

Y PWYLLGOR MATERION EWROPEAIDD AC ALLANOL

Dyddiad: 9 Hydref 2003

Amser: 09:00

Lleoliad: Ystafelloedd Pwyllgora 3 a 4, Adeilad y Cynulliad Cenedlaethol, Bae Caerdydd

Teitl: Craffu'n gyffredinol ar ddeddfwriaeth yr UE a'r system o rybudd ymlaen llaw ynghylch sybsidiaraeth sydd yng Nghyfansoddiad Ewrop

DIBEN

1. Mae Cyfansoddiad drafft Ewrop, a ddeilliodd o'r Confensiwn ar Ddyfodol Ewrop, yn cynnwys cynigion i alluogi seneddau cenedlaethol i wrthwynebu achosion o dramgwyddo egwyddor sybsidiaraeth mewn cynigion Ewropeaidd. Mae Senedd y DU yn datblygu system i asesu a yw cynigion yr UE yn tramgwyddo egwyddor sybsidiaraeth; mae'r cynlluniau'n cynnwys dull i alluogi'r Cynulladau datganoledig i gyfrannu tuag at lunio'r gwrthwynebiadau.

2. Mae'r papur hwn yn gwahodd safbwyntiau gan Aelodau ar gael y Cynulliad i wneud mwy o waith craffu ar gynigion deddfwriaethol Ewropeaidd yn gyffredinol, ac mae hefyd am glywed safbwyntiau ar sut y gall y Cynulliad fwrw ati â'r cynigion ar sybsidiaraeth sydd yn y drafft o Gyfansoddiad Ewrop.

ARGYMHELLIAD

3. Gwahoddir yr aelodau i benderfynu:

- a ddylai'r Cynulliad fod yn fwy gweithredol wrth graffu'n rheolaidd ar gynigion sy'n tarddu o'r UE, a pha ran ddylai'r Cynulliad ei chwarae wrth ystyried a yw'r cynigion yn tramgwyddo egwyddor sybsidiaraeth (para 16-22); a'r
- ffordd orau o wneud y gwaith hwn o graffu (para 23-33).

CEFNDIR

Y sefyllfa bresennol parthed craffu ar ddeddfwriaeth yr UE

4. Ni fu'r Pwyllgor Materion Ewropeaidd ac Allanol blaenorol yn ystyried deddfwriaeth Ewropeaidd

ddrafft yn fanwl yn rheolaidd, na derbyn rhestr gyda chrynodeb o'r cynigion a gyflwynwyd gan yr UE. Bu'r Pwyllgor blaenorol yn ystyried bod yn fwy rhagweithiol wrth graffu ar gynigion yr UE, wrth adolygu ei weithrediadau yn 2000/2001. Penderfynwyd peidio â dilyn yr opsiwn hwn, yn bennaf oherwydd swmp y deddfwriaeth a gyflwynir. Ychydig o waith craffu a ganiateir hefyd i bwyllgorau pwnc y Cynulliad i gynigion drafft yr UE.

5. I gymharu, mae ystyried deddfwriaeth drafft yr UE yn rhan allweddol o gylch gwaith Pwyllgor Cysylltiadau Ewropeaidd ac Allanol yr Alban, Pwyllgor Craffu Ewropeaidd Ty'r Cyffredin a Phwyllgor Dethol Ty'r Arglwyddi ar yr Undeb Ewropeaidd, er bod cwmpas y gwaith craffu yn amrywio ar draws y tri Phwyllgor. Ceir manylion pellach yn Atodiad A.

Y cyfansoddiad drafft

6. Mae'r rhannau perthnasol o'r cyfansoddiad drafft i'w cael yn Atodiad B. Yn ei hanfod, mae'n datgan y gall senedd genedlaethol gyflwyno barn rhesymegol i Gomisiwn, Cyngor a Senedd yr UE os yw'r senedd genedlaethol yn teimlo bod cynnig gan yr UE yn tramgwyddo egwyddor sybsidiaraeth.

7. Ystyr sybsidiaraeth yn y Confensiwn yw:

"Under the principle of subsidiarity, in areas which do not fall within its exclusive competence the Union shall act only if and insofar as the objectives of the intended action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level."

(Erthygl 1-9, cymal 3)

8. Mae'r protocol drafft ar sybsidiaraeth a chymesurolddeb (yn Atodiad B) yn ymhelaethu ar y diffiniad hwn ac yn rhoi amlinelliad o'r hyn a olyga yn ymarferol:

- Mae angen i'r Comisiwn ymgynghori'n eang, ar lefel lleol a rhanbarthol os yw hynny'n addas, cyn cynnig deddfwriaeth
- Mae angen i'r Comisiwn anfon copïau o'r cynigion at seneddau cenedlaethol
- Mae angen i'r Comisiwn ddarparu memorandwm eglurhaol ar gynigion deddfwriaethol, a ddylai gynnwys eglurhad am y penderfyniad i gymryd camau ar lefel yr Undeb.
- Gall unrhyw senedd genedlaethol, o fewn chwe wythnos i gynnig y Comisiwn gael ei drosglwyddo, gyflwyno barn rhesymegol yn datgan paham y mae'n ystyried nad yw'r cynnig yn cydymffurfio ag egwyddor sybsidiaraeth. Seneddau cenedlaethol neu pob siambr o Seneddau cenedlaethol a ddylai ymgynghori, lle y bo'n briodol, gyda'r Seneddau rhanbarthol sydd â phwerau deddfwriaethol.
- Mae angen i'r Senedd Ewropeaidd, y Cyngor a'r Comisiwn ystyried barn rhesymegol Seneddau cenedlaethol. Pan y bydd un rhan o dair o seneddau cenedlaethol yn gwrthwynebu (neu chwarter ar faterion sy'n gysylltiedig â rhyddid, diogelwch a chyfiawnder), bydd angen i'r Comisiwn

adolygu ei gynnig.

- Bydd gan Aelod wladwriaethau, a Phwyllgor y Rhanbarthau mewn achosion penodol, y pwr i ddod ag achos o dramgwyddo sybsidiaraeth gerbron Llys Cyfianwder Ewrop. Bydd gan seneddau cenedlaethol hefyd yr hawl i wneud hyn, ond bydd yr Aelod wladwriaeth yn hysbysu'r ffaith ar eu rhan.

9. Nid yw'r Confensiwn yn rhoi'r hawl i is-gyrff deddfwriaethol o fewn Aelod wladwriaeth i gynnig barn rhesymegol ar eu rhan eu hunain. Nid oes unrhyw beth i rwystro'r Cynulliad rhag cyflwyno sylwadau neu wrthwynebiadau i'r Comisiwn a sefydliadau eraill ar ei ran ei hun, ond ni fyddai ganddynt unrhyw statws ffurfiol.

Cynnig gan Senedd y DU

10. Mae Cadeirydd Pwyllgor Craffu Ewropeaidd Ty'r Cyffredin wedi ysgrifennu yn cynnig sut y byddai Senedd y DU yn asesu'r cynigion ar gyfer sybsidiaraeth a sut y gellid cynnwys safbwyntiau'r cyrff deddfwriaethol datganoledig. (Mae copi o'r cynnig i'w gael yn Atodiad C).

11. Mae'r cynnig yn ymdrin yn gyntaf â'r mecanwaith i gynnig barn rhesymegol o fewn rheolau Ty'r Cyffredin. Mae'n argymhell, lle y bo'r Pwyllgor Craffu Ewropeaidd wedi cytuno y dylid cyflwyno barn rhesymegol yn gwrthwynebu achos o dramgwyddo egwyddor sybsidiaraeth, y dylai'r Pwyllgor gael y pwr i osod cynnig ar y Papur Gorchymyn yn cynnig y dylai'r gwrthwynebiad gael ei wneud heb drafodaeth. Y Llywodraeth sydd i benderfynu ar union amseriad y cynnig, ond fe fyddai'n cael ei gyfyngu gan yr angen i gadw o fewn y cyfnod penodedig o chwe wythnos ar gyfer gwrthwynebiadau.

12. Mae'r cynnig wedyn yn nodi sut y dylid cynnwys safbwyntiau'r cyrff deddfwriaethol datganoledig yn y broses. Mae'n argymhell lle y bo'r Pwyllgor Craffu Ewropeaidd yn nodi bod achos posibl o dramgwyddo egwyddor sybsidiaraeth, y bydd yn tynnu sylw'r cyrff deddfwriaethol datganoledig ac yn gofyn eu barn. Mae hefyd yn argymhell, lle y bo'r cyrff deddfwriaethol datganoledig yn nodi achos o dramgwyddo na sylwyd arno, y bydd yn fodlon dileu'r gymeradwyaeth a dechrau'r broses o wrthwynebu.

13. Mae Pwyllgor yr Alban wedi paratoi ateb cychwynnol yn croesawu'r cynigion, ond bydd yn eu hystyried yn fanylach.

Pam bod angen craffu ar gynigion drafft yr UE?

14. Mae cyfran sylweddol o'r is-ddeddfwriaeth sy'n cael ei wneud gan y Cynulliad wedi ei gyflwyno i weithredu deddfwriaeth yr UE. Wrth weithredu deddfwriaeth yr UE mae'n amhosib ei newid, ac yn aml does dim llawer o gyfle i'w ddadansoddi. Hefyd, mae mathau arbennig o ddeddfwriaeth yr UE - Rheoliadau'r UE - sy'n cael effaith uniongyrchol. Golyga hyn fod ganddynt holl bwerau'r gyfraith cyn

gynted ag y cytunir arnynt yn yr UE ac nid oes angen iddynt gael eu trosi yn deddfwriaeth ddomestig.

15. Felly y cyfnod allweddol i ddylanwadu ar deddfwriaeth yr UE yw tra y bo'r cynnig ar ffurf drafft. Gellir gwneud hyn, yn rhannol, trwy graffu ar gynigion drafft wrth iddynt gael eu cyflwyno i Senedd y DU.

OPSIYNAU POSIB

16. Mae tri prif opsiwn i'r Pwyllgor eu hystyried wrth benderfynu sut i fwrw ati â deddfwriaeth yr UE:

- Opsiwn 1 - Peidio ag ystyried arwyddocad cynigion yr UE o ran polisi na'u goblygiadau i sybsidiaraeth yn rheolaidd.
- Opsiwn 2 - Dim ond ystyried materion sy'n ymwneud â sybsidiaraeth a enwir gan Senedd y DU
- Opsiwn 3 - Ystyried rhestr o gynigion o ran eu harwyddocâd polisi a'u goblygiadau i sybsidiaraeth yn rheolaidd.

Opsiwn 1 - Peidio ag ystyried cynigion yr UE yn rheolaidd

17. Dyma'r sefyllfa bresennol ac mae'n galluogi'r Pwyllgor Materion Ewropeaidd ac Allanol a phwyllgorau pwnc i ganolbwyntio ar faterion eraill. Yr anfantais yw nad yw'r Cynulliad yn ei gyfanrwydd yn cael gor-olwg o'r cynigion sy'n dod o Frwsel yn ystod y camau cychwynnol, ac ni all y Pwyllgor gyfrannu wrth i Senedd y DU lunio safbwyntiau rhesymegol ar achosion o dramgwyddo egwyddor sybsidiaraeth.

Opsiwn 2 - Dim ond ystyried materion sy'n ymwneud â sybsidiaraeth a enwir gan Senedd y DU

18. Byddai hyn yn sicrhau bod y Cynulliad yn manteisio ar y darpariaethau sy'n gysylltiedig â sybsidiaraeth a'r ffaith bod cyrff deddfwriaethol rhanbarthol yn cael eu cydnabod yng Nghyfansoddiad Ewrop. Y prif anfanteision yw na cheid gorolwg gynhwysfawr o gynigion yr UE unwaith eto, a dim ond y materion hynny yr oedd Senedd y DU yn credu eu bod o bwys y byddai'r Cynulliad yn eu hystyried.

19. Mae problem hefyd sut y gallai'r Cynulliad gwrdd â'r cyfnod penodedig o chwe wythnos ar gyfer gwrthwynebiadau. Yn enwedig gan y byddai Senedd y DU angen sylwadau cyn diwedd y cyfnod hwnnw.

Opsiwn 3 - Ystyried rhestr o gynigion o ran eu harwyddocâd polisi a'u goblygiadau i sybsidiaraeth yn rheolaidd.

20. Byddai hyn yn datblygu swyddogaeth graffu y Cynulliad. Prif fanteision yr opsiwn hwn yw:

- bod y Cynulliad yn ei gyfanrwydd yn elwa ar orolwg gynhwysfawr o ddeddfwriaeth sy'n cael ei chynnig gan yr UE
- byddai'n haws i bwyllgorau pwnc fodloni Gorchymyn Sefydlog 9.8(i) sy'n ei gwneud yn ofynnol iddynt roi cyngor ar ddeddfwriaeth Ewropeaidd
- fe allai'r Cynulliad gyfrannu tuag at y broses o lunio safbwyntiau rhesymegol gan Senedd y DU ar achosion o dramgwyddo egwyddor sybsidiaraeth.

21. Y prif anfantais yw ei bod efallai yn mynd i gymryd llawer o amser ac adnoddau. Efallai y byddai anawsterau hefyd wrth geisio cadw o fewn y cyfnod penodedig ar gyfer cyflwyno gwrthwynebiadau.

Yr opsiwn sy'n cael ei hargymell

22. Mae opsiwn 3 yn cael ei hargymell gan ei bod yn rhoi cyfle i'r Cynulliad, ac i'r Pwyllgor, graffu ar gynigion yr UE yn fwy effeithiol. Fodd bynnag, o gofio'r goblygiadau o ran amser ac adnoddau, fe fyddai angen adolygu unrhyw system graffu newydd yn gyson. Ceir amlinelliad o sawl her gweithdrefnol ac ymarferol yn yr adran ganlynol; mae'n bosibl cynnal gwaith cynllunio manwl pellach i fynd i'r afael â hwy os yw'r Pwyllgor yn rhoi ei ganiatâd.

Camau i'w cymryd: Gwahoddir y Pwyllgor i ystyried yr opsiynau uchod a'r argymhelliad. Os yw'r Pwyllgor yn cytuno â'r argymhelliad, dylai'r Aelodau ystyried adran ganlynol y papur, sy'n rhoi amlinelliad o sut y byddai system graffu yn gweithio yn ymarferol.

SUT Y GALLAI OPSIWN 3 - CRAFFU AR DDEDDFWRIAETH YR UE YN RHEOLAIDD - WEITHIO YN YMARFEROL

Cefnogaeth a chyngor

23. Hyd yma, mae'r cyfyngiadau o ran amser a'r goblygiadau sylweddol o ran adnoddau wedi ein rhwystro rhag cynnal asesiad cynhwysfawr o gynigion Ewropeaidd. Mae adnoddau yn parhau i fod yn brin, ond mae Gwasanaethau'r Pwyllgorau ac Ymchwil yr Aelodau yn datblygu system a fyddai'n caniatáu craffu ar gynigion yr UE yn fwy effeithiol, ac maent yn treialu elfennau ohono ar hyn o bryd. Dyma'r manylion:

- Mae Gwasanaethau'r Pwyllgorau ac Ymchwil yr Aelodau yn derbyn copïau o holl gynigion yr UE sydd wedi eu gosod yn Senedd y DU a'r memoranda eglurhaol cysylltiedig.
- Bydd y dogfennau hyn ar gael ar y Fewnwyd mewn rhestr a fydd yn cael ei diweddarau'n wythnosol. (Ceir enghraifft o'r rhestr yn Atodiad D).
- Fe fyddai'r rhestr o gynigion yna'n cael eu dosbarthu fesul pwnc i gyd-fynd â meysydd

pwyllgorau pwnc y Cynulliad.

- Fe fyddai pob tim pwnc yng Ngwasanaethau'r Pwyllgorau ac Ymchwil yr Aelodau yn ystyried y dogfennau sydd o fewn eu maes arbenigedd hwy er mwyn nodi cynigion sydd o bwysigrwydd arbennig i Gymru.
- Fe fyddai rhestr ddiwygiedig, yn nodi dogfennau sydd o ddi-ddordeb arbennig, yn cael eu cyflwyno i bob pwyllgor Pwnc eu hystyried.
- Fe fyddai'r Pwyllgor Ewropeaidd a Materion Allanol yn derbyn rhestr lawn ar gyfer pob pwnc i'w alluogi i gadw gorolwg strategol o'r cynigion a ddaw o'r UE, ac fe allai graffu ar eitemau penodol o ddeddfwriaeth o dan ei bwerau presennol.
- Fe fyddai cyngor ar achosion posibl o dramgwyddo egwyddor sybsidiaraeth, sy'n cael eu nodi gan Senedd y DU neu gan y Cynulliad, yn cael ei roi hefyd.

24. Mae'r broses sifftio yn weddol debyg i'r gwasanaeth sy'n cael ei ddarparu ar hyn o bryd i Bwyllgor Ewropeaidd a Chysylltiadau Allanol Senedd yr Alban, er nad ydynt yn derbyn asesiad o arwyddocâd y cynnig.

25. Yn ei hanfod, byddai pwyllgorau pwnc yn ystyried goblygiadau cynigion drafft o ran polisiâu a hefyd yn hysbysu'r Pwyllgor Materion Ewropeaidd ac Allanol os oedd ganddynt unrhyw bryderon ynghylch achosion o dramgwyddo egwyddor sybsidiaraeth. Mater i Bwyllgorau unigol fyddai penderfynu faint o amser i'w neilltuo i graffu ar gynigion Ewropeaidd. Fe fyddai'r Pwyllgor Materion Ewropeaidd ac Allanol yn cadw gorolwg strategol ar gynigion sy'n deillio o Ewrop, yn ystyried cynigion unigol sydd o fewn ei gylch gwaith ac yn gweithio gyda Seneddau'r DU a'r Alban ar achosion o dramgwyddo egwyddor sybsidiaraeth.

Materion gweithdrefnol i'w datrys

Rheolau Sefydlog

26. Mae craffu ar ddeddfwriaeth ddrafft Ewropeaidd eisoes yn rhan o gylch gwaith pwyllgorau pwnc - RhS 9.8(i). Fe fyddai'r rhestrau yn ôl pwnc yn helpu pwyllgorau pwnc i fodloni'r rhan hwn o'u cylch gwaith yn fwy effeithiol.

27. Mae gan y Pwyllgor Materion Ewropeaidd ac Allanol y pwr i "*fonitro effaith gyffredinol a chanlyniadau'r polisiâu a ddilynir gan sefydliadau'r Undeb Ewropeaidd ar gyfer Cymru*" (RhS 15.2) ac i "*asesu arwyddocâd deddfwriaeth Ewropeaidd arfaethedig sy'n effeithio ar Gymru sy'n dod o fewn*

cylch gwaith mwy nag un pwyllgor pwnc a chyflwyno adroddiad amdano pan fo rhaid." (RhS 15.3)

28. Mae'r darpariaethau hyn yn galluogi'r Pwyllgor Materion Ewropeaidd ac Allanol i gadw gor-olwg strategol ar gynigion yr UE, ond byddai angen newid y Rheolau Sefydlog i alluogi'r Pwyllgor i nodi gwrthwynebiad ar sail sybsidiaraeth i Senedd y DU ar ran Cynulliad Cenedlaethol Cymru.

Camau i'w cymryd: Gwahoddir yr aelodau i ystyried ceisio newid y Rheolau Sefydlog i alluogi'r Pwyllgor i hysbysu Senedd y DU o unrhyw bryderon ynghylch achosion o dramgwyddo egwyddor sybsidiaraeth ar ran Cynulliad Cenedlaethol Cymru.

Amseru cyfarfodydd a pha mor aml i'w cynnal

29. Mae'r amserlen ar gyfer cyfarfodydd y Pwyllgorau yn achosi rhywfaint o anawsterau, yn enwedig i gadw o fewn y cyfnod penodedig o chwe wythnos ar gyfer cyflwyno gwrthwynebiadau ar sail sybsidiaraeth. (Bydd yr amser fydd ar gael yn llawer byrrach, gan y daw yr hysbysiad cychwynnol oddi wrth Senedd y DU yn aml, a fydd wedi defnyddio rhywfaint o'r chwe wythnos i wneud eu hasesiad eu hunain. Yna fe fyddai angen dychwelyd sylwadau'r Cynulliad mewn digon o bryd i Senedd y DU eu hystyried a mynd trwy'r prosesau seneddol sydd eu hangen wrth gytuno ar farn rhesymegol).

30. Ni fydd achosion posibl o dramgwyddo yn codi'n aml iawn mae'n debyg, ond pan fyddant yn codi, bydd angen delio â hwy yn gyflym. Mewn gwirionedd, er mwyn cadw o fewn y cyfnod penodedig ar bob achlysur, byddai angen ystyried achosion posibl o dramgwyddo cyn gynted ag y maent yn cael eu nodi. Nid yw hyn yn ymarferol o fewn amserlen arferol y Pwyllgor, ac nid yw'n ymarferol chwaith i drefnu cyfarfodydd ychwanegol o'r Pwyllgorau i ddelio â hyn.

31. Dyma'r opsiynau:

- derbyn na fydd yn bosibl ystyried rhai achosion posibl o dramgwyddo egwyddor sybsidiaraeth mewn pryd;
- sefydlu is-Bwyllgor bach a allai gyfarfod am gyfnod byr, yn fwy rheolaidd, i ystyried achosion posibl o dramgwyddo ac i wneud argymhellion. Byddai angen newid y Rheolau Sefydlog i sefydlu is-Bwyllgor o'r fath.
- sefydlu 'rhith-bwyllgor' fel bod unrhyw dramgwyddo sybsidiaraeth yn gallu cael ei ystyried trwy ohebiaeth. Byddai angen newid y Rheolau Sefydlog i sefydlu is-Bwyllgor o'r fath.

32. Dylid nodi na all Pwyllgor Deddfau'r Cynulliad gyflawni'r swyddogaeth hon, gan bod Deddf Llywodraeth Cymru yn gwahardd pennu unrhyw dasgau ychwanegol iddo.

Camau i'w cymryd: Gwahoddir yr aelodau i ystyried sut y gall y Cynulliad gadw o fewn y cyfnod penodedig o chwe wythnos wrth gyflwyno sylwadau ar achosion posibl o dramgwyddo egwyddor sybsidiaraeth.

Cytuno'n ffurfiol gyda Senedd y DU a'r cyrff deddfwriaethol datganoledig eraill ar hysbysiadau ar sail sybsidiaraeth

33. Mae Senedd yr Alban wedi nodi eisoes eu bod yn teimlo y byddai memorandwm cyd-ddealltwriaeth o gymorth efallai i reoleiddio'r ffordd y caiff safbwyntiau rhesymegol eu llunio. Byddai, er enghraifft, yn rhoi amlinelliad o sut i ddelio â sefyllfa lle y mae un corff deddfwriaethol datganoledig yn dymuno gwrthwynebu, ond bod un yn gwrthod yn bendant â gwneud hynny. Caiff y mater hwn ei drafod yng nghyfarfod nesaf Cadeiryddion Pwyllgorau Ewropeaidd y DU yn ddiweddarach yn y mis a bydd y Pwyllgor yn derbyn y newyddion diweddaraf yn dilyn y drafodaeth honno.

CAMAU I'W CYMRYD

34. Mae angen i'r Pwyllgor benderfynu a ddylai'r Cynulliad, mewn egwyddor, sefydlu mecanwaith fwy ffurfiol i'w gwneud yn haws ystyried goblygiadau polisi cynigion drafft yr UE a hefyd i asesu a yw'r cynigion yn tramgwyddo egwyddor sybsidiaraeth. Os felly, bydd angen i'r Pwyllgor ystyried sut y dylid gwneud hyn yn ymarferol.

35. Dylid treialu unrhyw system newydd os yn bosibl, a'i hadolygu'n gyson i sicrhau ei bod yn effeithiol a'i bod yn gwneud defnydd darbodus o adnoddau.

Pwynt Cyswllt

Gwasanaethau'r Pwyllgorau ac Ymchwil yr Aelodau

ANNEX A

SCRUTINY OF EU LEGISLATION IN OTHER UK LEGISLATURES

Scotland

1. The Scottish Committee meets every two weeks and receives a list of EU proposals prepared by the Secretariat and categorised by subject; the Committee considers the list and then refers the relevant parts to subject committees for detailed consideration. On occasion, the Committee does consider proposals in detail itself.

2. This approach evolved over the first Parliament, after the Committee found that a more complicated classification of the importance of proposals by the European Committee was unmanageable and meant

that subject committees were not being proactive in their consideration.

UK Parliament

3. The House of Commons European Scrutiny Committee has 16 members, 14 staff supporting it and meets weekly. Its primary role is to assess the political and legal importance of EU documents and to determine which are debated. The Committee considers a list of deposited documents accompanied by a brief analysis of their contents and a recommendation prepared by the Clerks. The Committee's weekly bulletin highlights proposals that the Committee has deemed significant.

4. The House of Lords Select Committee on the European Union has 19 members and six subject specific sub-committees. Each week, the Chair of the Committee, supported by the Clerks and legal adviser, conducts an initial sift of the deposited documents to identify documents for consideration in each sub-Committee. The sub-Committees consider some proposals in detail and note the rest.

5. The UK Parliament can pass a scrutiny resolution, under which the UK Government should not agree a proposal until Parliament has had the opportunity to consider it in more detail.

Annex B

EXTRACT FROM DRAFT CONSTITUTION PUBLISHED ON 26 MAY 2003

TITLE III: UNION COMPETENCES AND ACTIONS

Article I-9: Fundamental principles

1. The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality.

2. Under the principle of conferral, the Union shall act within the limits of the competences conferred upon it by the Member States in the Constitution to attain the objectives set out in the Constitution. Competences not conferred upon the Union in the Constitution remain with the Member States.

3. Under the principle of subsidiarity, in areas which do not fall within its exclusive competence the Union shall act only if and insofar as the objectives of the intended action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

The Union Institutions shall apply the principle of subsidiarity as laid down in the Protocol on the

application of the principles of subsidiarity and proportionality, annexed to the Constitution. National Parliaments shall ensure compliance with that principle in accordance with the procedure set out in the Protocol.

4. Under the principle of proportionality, the scope and form of Union action shall not exceed what is necessary to achieve the objectives of the Constitution.

The Institutions shall apply the principle of proportionality as laid down in the Protocol referred to in paragraph 3.

DRAFT PROTOCOL ON THE ROLE OF NATIONAL PARLIAMENTS

IN THE EUROPEAN UNION

THE HIGH CONTRACTING PARTIES,

RECALLING that the way in which individual national Parliaments scrutinise their own governments in relation to the activities of the Union is a matter for the particular constitutional organisation and practice of each Member State.

DESIRING, however, to encourage greater involvement of national Parliaments in the activities of the European Union and to enhance their ability to express their views on legislative proposals as well as on other matters which may be of particular interest to them.

HAVE AGREED UPON the following provisions, which shall be annexed to the Constitution:

I. Information for Member States' national Parliaments

1. All Commission consultation documents (green and white papers and communications) shall be forwarded directly by the Commission to Member States' national Parliaments upon publication. The Commission shall also send Member States' national Parliaments the annual legislative programme as well as any other instrument of legislative planning or policy strategy that it submits to the European Parliament and to the Council, at the same time as to those Institutions.

2. All legislative proposals sent to the European Parliament and to the Council shall simultaneously be sent to Member States' national Parliaments.

3. Member States' national Parliaments may send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion on whether a legislative proposal complies with the principle of subsidiarity, according to the procedure laid down in the Protocol on the application of the principles of subsidiarity and proportionality.

4. A six-week period shall elapse between a legislative proposal being made available by the Commission to the European Parliament, the Council and the Member States' national Parliaments in the official languages of the European Union and the date when it is placed on a Council agenda for adoption or for adoption of a position under a legislative procedure, subject to exceptions on grounds of urgency, the reasons for which shall be stated in the act or common position. Save in urgent cases for which due reasons have been given, no agreement may be established on a legislative proposal during those six weeks. Ten days must elapse between the placing of a proposal on the Council agenda and the adoption of a common position.

5. The agendas for and the outcome of Council meetings, including the minutes of meetings where the Council is deliberating on legislative proposals, shall be transmitted directly to Member States' national Parliaments, at the same time as to Member States' governments.

6. The Court of Auditors shall send its annual report to Member States' national Parliaments, for information, at the same time as to the European Parliament and to the Council.

7. In the case of bicameral national Parliaments, these provisions shall apply to both chambers.

II. Interparliamentary cooperation

8. The European Parliament and the national Parliaments shall together determine how interparliamentary cooperation may be effectively and regularly organised and promoted within the European Union.

9. The Conference of European Affairs Committees may submit any contribution it deems appropriate for the attention of the European Parliament, the Council and the Commission. That Conference shall in addition promote the exchange of information and best practice between Member States' Parliaments and the European Parliament, including their special committees. The Conference may also organise interparliamentary conferences on specific topics, in particular to debate matters of common foreign and security policy and of common security and defence policy. Contributions from the Conference shall in no way bind national Parliaments or prejudice their positions.

PROTOCOL ON THE APPLICATION OF THE PRINCIPLES OF SUBSIDIARITY AND PROPORTIONALITY

THE HIGH CONTRACTING PARTIES,

WISHING to ensure that decisions are taken as closely as possible to the citizens of the Union,

RESOLVED to establish the conditions for the application of the principles of subsidiarity and proportionality, as enshrined in Article I-9 of the Constitution, and to establish a system for monitoring the application by the Institutions of those principles,

HAVE AGREED UPON the following provisions, which shall be annexed to the Constitution:

1. Each Institution shall ensure constant respect for the principles of subsidiarity and proportionality, as laid down in Article I-9 of the Constitution.
2. Before proposing legislative acts, the Commission shall consult widely. Such consultations shall, where appropriate, take into account the regional and local dimension of the action envisaged. In cases of exceptional urgency, the Commission shall not conduct such consultations. It shall give reasons for the decision in its proposal.
3. The Commission shall send all its legislative proposals and its amended proposals to the national Parliaments of the Member States at the same time as to the Union legislator. The European Parliament and the Council shall send their legislative resolutions and common positions respectively, upon adoption, to the national Parliaments of the Member States.
4. The Commission shall justify its proposal with regard to the principles of subsidiarity and proportionality. Any legislative proposal should contain a detailed statement making it possible to appraise compliance with the principles of subsidiarity and proportionality. This statement should contain some assessment of the proposal's financial impact and, in the case of a framework law, of its implications for the rules to be put in place by Member States, including, where necessary, the regional legislation. The reasons for concluding that a Union objective can be better achieved at Union level must be substantiated by qualitative and, wherever possible, quantitative indicators. The Commission shall take account of the need for any burden, whether financial or administrative, falling upon the Union, national governments, regional or local authorities, economic operators and citizens, to be minimised and commensurate with the objective to be achieved.
5. Any national Parliament or any chamber of a national Parliament of a Member State may, within six weeks from the date of transmission of the Commission's legislative proposal, send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why it considers that the proposal in question does not comply with the principle of subsidiarity. It will be for each

national Parliament or each chamber of a national Parliament to consult, where appropriate, regional Parliaments with legislative powers.

6. The European Parliament, the Council and the Commission shall take account of the reasoned opinions issued by Member States' national Parliaments or by a chamber of a national Parliament.

The national Parliaments of Member States with unicameral Parliamentary systems shall have two votes, while each of the chambers of a bicameral Parliamentary system shall have one vote.

Where reasoned opinions on a Commission proposal's non-compliance with the principle of subsidiarity represent at least one third of all the votes allocated to the Member States' national Parliaments and their chambers, the Commission shall review its proposal. This threshold shall be at least a quarter in the case of a Commission proposal or an initiative emanating from a group of Member States under the provisions of Article [...] of Chapter X of Part Three of the Constitution on the area of freedom, security and justice.

After such review, the Commission may decide to maintain, amend or withdraw its proposal. The Commission shall give reasons for its decision.

7. The Court of Justice shall have jurisdiction to hear actions on grounds of infringement of the principle of subsidiarity by a legislative act, brought in accordance with the rules laid down in Article [230] by Member States, or notified by them in accordance with their legal order on behalf of their national Parliament or a chamber of it.

In accordance with the same Article of the Constitution, the Committee of the Regions may also bring such actions as regards legislative acts for the adoption of which the Constitution provides that it be consulted.

8. The Commission shall submit each year to the European Council, the European Parliament, the Council and the national Parliaments of the Member States a report on the application of Article 8(3) of the Constitution. This annual report shall also be forwarded to the Committee of the Regions and to the Economic and Social Committee.

ANNEX C

PROPOSAL FROM HOUSE OF COMMONS EUROPEAN SCRUTINY COMMITTEE

Implementing the subsidiarity early-warning mechanism

Paper for Discussion

The protocols to the Convention's draft Treaty provide for individual chambers of national parliaments to put forward reasoned opinions objecting to EU legislative proposals which they believe breach the principle of subsidiarity, and for the Commission to reconsider its proposal if a sufficient number of national parliaments or their chambers present such objections. The objections must be presented within six weeks of transmission of the proposal to national parliaments. The question arises of how the House of Commons will decide whether to present such objections.

The task has two aspects: first, identifying possibly non-compliant proposals, and secondly, deciding whether the non-compliance is sufficiently serious to present a reasoned opinion. It is clear that only the European Scrutiny Committee (ESC) could systematically undertake the first aspect, especially within the six weeks allowed. Therefore the ESC will at least need to initiate the procedure for objecting. It would also have to draw up the reasoned opinion, since it is not clear who else could do so. Speed will be essential, especially when the intention is to present objections in co-operation with other parliaments in order to have the required number.

As for deciding *whether* to object, the options are for the House to delegate this power to the ESC or for the ESC's view to be endorsed in some way by the House. The latter would have the advantage that the objection would have greater weight. However, it is crucial that any wider endorsement does not require time on the Floor or in any other way require assistance from the Government, as the objections would then be as much government objections as parliamentary ones.

There are several possibilities:

(i) For the ESC to be able to place on the Order Paper a motion providing for objection to be made, to be agreed without debate (and if itself objected to to be subject to a deferred division). The exact timing could be left to the Government within a range (e.g. not more than ten days after the Committee puts forward its motion, or earlier if the six-week period ends earlier, subject to a minimum of two days notice.) The advantages are that this would not depend on the Government's goodwill in providing time and virtually no time would be taken on the Floor. The disadvantage is that there would be no opportunity to debate the ESC's proposal, including the terms of the reasoned opinion.

(ii) Approval by a committee which would be required to meet within a certain time of the ESC referring an EU document to it, followed by a motion in the House as above. However, if the committee was the relevant European Standing Committee, the ESC would in practice depend on the government whips to ensure a quorum. It is difficult to see what other sort of committee might be appropriate, except one dominated by the ESC itself (which any Member could attend) and with no other purpose than to report to the House that it has considered the proposed objection (comparable to the role of a Standing Committee on Delegated Legislation); otherwise the ESC would be vulnerable to a small and possibly unrepresentative group of Members blocking the ESC's proposal in the committee.

(iii) Some other expression of support, such as a requirement for an Early Day Motion put forward by

the ESC gathering at least 100 signatures, with the possibility of amendments being tabled opposing the ESC proposal.

Option (i) is recommended

Another issue is input from the devolved assemblies. In one sense there is no difference from receiving input from them on any other aspect of a document: it is open to them to submit views, though such views need to arrive sufficiently quickly. However, the situation is different in that the Commons has a particular right (to object on subsidiarity grounds) which is not available to the devolved assemblies. It is suggested therefore (i) that when the staff encounter a document to which objection may be made on grounds of subsidiarity, they alert the devolved assemblies so that the assemblies have as much opportunity as possible to make their views known, and (ii) that the Committee make clear that if the devolved assemblies identify subsidiarity problems which it has missed, it will be willing to rescind clearance and initiate the procedure for objecting on subsidiarity grounds.

The ESC may also wish to use its power to require opinions from departmental select committees (if time permits) and to co-ordinate closely with the Lords Committee.

16 July 2003

ANNEX D

WEEKLY LIST (WEEK ENDING 12 SEPTEMBER 2003)

Batch list	Date of deposit	Title	Doc code	Date of doc
147/03	11/09/03	Opinion of the Commission on the European Parliament's amendments to the Council's common position regarding the proposal for a Directive of the European Parliament and of the Council coordinating the procedures for the award of public works contracts, public supply contracts and public service contracts. Document / Explanatory Memorandum	12282/03	05/09/03

146/03	10/09/03	Proposal for a Regulation of the European Parliament and of the Council concerning statistics on the Information Society. Document / Explanatory Memorandum	12145/03	04/09/03
146/03	10/09/03	Commission Staff Working Paper on investing in research – An Action Plan for Europe. Document / Explanatory Memorandum	SEC (2003) 489	
146/03	10/09/03	Communication from the Commission on investing in research – An Action Plan for Europe. Document / Explanatory Memorandum	COM (2003) 226	04/06/03
145/03	09/09/03	Commission Staff Working Paper – Annexes to the TEN Annual Report for the year 2001. Document / Explanatory Memorandum	12241/03 add.1	04/09/03
145/03	09/09/03	Report from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions. Document / Explanatory Memorandum	12241/03	04/09/03
145/03	09/09/03	Draft Council Resolution on transforming undeclared work into regular employment. Document / Explanatory Memorandum	12196/03	03/09/03

145/03	09/09/03	<p>Proposal for a Council Decision on the position to be taken by the Community within the Association Committee established by the Europe Agreement between the European Communities and their Member States, of the one part, and Bulgaria, of the other part, with regard to the adoption of a Regional aid map on the basis of which regional aid granted by Bulgaria will be assessed.</p> <p>Document / Explanatory Memorandum</p>	12158/03	02/09/03
144/03	08/09/03	<p>Proposal for a Council Regulation introducing a scheme to compensate for the additional costs incurred in the marketing of certain fishery products from the Azores, Madeira, the Canary Islands and the French departments of Guiana and Réunion as a result of those regions' remoteness.</p> <p>Document / Explanatory Memorandum</p>	11826/03	28/08/03
144/03	08/09/03	<p>Proposal for a Council Regulation adopting autonomous and transitional measures concerning the importation of certain processed agricultural products originating in Malta and the exportation of certain processed agricultural products to Malta.</p> <p>Document / Explanatory Memorandum</p>	11890/03	01/09/03
144/03	08/09/03	<p>Liberia: Proposal for a Council Decision adopting measures in a case of special urgency amending Council Decision 2002/274/EC.</p> <p>Document / Explanatory Memorandum</p>	12040/03	19/08/03
144/03	08/09/03	<p>Proposal for a Council Regulation amending the Commission Decision of 8 July 2002 on administering certain restrictions on imports of certain steel products from the Russian Federation.</p> <p>Document / Explanatory Memorandum</p>	12042/03	19/08/03

144/03	08/09/03	<p>Proposal for a Council Regulation on the establishment of structures for the management of the European satellite radionavigation programme.</p> <p>Document / Explanatory Memorandum</p>	12058/03	22/08/03
144/03	08/09/03	<p>Proposal for a Regulation of the European Parliament and of the Council on the transfer of cargo and passenger ships between registers within the Community.</p> <p>Document / Explanatory Memorandum</p>	12059/03	21/08/03
144/03	08/09/03	<p>Proposal for a Directive of the European Parliament and of the Council on establishing a framework for the setting of Eco-design requirements for Energy-Using Products and amending Council Directive 92/42/EEC.</p> <p>Document / Explanatory Memorandum</p>	12082/03	26/08/03
144/03	08/09/03	<p>Synthesis of annual activity reports 2002 of DGs and Services - Communication from the Commission.</p> <p>Document / Explanatory Memorandum</p>	12090/03	27/08/03
144/03	08/09/03	<p>Proposal for a Regulation of the European Parliament and of the Council establishing a European Centre [for Disease Prevention and Control].</p> <p>Document / Explanatory Memorandum</p>	12098/03	28/08/03
144/03	08/09/03	<p>Report from the Commission to the Council on the application of Annex X to the Staff Regulations (Council Regulation No 3019/87 of 5 October 1987) - Year 2002.</p> <p>Document / Explanatory Memorandum</p>	12102/03	29/08/03

144/03	08/09/03	<p>Annual report from the Commission to the Council and the European Parliament on the results of the multiannual guidance programmes for the fishing fleets at the end of 2002.</p> <p>Document / Explanatory Memorandum</p>	12103/03	28/08/03
144/03	08/09/03	<p>Opinion of the Commission on the European Parliament's amendments to the Council's common position regarding the proposal for a Directive of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors, amending the proposal of the Commission.</p> <p>Document / Explanatory Memorandum</p>	12120/03	01/09/03
144/03	08/09/03	<p>Proposal for a Council Decision on additional macro-financial assistance to Serbia and Montenegro amending Decision 2002/882/EC providing further macro-financial assistance to the Federal Republic of Yugoslavia.</p> <p>Document / Explanatory Memorandum</p>	12129/03	01/09/03
144/03	08/09/03	<p>Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1406/2002 establishing a European Maritime Safety Agency.</p> <p>Document / Explanatory Memorandum</p>	12131/03	01/09/03
144/03	08/09/03	<p>Amended proposal for a Directive of the European Parliament and of the Council amending Directive 1999/32/EC as regards the sulphur content of marine fuels.</p> <p>Document / Explanatory Memorandum</p>	12142/03	02/09/03

144/03	08/09/03	<p>Communication from the Commission to the Council and the European Parliament - Towards an international instrument on cultural diversity.</p> <p>Document / Explanatory Memorandum</p>	12164/03	02/09/03
144/03	08/09/03	<p>Amended proposal for a Regulation of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport and amending Council Regulation (EEC) No 3821/85 on recording equipment in road transport.</p> <p>Document / Explanatory Memorandum</p>	12168/03	02/09/03
144/03	08/09/03	<p>Opinion of the Commission pursuant to Article 251 (2), third subparagraph, point (c) of the EC Treaty, on the European Parliament's amendments to the Council's common position regarding the proposal for a Directive of the European Parliament and of the Council amending Council Directive 96/22/EC concerning the prohibition on the use in stockfarming of certain substances having a hormonal or thyrostatic action and of beta-agonists amending the proposal of the Commission pursuant to Article 250 (2) of the EC Treaty.</p> <p>Document / Explanatory Memorandum</p>	12173/03	03/09/03
144/03	08/09/03	<p>Proposal for a Decision of the European Parliament and of the Council on the mobilisation of the EU Solidarity Fund according to point 3 of the Interinstitutional Agreement of 7 November 2002 between the European Parliament, the Council and the Commission on the financing of the European Union Solidarity Fund, supplementing the Interinstitutional Agreement of 6 May 1999 on budgetary discipline and improvement of the budgetary procedure.</p> <p>Document / Explanatory Memorandum</p>	12177/03	02/09/03

144/03	08/09/03	<p>Proposal for a Regulation of the European Parliament and of the Council on certain fluorinated greenhouse gases.</p> <p>Document / Explanatory Memorandum</p>	12179/03	02/09/03
144/03	08/09/03	<p>Proposal for a Council Decision on the position of the European Community on the draft Regulation of the United Nations Economic Commission for Europe on uniform prescriptions concerning the approval of cornering lamps for power-driven vehicles.</p> <p>Document / Explanatory Memorandum</p>	12180/03	02/09/03
144/03	08/09/03	<p>Proposal for a Directive of the European Parliament and of the Council on the approximation of the laws of the Member States on extraction solvents used in the production of foodstuffs and food ingredients (codified version).</p> <p>Document / Explanatory Memorandum</p>	12183/03	02/09/03