opinion, may adopt the proposed act thus amended,
- if the European Parliament does not propose any amendments, may adopt the proposed act,

- shall otherwise adopt a common position and communicate it to the European Parliament. The Council shall inform the European Parliament fully of the reasons which led it to adopt its common position. The Commission shall inform the European Parliament fully of its position.

If, within three months of such communication, the European Parliament:

- (a) approves the common position or has not taken a decision, the act in question shall be deemed to have been adopted in accordance with that common position;
  - (b) rejects, by an absolute majority of its component members, the common position, the proposed act shall be deemed not to have been adopted;
  - (c) proposes amendments to the common position by an absolute majority of its component members, the amended text shall be forwarded to the Council and to the Commission, which shall deliver an opinion on those amendments.
3. If, within three months of the matter being referred to it, the Council, acting by a qualified majority, approves all the amendments of the European Parliament, the act in question shall be deemed to have been adopted in the form of the common position thus amended; however, the Council shall act unanimously on the amendments on which the Commission has delivered a negative opinion. If the Council does not approve all the amendments, the President of the Council, in agreement with the President of the European Parliament, shall within six weeks convene a meeting of the Conciliation Committee.
  4. The Conciliation Committee, which shall be composed of the Members of the Council or their representatives and an equal number of representatives of the European Parliament, shall have the task of reaching agreement on a joint text, by a qualified majority of the Members of the Council or their representatives and by a majority of the representatives of the European Parliament. The Commission shall take part in the Conciliation Committee's proceedings and shall take all the necessary initiatives with a view to reconciling the positions of the European Parliament and the Council. In fulfilling this task, the Conciliation Committee shall address the common position on the basis of the amendments proposed by the European Parliament.
  5. If, within six weeks of its being convened, the Conciliation Committee approves a joint text, the European Parliament, acting by an absolute majority of the votes cast, and the Council, acting by a qualified majority, shall each have a period of six weeks from that approval in which to adopt the act in question in accordance with the joint text. If either of the two institutions fails to approve the proposed act within that period, it shall be deemed not to have been adopted.
  6. Where the Conciliation Committee does not approve a joint text, the proposed act shall be deemed not to have been adopted.
  7. The periods of three months and six weeks referred to in this Article shall be extended by a maximum of one month and two weeks respectively at the initiative of the European Parliament or the Council.

*Treaty establishing the European Community (Nice consolidated version)*

*Official Journal C 325 , 24/12/2002 P. 0133 – 0134*

*Official Journal C 340 , 10/11/1997 P. 0279 - Consolidated version*

*Official Journal C 224 , 31/08/1992 P. 0066 - Consolidated version*

## **Appendix C: Orders of Reference of the European Standing Committee**

Standing Orders of the House of Commons, Public Business 2007

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 Standing 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 Orders No. 16 (Proceedings under an Act or on European Union documents), No. 89 (Procedure in standing committees) and No. 119 (European Standing 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 subcommittees any of the matters referred to the committee.
- (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 minutes of 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 subcommittees 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.

*Standing Orders of the House of Commons, Public Business 2007*

<http://www.publications.parliament.uk/pa/cm200607/cmstords/405/40501.htm>

#### **Appendix D: Resolution of the House of 17 November 1998 (the scrutiny reserve resolution)**

Resolved, That

- (1) No Minister of the Crown should give agreement in the Council or in the European Council to any proposal for European Community legislation or for a common strategy, joint action or common position under Title V or a common position, framework decision, decision or convention under Title VI of the Treaty on European Union:—
  - (a) which is still subject to scrutiny (that is, on which the European Scrutiny Committee has not completed its scrutiny) or
  - (b) which is awaiting consideration by the House (that is, which has been recommended by the European Scrutiny Committee for consideration pursuant to Standing Order No.119 (European Standing Committees) but in respect of which the House has not come to a Resolution).
- (2) In this Resolution, any reference to agreement to a proposal includes—
  - (a) agreement to a programme, plan or recommendation for European Community legislation;
  - (b) political agreement;

- (c) in the case of a proposal on which the Council acts in accordance with the procedure referred to in Article 251 of the Treaty of Rome (co-decision), agreement to a common position, to an act in the form of a common position incorporating amendments proposed by the European Parliament, and to a joint text; and
  - (d) in the case of a proposal on which the Council acts in accordance with the procedure referred to in Article 252 of the Treaty of Rome (co-operation), agreement to a common position.
- (3) The Minister concerned may, however, give agreement—
- (a) to a proposal which is still subject to scrutiny if he considers that it is confidential, routine or trivial or is substantially the same as a proposal on which scrutiny has been completed;
  - (b) to a proposal which is awaiting consideration by the House if the European Scrutiny Committee has indicated that agreement need not be withheld pending consideration.
- (4) The Minister concerned may also give agreement to a proposal which is still subject to scrutiny or awaiting consideration by the House if he decides that for special reasons agreement should be given; but he should explain his reasons—
- (a) in every such case, to the European Scrutiny Committee at the first opportunity after reaching his decision; and
  - (b) in the case of a proposal awaiting consideration by the House, to the House at the first opportunity after giving agreement.
- (5) In relation to any proposal which requires adoption by unanimity, abstention shall, for the purposes of paragraph (4), be treated as giving agreement.

### **Appendix E: Scrutiny in the House of Lords**

Whereas the European Scrutiny Committee has a detailed order of reference which sets out the mechanics of the scrutiny system, the House of Lords European Union Committee has a much broader remit: ‘to consider European Union documents and other matters relating to the European Union’<sup>39</sup>.

The Committee has eighteen members and operates largely through sub-committees. Other peers are co-opted into these sub-committees so that around seventy members of the Lords are involved with European work in any one session.

The House of Lords EU Committee conducts more detailed scrutiny of fewer documents than the ESC.

---

<sup>39</sup> Companion to the Standing Orders and guide to the Proceedings of the House of Lords, 19th Edition (2003), paragraph 9.51.

Unlike the ESC, the Chairman of the EU Committee sifts the documents and decides which ones need further debate in a sub-committee. This is generally around a quarter of the total number of documents.

There are seven sub-committees:

- Economic and Financial Affairs and International Trade (A)
- Internal Market (B)
- (including communications, energy, transport, research and space)
- Foreign Affairs, Defence and Development Policy (C)
- Environment and Agriculture (D)
- Law and Institutions (E)
- Home Affairs (F)
- Social Policy and Consumer Affairs (G)
- (including health, worker protection and education)

Each committee considers the documents referred to it and decides which ones to examine more closely by conducting an inquiry. The committees consider each document using three tests for the implications of the proposals:

- Subsidiarity: whether they are properly matters which the EU should be legislating for
- Regulatory impact assessment: whether they have been subject to a proper cost analysis
- Comitology: whether they inappropriately delegate power to the EU official committees.

After considering each document, the sub-committee may make a report after taking written and oral evidence, correspond with ministers on documents that do not need a full enquiry, or clear the document from scrutiny without further comment.

The procedures of the sub-committees are similar to House of Commons select committees, gathering written and oral evidence before reporting to the House. Sub-committee reports must be approved by the EU Committee itself, after which the government is required to respond within two months. As well as EU documents the EU Committee can conduct inquiries into other matters relating to the EU.

The House of Lords EU Committee has, like the ESC, a scrutiny reserve resolution. There is a range of ways that the Committee can clear the document by:

- The Committee's chairman in his weekly sift
- The relevant sub-committee, deciding it needs no further scrutiny and no report
- Reporting it to the House of Lords and holding a debate
- A decision following correspondence between the Committee and ministers.

## Appendix F

### Scrutiny systems in other parliaments<sup>40</sup>

Strong mandating system
Mandating system
Weak mandating system
Document-based system
Weak document-based system
Weak advisory role

Member state	Role of scrutiny committee	Scrutiny reserve?	Flow of information	Transparency	Effectiveness
Denmark	<i>Euroaudvalget</i> : Sees all EU proposals at early stage, top level briefing on strategic background, mandates Government before it votes at Council of Ministers, focused on formulation and issuing voting instructions for Council	Yes	Meetings held in secret; therefore committee has access to high level documents	Some meetings held in public, majority held in secret	Extremely effective, willing to use powers, Government can not deviate from mandate, must consult Committee to obtain new mandate
Finland	<i>The Grand Committee</i> : Mandates government before Council meetings based on proposals by sectoral committees. Mixed system with elements of document and council based. Government adopts parliament's position on all proposed EU acts	Yes	Only receives proposals for legislation that are within the Parliament's sphere of competence. Other documents depend on Government's discretion	Televised, unless in closed session. Meetings closed to public. Documents become public after meeting	Government can deviate from mandate under some circumstances, but must explain action to committee and Parliament

<sup>40</sup> Open Europe, *Getting A Grip: Reforming EU Scrutiny at Westminster*, April 2006, pp.28-30

Sweden	<i>Advisory Board:</i> Discusses Government's position prior to Council of Ministers. Is focused on formulation and issuing voting instructions. Mandates are politically but not legally binding	Yes	All information on European affairs but not all information	Documents and records of meetings published on website	Government can deviate from mandate but is usually unwilling to do this
Austria	<i>Hauptausschuss and EU-Ausschuss:</i> Decides on mandates on behalf of Parliament. Is focused on formulation and issuing voting instructions for Council of Ministers	Yes	Does not systematically receive information on the position of government on EU documents	Open meetings except when discussing confidential material	Has ability to issue a 'binding opinion' constituting a mandate that the government cannot negotiate. However has been reluctant to use it; Government can deviate if has compelling reason
Estonia	<i>European Union Affairs Committee:</i> Government must present negotiating position to Committee. Responsible for mandating Government on basis of sectoral Committees	Yes	Draft legislation. But can request other information on 'other EU affairs of significance'	No public meetings, but minutes are published	Government must follow opinion, if not must explain why. Only formed in March 2005 when its role and competency was extended, therefore not enough time to see its full potential
Slovakia	<i>Committee on European Integration:</i> Government obliged to present negotiated position to Committee, which adopts binding positions for government	Yes, fourteen days	Most EU documents	Closed meetings	Binding decisions and plans to expand powers to ask other parliamentary committees to develop an opinion on EU drafts
Lithuania	<i>European Affairs committee:</i> Document-based system but can mandate Government, examine and present	Yes	Draft legislation, but can request other information	Meetings generally in public	Only recently formed therefore not enough time to see its potential

Hungary	<i>Committee on European Integration Affairs:</i> Focuses on the supervision of Government and revision of the process of approximation of laws. Document-based system but can mandate Government, only politically binding	No	Set up database to deal with information. Receives most EU documents	Some closed meetings, most documents made public	Government can deviate from mandate under some circumstances, but must explain action
Germany	<i>Committee for the Affairs of the European Union:</i> Committee deliberates on EU matters, drafts positions and suggests recommendations. Government obliged to inform, vote and take account of committee's view	Yes	Receives information at a late stage of legislative process	Documents published but not minutes, only a few meetings held in public	Emphasis on exploring opinions of experts, no override powers, has power to move an amendment to a recommendation for a decision submitted by a Committee but has never used it, formal view given in 5% of cases, informally in the rest, usually only deliberates 5% of EU documents
Poland	<i>The European Committee:</i> Preliminary review of acts. Government obliged to present negotiated position to committee which takes positions and expresses opinions. Position should form basis for Government; if it deviates it must explain	Not officially	Yes but limited	Meetings in public, all documents released into public domain	Committee can only express opinion which the Government does not have to accept. Scrutiny reserve not official under the 2004 act. However Polish ministers do tend to cite the reserve principle
Latvia	<i>European Affairs Committee:</i> Government obliged to present negotiated position to Committee, which reviews and approves negotiating position	No	Receives all draft EU documents, but scrutiny time is limited	Meetings in public, minutes and documents made public	Good co-operation between Government and Parliament e.g. access to governmental EU database on EU legislation, agendas, government positions and reports

France	<i>Delegation for the European Union:</i> Examines proposals of European acts and directives and monitors EU activity	Yes, one month	Limited to EU documents that have a legislative character, usually 80%, only informed about the rest	Meetings are generally closed, minutes and documents are made public	Problems of timing. Delays sometimes result in poor or late comments. Meets before Council meetings
UK	<i>European Scrutiny Committee:</i> Document-based system, decides what is to be debated, and reports to the House on the legal and political importance of EU documents	Yes, but not statutory	All documents of the EU	Meetings generally in public and most documents are public	Weak system where scrutiny reserve is not statutory. Has made recent efforts to strengthen the Committee
Malta	<i>Standing Committee on Foreign and European Affairs:</i> Close to UK system, oversees that the explanatory memoranda have the effects they say they will	Yes, but not statutory	Documents passed to the Committee	Meetings in private, audio recordings, website	A weak British system that has more of an advisory role
Czech Republic	<i>Committee for European Affairs:</i> Government must inform Committee of position before Council meeting. The Committee decision is not binding but must be considered	Yes, limited to 35 days	Documents not in Czech language and short six-week period for decisions	Public access in general, but may only be filmed if requested by Committee members	Information problems and no mandating powers
Italy	<i>Committee on EU policies:</i> Examines EU draft legislation and passes information to sectoral Committees	Yes, limited to 20 days	Most EU documents, but no regular process for the transmission of proposals	Meetings generally in public	Weak Committee and ineffective system. It now has a scrutiny reserve since March 2005, but is yet to apply it

Netherlands	<i>Committee on European Affairs:</i> Responsible for informing, co-ordinating and initiating discussion of EU issues	No, except special rules on 3rd pillar	Some limits to information	Open meetings and documents made public	The legal basis for forms of information and holding Government to account is weak; no constitutional role for Parliament to act more powerfully. Has special powers over legislation that fall within freedom, security and justice, 3rd pillar empowers Committee to give assent before Council meeting
Slovenia	<i>Committee for European Affairs:</i> Government obliged to present negotiated position to Committee, discuss and formulate	No	In practice the Parliament does not receive EU documents directly from the Government	Meetings open to public, except by agreement, documents published after meetings	Weak – no adequate role in the scrutiny procedure
Ireland	<i>Joint Committee on European Affairs:</i> Scrutinises information on legislative proposals. Ministers must consider recommendations	No formal system	All legislative proposals across the three pillars 'as soon as possible,' usually within 4 weeks	Meetings in public, information on web, except for preparatory meetings with the policy adviser	Considers all Council proposals, ministers offer oral briefings before Council meetings. New powers introduced in 2002 have given it more influence but still limited, for example has no scrutiny reserve
Cyprus	<i>Committee on European Affairs:</i> Scrutinises Government decisions on European affairs, invites ministers to answer questions on bills of law and regulations of a harmonising nature	No	Limited, Government does not always complete Committee requests	Limited but moving to introduce new measures to interact with public	Meetings vary according to work, considering changes to Committee to allow more sectoral Committee involvement
Portugal	<i>Committee on European Affairs:</i> Evaluates subjects of interest and encourages greater participation by Parliament	No	All government proposals to the Council	Public meetings	Limited because only has advisory role

Greece	<i>Committee on European Affairs:</i> Adopts recommendations on EU legislation and submits them to parliament and Government. Expresses advisory opinion on any EU issue, opinion not binding, Government must answer opinion	No	Information limited to its area of competence	Public meetings, agendas on website, minutes only available on request	Limited advisory role, has irregular meetings and only has to meet twice a month
Spain	<i>Joint Committee on European Affairs:</i> Discusses EU laws, adopts resolutions to guide the action of the Government in EU matters	No	Some limits to information	Meetings usually held in private	Limited effectiveness only meets once a month, only holds hearings and debates
Luxembourg	<i>Committee on foreign and European Affairs and Defence:</i> Receives reports before and after Council and deals with institutional issues	No	Yes but limited	Meetings held in private	Committee has advisory role, irregular meetings, only when important Council meetings are imminent
Belgium	<i>Federal Advisory Committee on European Affairs:</i> Document-based system, designed to co-ordinate Parliamentary supervision of EU decision making, and promote scrutiny	No	Yes but limited	Public access to meetings generally, and documents released into public domain	Limited but advisory role