

SCRUTINY OF EUROPEAN MATTERS IN THE HOUSE OF COMMONS

Memorandum from the European Scrutiny Committee (ESC)

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Introduction

1. We welcome the Modernisation Committee's inquiry into scrutiny of European matters in the House of Commons, and are pleased that the Government wishes to improve the way in which Parliament engages with European matters. We note that the Leader of the House hopes the Modernisation Committee will work with us in developing its proposals, and we will be happy to provide the Modernisation Committee with any assistance we can.
2. It is important to emphasise at the outset that **the main purpose of the scrutiny system in the Commons is to make UK Ministers accountable for their activities in the Council.** The scrutiny system may have other benefits, such as additional information for Members, the media and the public and influence on European

institutions, but ministerial accountability is fundamental, and any proposals to change the system must be judged primarily by that yardstick.

3. We agree with the Leader that “European issues ... should be in the mainstream of our political life”,¹ and hope that the Modernisation Committee’s proposals will contribute to this and encourage more Members to participate in the House’s EU-related activities. However, many EU proposals are detailed and technical, and are never likely to interest more than a small minority; some EU matters will be suitable for “mainstreaming”, but many will not.
4. In order to mainstream EU matters in the House, it will be necessary to provide new incentives for Members to be actively involved in them, as well as to ensure they have easy access to relevant information. Such incentives could include greater ability to question Ministers and influence them, more control by the House over the Government’s policies in the EU, direct access by Members to EU policy-makers such as Commissioners, more time on the Floor of the House devoted to EU matters, and greater public and media attention to the House’s EU-related activities.
5. **We emphasise the need to ensure effective publicity for the House’s EU-related activities, including those in Standing Committees**, and comment below on the resources which may be necessary for this. Members are more likely to attend debates if people outside the House are paying attention to them, and better links with the public and the media will add value in themselves, especially with regard to the Government’s objective of increasing national parliaments’ role in the EU in order to contribute to the legitimacy of the EU.² Other advantages could include demonstrating that the Commons actively scrutinises EU legislation, making the public better-informed, helping to reconnect citizens and the EU and, in our case, increasing the range of advice we receive. The two preconditions are that the House should have sufficient ability to question and influence Ministers to make lobbying it worthwhile, and that people should be able to find out quickly and easily what EU matters are being considered in the Commons.
6. **We also draw attention to the sheer quantity of EU legislation which passes through the House.** We consider every document at our weekly meetings on the basis of briefing from our staff, but only a very small number is recommended for debate. In 2003, 1080 documents were deposited, 535 were deemed of political and/or legal significance and were reported on, and 48 were recommended for debate, giving rise to 26 debates in European Standing Committees and one on the Floor (in some cases covering several documents). Our sifting role will remain essential whatever steps are taken towards mainstreaming.
7. When this paper refers to ‘the scrutiny system’ we mean the document-based system of scrutiny involving ourselves, the European Standing Committees and occasionally

¹ HC 508, 2003-04, para 2.

² See Thirtieth Report of the European Scrutiny Committee, *European scrutiny in the Commons*, 2001-02, HC 152-xxx, para 2.

the Floor of the House — not the House’s wider opportunities to consider EU matters, such as Question Time in the Chamber, adjournment debates in Westminster Hall and the policy debates proposed for the European Grand Committee. A summary of how the scrutiny system works is attached at Annex 1.

The ESC’s work and improvements in scrutiny

8. It may be helpful to the Modernisation Committee for us to indicate the six areas in which we have been seeking to improve the effectiveness of scrutiny (some of them more closely related to the Modernisation Committee’s inquiry than others), and the progress made in them so far:³

(i) Ensuring that the mechanics of the system work effectively, and particularly that the scrutiny reserve resolution is not breached. Since our series of five evidence sessions from October 2001 to November 2002 with Ministers we believed had breached the scrutiny reserve resolution without good cause, we have not had a further case where we felt it necessary to call a Minister before us. The Government’s most recent twice-yearly list of scrutiny reserve breaches contains relatively few documents (32 as far as the Commons is concerned), and we are satisfied that the Government is taking the resolution seriously. Other “mechanical” aspects of the system are also currently working well most of the time. Other recent changes include considering proposals for legislation at an earlier stage, mainly through an annual evidence session on the Commission’s Legislative and Work Programme, and taking more oral evidence.

(ii) Improving pre- and post-Council scrutiny. We have concentrated here on improving the quality of the written material we receive (in particular ensuring that written answers indicate the Government’s stance on the issues discussed rather than simply the outcome of the meeting) and taking oral evidence from the Minister for Europe after each European Council meeting. We make a suggestion below about involving departmental select committees in this process.⁴

(iii) Improving debates on EU documents. We made proposals in our report of 2002 on *European scrutiny in the Commons*. This area will clearly be one of the main aspects of the Modernisation Committee’s own inquiry and Report, and we examine it further below.⁵

(iv) Closer links with the public and media. We discuss this below.⁶

(v) Closer inter-parliamentary links within Europe, including a reformed COSAC (the organisation bringing together the European committees of the EU’s national

³ For more information, see HC 152-xxx, 2001-02, and our annual reports for 2002 and 2003: HC 63-viii, 2002-03, and HC 42-viii, 2003-04.

⁴ Para 48 below.

⁵ Paras 16-37 below.

⁶ Paras 31, 50-1 below.

parliaments and the European Parliament). COSAC now has a small secretariat, providing some continuity, the main item on the twice-yearly agenda is required to relate to COSAC's role as a body for enhancing national parliamentary scrutiny, and unanimity is no longer required for COSAC's statements or "contributions". We have also improved links with the UK's MEPs, having now held three meetings with them (one in Brussels), which members of the Lords European Union Committee and certain departmental select committees have also attended. We hope to improve our bilateral links with other national parliament committees, especially those in France and Germany, to mirror the developing relationship between the three countries at government level, and have recently met our French counterparts in Paris for that purpose.

(vi) A greater role for national parliaments in the EU, as discussed in our Report of 2002 on *Democracy and accountability in the EU and the role of national parliaments*.⁷ The most important aspect of this is the proposed subsidiarity mechanism, discussed below.⁸

The proposed European Grand Committee

9. **We strongly support the proposals by the Foreign Secretary and the Leader of the House for a Joint European Grand Committee.** It would build on the precedents set by the successful Standing Committees on the Convention and on the Inter-Governmental Conference (IGC), as well as on proposals we made in 2002. We are satisfied that it would add value to the House's European scrutiny by providing a relatively high-profile forum for debate, and that, in the form proposed in the Leader's paper, it would not undermine existing scrutiny procedures. The latter point is particularly important given that meetings of the Grand Committee would, under the Leader's proposal, be called by the Government whereas the current scrutiny debates on documents are initiated by backbench Members in the ESC.
10. Much would depend on the subjects chosen for the Grand Committee. The Leader's paper indicates that two per year would be to discuss the Foreign Secretary's White Papers in January and July. Others would be "as need arose". These would presumably be debates on specific areas of EU policy, such as asylum and immigration, criminal law or the EU's external action, on the Commission's forward planning documents or possibly on a few other EU documents of particular importance. They might include areas covered by reports of the Lords European Union Committee. **We suggest that the trigger for debates other than those on the twice-yearly White Papers could be a decision by the European Scrutiny Committee and the Lords European Union Committee, subject to a maximum of four or five meetings of the Grand Committee per year.**
11. We hope that the European Grand Committee will follow the precedent of the Standing Committees on the Convention and the IGC in providing time for questions

⁷ HC 152-xxxiii, 2001-02.

⁸ Paras 38-46 below.

as a prelude to the debate, since this would allow more Members to participate. We agree with the Leader that there should be no voting. We would be happy to be part of a core membership, but since the quorum is not intended to relate to the core members, it appears to make little difference whether there is a core membership or not.

12. **We support the suggestion that Commissioners (and possibly other EU officials) should be invited to appear and answer questions.** The aim should not be to involve them in general debates, and certainly not to seek to make them accountable to the UK Parliament. Instead the aim, on a limited number of occasions per year, should be to provide Members of the UK Parliament with the chance to question senior EU decision-makers and to help inform the subsequent debate, as well as providing UK citizens with the opportunity to see Commissioners answering questions in London. Such question sessions might cover the Commission's Annual Policy Strategy (produced in February) and/or its Annual Legislative and Work Programme (November). Obviously Commissioners could not be summoned to attend; we assume that the Modernisation Committee will seek to ascertain whether Commissioners are willing in principle to appear before such a Committee. We would expect the difficulties to be practical ones, especially the prior duty of Commissioners to appear before the European Parliament and its committees, even at short notice.
13. **We also support the proposal to invite UK MEPs to participate,** and agree with the Leader that it would help to ensure that MEPs are aware of the views of UK parliamentarians (and vice versa). This is particularly important in view of MEPs' power in the EU's co-decision process. We hope that the Modernisation Committee will consult the UK's MEPs on the proposal, especially on practical aspects such as the timing of meetings.
14. **We propose too that the Scottish Parliament and the National Assembly for Wales (and the Northern Ireland Assembly if reconvened) be invited to send representatives to the Grand Committee.** In this way members of all the assemblies with legislative powers relating to all or part of the UK would be brought together in a single forum, which we believe would add to the quality of debate and perhaps contribute to the coherence of UK policy-making on EU matters.
15. If the name "European Grand Committee" proves unacceptable to the House of Lords, we would propose something similarly short, such as "European Joint Committee".

Debates on EU documents

16. **Our fundamental point as regards the debates or other proceedings which form part of the scrutiny system is that these must continue to be related to specific EU documents rather than becoming more general. It is through the link with specific documents that Ministers can be held accountable for the decisions they are making on EU proposals. The central feature of the present system is that if we recommend a debate a debate necessarily takes place, and any Member of the**

House may question the Minister with responsibility for the document concerned. Any additional debates on *policy* must complement rather than replace this activity.

17. We have ourselves sometimes been disappointed by debates in European Standing Committees, and in particular by the level of attendance, the extent of media and public attention and the fact that members sometimes do not pursue the points we have emphasised, and we stated in 2002 that we did not believe European Standing Committees had yet reached their full potential. However, we consider that the Leader's paper goes further in criticism of them (in paragraphs 2 and 20) than is warranted. Some European Standing Committee debates are disappointing, whereas on other occasions the procedure works well. We give two recent examples of the latter: the debate on fisheries quotas in European Standing Committee A on 11 March (11 Members other than core ones attending, the full time taken both for questions and debate and a lively debate) and the debate on the Working Time Directive in Standing Committee C on 24 March (eight Members other than core ones attending, the full time taken for questions and again a lively debate). We provide figures for attendance in Annex 2, but the real measure (a subjective one) is not numbers attending or time occupied but whether the issues have been searchingly examined and debated. In that respect there is sometimes room for improvement, but there is also something which could be built on. We hope the Modernisation Committee will seek views from the core members of European Standing Committees.
18. There are several questions the Modernisation Committee will need to address in reaching conclusions on what should follow any decision by us that a document merits "further consideration" by the House, as follows:
 - (i) Is the purpose of the further consideration additional scrutiny (beyond that carried out by us) or debate, or a combination of the two? The present Standing Committee procedure, with questions and debate, combines the two.
 - (ii) Should the emphasis be on a small group of Members carrying out a task committed to them by the House, or on the widest possible participation? Members may feel less commitment to a task if all Members are entitled to participate.
 - (iii) Should the outcome of the further consideration be a substantive resolution, as now, or should the debate itself be the outcome and the resolution (if any) be purely formal (as in the case of Delegated Legislation Committees)? Or should the House go even further, as suggested in the Leader's paper, and have a select committee-type inquiry, leading presumably to a Report?
 - (iv) What changes (if any) would give Members an incentive to participate in debates or other proceedings on EU documents?
19. Our own views on these questions are as follows:

- (i) While there is scope for improving the effectiveness of the scrutiny aspect of the Standing Committees, we would be surprised if the House were willing to abandon entirely the possibility of a debate, which provides the opportunity for individuals and parties to set out alternative views; indeed the Leader indicates that some debates would continue even if further consideration of EU documents normally took place in departmental select committees (paragraph 30). For some documents further scrutiny is more necessary than debate; for others there is little need for further scrutiny but scope for a worthwhile debate. The options are therefore to try to categorise documents in advance in this respect or to retain a combination of scrutiny and debate for each document. On balance we favour the latter.
- (ii) We believe that further consideration of documents is likely to work best if conducted primarily by a group of Members who feel they are carrying out a task which has been committed to them by the House and is of benefit to the House. However, we also recognise that, particularly in view of the wide-ranging nature of EU legislation, there will often be other Members with expertise or constituency or other interests in particular documents, and that the proceedings benefit from their presence. The provision for any Member to attend also permits Opposition spokesmen to participate. We would therefore favour keeping something similar to the present arrangement in this respect.
- (iii) The option of a purely formal motion instead of a substantive one is an interesting idea for reducing the involvement of the whips (though, contrary to paragraph 25 of the Leader's paper we would regard it as essential for Ministers to attend in any event). However, it would not necessarily achieve this purpose, and, as far as debates are concerned, we would regard the downgrading of the motion from a substantive one to a purely formal one as too high a price for that uncertain benefit. We consider below the possibility of select committee-type inquiries instead of debates.
- (iv) Our views on this point are given elsewhere in this paper.⁹

20. The Leader's paper puts forward the radical option of referring documents to departmental select committees, which could deal with them through sub-committees. The Modernisation Committee will no doubt receive memoranda from departmental select committees themselves on this matter, and will be aware that it would also affect the current right of Opposition spokesmen to participate in Standing Committee debates. We assume that the suggested procedure would result in a Report, or at least a transcript, which would be intended to inform decisions on a motion taken subsequently without debate in the House.

21. We would require two safeguards before we could countenance this at all: first, it would need to be clear that a recommendation from us for further consideration would invariably lead to further consideration, as now, even if this imposed heavy

⁹ Paras 4 above and 26-32 below.

workloads on particular committees. Secondly, such further consideration would need to include, as now, an opportunity for Members to question a Minister on the document.

22. In practice we do not believe such a system would work. The most important constraint on what select committees can do is Members' time, and neither sub-committees nor extra staff help in this respect. Also, we do not see how departmental select committees could fit EU documents sometimes needing almost immediate consideration into a busy schedule of inquiries. (Annex 3 shows, by Department, the documents recommended for debate in the current Parliament.) A more workable version of this option would involve overlapping committees, with only some Members sitting both on the departmental select committee and the related European committee (similar to the relationship between the Lords European Union Committee and its sub-committees), and an enlarged ESC staff serving the European committees. However, the link between any Report or transcript and a subsequent decision in the House would be less direct even than the link between Standing Committee and House in the present system. **We do not support the option of referring documents to departmental select committees.**
23. A related radical option (in the Leader's paragraph 27) would be referral of documents to a new set of subject sub-committees of the ESC. The Leader says this would duplicate what already exists in the Lords and might meet with the same lack of willing volunteers as the European Standing Committees. We do not see that it would duplicate the Lords sub-committees any more than sub-committees of departmental select committees would, given that in either case the sub-committees would deal with specific documents referred to them by us, and the possibility of there being not enough willing volunteers applies to all the options. The risk of over-burdening the members of departmental select committees and disrupting the work of those committees would be removed. It is therefore a more attractive option. However, we consider next whether some of the advantages of this option could be achieved through changes to the existing European Standing Committee structure.

Possible changes to the European Standing Committees

24. The deterrents to membership of a European Standing Committee are clear. Members have to consider a wide range of miscellaneous documents which they have no role in selecting. They similarly have no control over the timing of debates, which sometimes occur at short notice. Many of the documents referred, though important, are specialised and technical. The documentation made available is often extremely lengthy and, again, technical, and does not include the views of interested parties outside the House. Although core members are appointed for a Parliament, the Standing Committees have no continuity or corporate existence, since they have no Chairmen of their own (meetings are chaired by a member of the Chairman's Panel) and no staff of their own. Members are whipped to attend, and the whips' overriding interest is always likely to be that the Government's motion should be agreed, preferably in as short a time as possible. No attempt is made to publicise their meetings, and press and public interest is minimal. Although Standing Committee

members are whipped, what matters is only that the Committee has met and agreed a motion, not the particular terms of the motion agreed; if the Government's motion is rejected or amended the Government could move its original motion in the House regardless, although in practice it has not done so on the few occasions when a motion has been amended. The fact that any Member can participate in individual debates that interest them removes one of the few potential advantages of being a member.

25. We therefore propose changes, in four main areas, combining several of the options in the Leader's paper.
26. **First, we and our predecessors have long argued that there should be five European Standing Committees instead of three, so that each would be more focused on a specific policy area or areas.**¹⁰ In the present session, for example, European Standing Committee C has so far had referred to it documents on space policy, the Working Time Directive, genetically modified maize, the Doha Development Agenda, disposal of batteries and nutrition and health claims made on food. There would be no more debates than now, but each committee would meet less often. Each could be smaller than now (we suggest nine Members), so few additional Members would be required (45 compared with 39). They would have subject names rather than being 'A', 'B' and 'C'.
27. The Leader's paper rejects this option, saying "if the Committees have not worked, it does not seem to make sense to make more of them" (paragraph 21), but this is a counsel of despair; the point of our proposals is to ensure that European Standing Committees *do* work. We hope the Modernisation Committee will find out from the Government what the basis is of its belief that a larger number of committees would not be successful. We note that the Leader's paper also mentions (paragraph 25) the possibility of ad hoc membership for each meeting, which would be equivalent to creating as many European Standing Committees as there are debates, and therefore considerably more than five. No option provides a guarantee of willing Members, but **we are particularly doubtful that many willing Members will be found for any committees which do not permit a reasonable amount of specialisation.**
28. **Secondly, we propose closer links between the European Standing Committees and ourselves.** This could come about in one of two ways. Either we could make it our practice to delegate one of our Members to attend each debate, to explain why we decided a document needed further consideration. Alternatively there could be a representative of each European Standing Committee on the ESC. We favour the latter, since it would give the Standing Committee representative the opportunity to influence decisions on the referral of documents, and provide a better channel for feedback on referrals and the helpfulness or otherwise of our Report paragraphs (on which we currently receive no feedback at all). In either case it would be necessary to ensure that the ESC and the Standing Committees did not meet at the same time.

¹⁰ Twenty-seventh Report from the Select Committee on European Legislation, 1995-96, *The scrutiny of European business*, HC 51-xxvii, paras 205-6; Seventh Report from the Select Committee on Modernisation of the House of Commons, 1997-98, *The scrutiny of European business*, HC 791, p. xxviii; HC 152-xxx, 2001-02, para 69.

29. The Modernisation Committee might also consider whether some overlap of membership between the Standing Committees and the relevant departmental select committee or committees would be worthwhile. Also, if service on a Standing Committee came to be regarded as preparation for becoming a member of a related departmental select committee, this would provide an incentive to serve on the Standing Committees.
30. **Thirdly, we propose that the Standing Committees have more of a corporate existence, with their own elected Chairmen or Convenors and staff with particular responsibility for them.** The Chairman could be the representative on the ESC, and could make representations more generally on its behalf. This would imply the Standing Committees sometimes meeting independently to take decisions. There could also be provision for the Standing Committees occasionally to take evidence on a document (within an overall timetable laid down by the Government), and perhaps even to visit Brussels, in advance of a debate. The debates could continue to be chaired by a member of the Chairman's Panel, as now, while any evidence-taking would be chaired by the Standing Committee's own Chairman (making the situation comparable to that of a Special Standing Committee); or the Modernisation Committee might wish to consider whether the Standing Committee's own Chairman should chair all meetings.
31. The staff would be responsible for ensuring that meetings were adequately publicised, particularly to the relevant specialist press, and that the Committee had all the briefing it needed; they would also be the first point of contact for Members. We regard better publicity for European Standing Committee debates as especially important. As regards briefing, document packs relating to Standing Committee debates are already available from the Vote Office, and always include the document, the Government's Explanatory Memorandum and our Report paragraphs on the document. Our Report paragraphs are intended as a guide to the document and the main issues that arise from it, but it is clear that members of Standing Committees do not always see it in that light. Standing Committees might benefit from additional evidence from bodies outside Government, or from some kind of summary analysis where a debate covers several substantial documents.
32. **Fourthly, members of the Standing Committees need to know that any decision they take has some significance.** In practice the Government's motion is rarely amended, and it has never been defeated. However we consider it an important principle that the Government should not be able to proceed exactly as it originally intended regardless of the Committee's decision. This principle is recognised in the case of the Regulatory Reform Committee by varying the proceedings in the House according to whether a draft regulatory reform order was agreed to without a division, agreed to with a division or disagreed to.¹¹ The Government's ability to ignore decisions of European Standing Committees has been hotly debated since 1991, with

¹¹ Standing Order No. 18.

various remedies proposed.¹² We proposed in 2002 that the motion moved in the House should always be the one agreed by the Standing Committee, that if the Government did not wish to move it another Member should do so, and that in such circumstances a brief explanatory statement by the mover and a Minister should be permitted. However, we said we would also be happy with a provision that, if the Government moved a motion different from that agreed by the Standing Committee, there should be a brief statement from the Minister and from someone opposing the motion,¹³ and this would presumably meet the Government's objection at least in part. In that case the difference from the present situation would be only the two brief statements. Such occasions would probably be rare, but we disagree with the Government's view that the change would not make much difference.¹⁴

Debates in Westminster Hall

33. We proposed in 2002 that provision should be made for us to refer EU documents for debate in Westminster Hall, with the same combination of questions and debate as in a Standing Committee.¹⁵ The advantages would be the greater prominence compared with a Standing Committee and the greater time compared with the Floor of the House. We envisaged using the opportunity sparingly. Such debates might take place on a Thursday afternoon (reducing the number of three-hour adjournment debates and potentially creating problems of timing) or at some time when debates do not currently take place, such as Tuesday or Wednesday evenings. If a vote was sought, this would take place subsequently in the Chamber, with the deferred division procedure. As there would be no core membership, subjects would need to be carefully chosen to ensure a reasonable number of Members participated. **We hope that the Modernisation Committee will support the proposal that we should be able, on an experimental basis, to refer documents for debate in Westminster Hall.**

Conclusion on debates on documents

34. As indicated above, **we regard the Standing Committee system as capable of being built on, and prefer the option of seeking to improve that system to the more radical options canvassed by the Leader. However, we would also like to see the House experimenting with new procedures, as in the case of Westminster Hall, in order to discover what works best.**

Debates on the Floor

35. The twice-yearly European debates on the Floor do not form part of the scrutiny system as such, and indeed do not usually impinge on our own work at all. Therefore

¹² See HC 51-xxvii, 1995-96, paras 198-200.

¹³ HC 152-xxx, 2001-02, paras 71-3.

¹⁴ HC 508, 2003-04, para 22.

¹⁵ HC 152-xxx, 2001-02, para 77.

we make no comment on them, though we would be delighted to be able to use any time freed on the Floor for debates on documents.

36. Debates on EU documents on the Floor *are* a concern of ours, and we regard it as extremely important that the more significant EU documents can be debated there, with sufficient time. Currently we can recommend that documents be debated on the Floor, but we cannot requisition time on the Floor, and the documents stand *formally* referred to the relevant Standing Committee unless the Government de-refers them.¹⁶ The absence of any provision for questions and the limited length of Floor debates on EU documents (under Standing Order No. 16, 1½ hours) deters us from referring documents to the Floor. In practice the Government often has provided time for a debate on the Floor, and sometimes, at our request, provided more than 1½ hours. Annex 4 lists documents we have recommended for debate on the Floor in recent sessions. If less time were allotted to general European debates, more could be available for especially important documents, such as the proposals on the EU's new Financial Perspective for 2007-13 and regional policy, which we recently recommended for debate on the Floor.¹⁷
37. We have also recommended previously that, when documents are debated on the Floor, time should be allowed for questions as well as debate, as in a Standing Committee.¹⁸

The subsidiarity early-warning mechanism

38. As indicated in the Leader's paragraph 31, the protocols to the EU's draft constitutional treaty provide for individual chambers of national parliaments to put forward (within six weeks of receiving a proposal) reasoned opinions objecting to EU legislative proposals which they believe do not comply with the principle of subsidiarity, and for the Commission to review its proposal if a sufficient proportion of national parliaments or their chambers present such objections.¹⁹ We would expect such objections to be made only occasionally: the documents we see often contain subsidiarity problems, but not often in such a form that we would object to the proposal as a whole on that ground. The question arises of how the House of Commons would decide whether to present such objections.
39. That 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. Our view is that, since only the ESC is systematically examining EU documents, it is only the ESC which could systematically undertake the first aspect, especially within the six weeks allowed. Therefore **we believe the ESC would at least need to *initiate* the procedure for objecting to EU proposals on**

¹⁶ Standing Order No. 119 (1) and (2).

¹⁷ HC 42-xv, 2003-04, paras 35 and 69.

¹⁸ HC 152-xxx, 2001-02, para 80.

¹⁹ *The draft constitutional treaty for the European Union*, Cm 5897, pp. 150-3.

grounds of subsidiarity. It would also have to draw up the reasoned opinion, since it is not clear who else could do so.

40. 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 (or overridden) by the House. Endorsement by the House would have the advantage that the objection would carry 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.**
41. There are two possible ways in which the House's endorsement could be given (or withheld), one involving a debate and the other not. **If a debate is not needed, the ESC could place on the Remaining Orders a motion providing for objection to be made, to be agreed without debate, and if objected to to be subject to a deferred division.** The exact timing for the motion to be dealt with by the House could be left to the Government within a range (e.g. not more than ten days after the ESC 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.
42. The Government regards this as a reasonable suggestion (Leader's paragraph 31), but the Procedure Committee has told us it believes there should be an opportunity for debate before the vote took place.²⁰ If a debate is required, it would be essential that the process did not depend on the Government providing time or the whips ensuring a quorum. There appear to be two possibilities: (i) The case for a reasoned objection could be considered by the relevant European Standing Committee, which would be required to meet within a certain time of the ESC referring the matter to it, with the proviso that if the Standing Committee failed to achieve a quorum the matter would still go forward for decision by the House. If agreed by the Standing Committee the debate would be followed by a motion in the House as above. A decision would be needed on what should happen if the Standing Committee rejected the ESC's proposal, since the House would presumably not want a Standing Committee to be able to deprive it of the opportunity to make a decision (the Procedure Committee's view was that there should still be a vote on the Floor of the House).²¹ Alternatively, the motion before the Committee could in this case be a purely formal one, that it had considered our proposal. (ii) The proposal could be considered by a Committee resembling a European Standing Committee, but with the members of the ESC as core members and any other Member able to attend. It would then depend on us to ensure a quorum. We would subsequently decide in the light of the debate whether to put our subsidiarity objection to the House for a decision.

²⁰ Letter from the Chairman of the Procedure Committee to the Chairman of the ESC, 20 November 2003.

²¹ *Ibid.*

43. A requirement for a debate would make the process longer and more complicated, and the time available will always be limited. **If the Modernisation Committee regards a debate as necessary, we would favour the second option — a Standing Committee with the ESC as core members and any other Member able to attend.**
44. We have also considered how the devolved assemblies could have an input to the process. It would not be possible to wait for representations from them. Instead, we have proposed (i) that when our 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 we indicate to the devolved assemblies that if they identify subsidiarity problems which we have missed, we will be willing to rescind clearance (if necessary) and initiate the procedure for objecting on subsidiarity grounds. The European affairs committees in the Scottish Parliament and the National Assembly for Wales have welcomed these proposals.
45. We might also consider using our power to require an opinion from a departmental select committee (if time permitted), and would certainly co-ordinate closely with the Lords Committee. We do not see a need for extensive inter-parliamentary arrangements, since it is for each national parliament or chamber to communicate its objections directly to the Presidents of the European Parliament, Council and Commission, but we would inform our counterpart committees of any proposal to make an objection, and would co-operate with any inter-parliamentary arrangements which are devised.
46. We agree with the Leader that it would be premature to make a decision in advance of the draft treaty being agreed, but we hope the Modernisation Committee will nevertheless indicate its views.

Other matters

Cross-cutting questions in Westminster Hall

47. We support the proposal for cross-cutting questions in Westminster Hall (Leader's paragraph 17), and agree that sessions should relate to a specific cross-cutting issue or issues. We also agree that the possibility of questions to Commissioners in Westminster Hall should be considered.

Departmental select committees and pre- and post-Council scrutiny

48. It is not feasible for us to carry out pre- and post-Council scrutiny for every Council meeting, but it would be a manageable task for a departmental select committee to do so for relevant Council. This could be conducted at least partly through written material. We would be pleased to co-ordinate our activities with any departmental select committee in this respect. **We hope that the Modernisation Committee will encourage departmental select committees to consider undertaking the task of pre- and post-Council scrutiny.**

Implementation of EU legislation

49. It is not part of our task to monitor the implementation of EU legislation in the UK, but no-one else in the Commons has this responsibility either. Some inquiries have been carried out by departmental select committees (for example the Trade and Industry Committee on end-of-life vehicles),²² but it would not be reasonable to expect them to do so systematically. In 2001-02 the then Leader of the House proposed a Secondary Legislation Scrutiny Committee on an experimental basis to sift statutory instruments in the same way that we scrutinise EU documents, recommending the most important for debate, and the proposal was supported by the Procedure Committee.²³ No such committee has been established in the Commons, but the Lords has established a Select Committee on Merits of Statutory Instruments, albeit with limited resources for such a large task. **We hope the Modernisation Committee will examine how implementation of EU legislation should be scrutinised, and whether the type of committee proposed in 2001-02 would be the best method.**

Publicity and information

50. We have emphasised in this paper the importance of improving links with the media and public, as regards the ESC, debates on documents and all the House's EU-related activities. A reasonable aim would be for the ESC and the Standing Committees to be mentioned in press reports on European matters (rather than seeking to generate stories solely about ESC's work or the Standing Committees), and for the specialist press to take an interest. Our proposals include a press strategy for the House's European business, easier access to relevant information through an improved website, a system of automatic electronic notification of Committee Reports, forthcoming debates and documents awaiting consideration on specific subjects to outside persons and organisations who have notified their interests to us, press notices each week highlighting notable ESC activity and perhaps other EU-related House activity, and carrying out more of the ESC's work in public.

Public meetings of the ESC when deliberating

51. In December we wrote to the Leader of the House requesting that standing orders be changed to permit us to meet in public when deliberating. The reasons for wishing to do so are partly ones of principle, that as much of the Committee's business should take place in public as possible, and partly that it could increase the Committee's public profile and thus also the House's profile in European matters. We do not see this as setting a precedent for other select committees, for example when considering draft Reports: the ESC is different in that it makes *decisions* about what documents should be debated, rather than about how to conduct inquiries and what to put in draft Reports, though it is of course the case that the reasons for the ESC's decisions are

²² First Report from the Trade and Industry Committee, 2001-02, *End of Life Vehicles Directive*, HC 299.

²³ HC 440, 2001-02, para 25; First and Second Reports from the Procedure Committee, 2002-03, HC 501 and 684.

published subsequently in our weekly Reports. We recognise that arguments can also be made against deliberating in public, such as that briefing could no longer be given to the Committee in confidence, that meetings might become much longer, that undue prominence would be given to the Committee's staff, and that the public would need to be informed of how the Committee worked (for example that it does not make decisions on the *merits* of documents) to make sense of it. **We ask the Modernisation Committee to consider the proposal that we be permitted to meet in public when deliberating.**

ESC plans

52. **We would welcome the Modernisation Committee's endorsement of those of our proposals for our own work which would require funding**, in particular our proposal for automatic notification of documents and reports on particular subjects or policy areas to those who have notified their interests to us, for a more easily searchable web-site and for additional resources to increase media awareness of our work. We would also welcome any observations the Modernisation Committee may have on the extent to which our weekly Reports serve their intended purpose of informing the House of EU proposals of legal and/or political importance.

European travel

53. We note the Leader's comments on the Members' European travel scheme, and particularly his suggestion that it could be used for "more organised, and perhaps collective, visits" (paragraph 33). **We propose that the funding under the Members' European travel scheme be made available for select committee travel related to inquiries directly concerned with EU expenditure, policy or legislation, and for visits by select committees to their counterpart committees in other EU national parliaments.**

National Parliament Office

54. Following a recommendation by the Modernisation Committee in 1998, the House established a National Parliament Office (NPO) in Brussels. As we stated in 2002, the Office, which comprises one Commons Clerk and one locally-engaged assistant based in European Parliament premises, "contributes significantly to the effectiveness of the scrutiny process", mainly through the information about legislative and policy developments in the EU institutions which it provides to us.²⁴ The existence of the NPO also enabled the House to provide on-the-spot support to the UK's national parliament representatives in the Convention. We do not see any case for a change in its functions, and assume that the Government is of the same view, as the NPO is not referred to in the Leader's paper. Subject to resource constraints, the NPO provides assistance to departmental select committees as well as to us, and in the future it could also become more involved in the work of European Standing Committees if they are reformed along the lines we suggest. If the House of Lords decides to send its own

²⁴ HC 152-xxx, 2001-02, para 109.

representative, that could be a sensible time to review the operation of the NPO to ensure both Houses receive the maximum benefit from a presence in Brussels, without duplication of effort.

28 April 2004

Annex 1: The European scrutiny system in the Commons

European scrutiny in the House of Commons is carried out mainly through the European Scrutiny Committee and the three European Standing Committees to which it refers documents for debate. The system concentrates on examination of documents. The main purpose of the system is to hold UK Ministers to account for their actions in the Council, and to provide the House with opportunities to influence them, but it can also have other benefits, such as provision of information and analysis for the public. The scrutiny system is in addition to all the usual opportunities Members have to scrutinise government policy.

The documents to be deposited in Parliament are defined in Standing Order No. 143, and range much further than legislative proposals, including for example any document published for submission to the European Council, the Council or the European Central Bank. Documents should normally be deposited within two working days of receipt in London, and the Government should produce an Explanatory Memorandum (EM) on each document within a further ten working days. EMs are signed by a Minister and constitute the Minister's evidence to Parliament. They are expected to cover a number of specific subjects, including the likely impact of the proposal on the UK, any subsidiarity problems and the Government's policy towards the proposal. Departments sometimes submit an 'unnumbered EM' in advance of an official text becoming available if there would otherwise be insufficient time for parliamentary scrutiny.

The European Scrutiny Committee consists of 16 Members — currently ten Labour Members, four Conservatives, one Liberal Democrat and one member of the Scottish National Party. The Committee has 16 staff (three shared with other Committees) — more than any other select committee. It normally meets every week when the House is sitting.

The Committee's main role is to sift EU documents on behalf of the House, assessing the political and legal importance of each and determining which are debated. Using the EM as the basis of its consideration, the Committee considers whether the document is of political and/or legal importance (if so, it is discussed in the Committee's weekly report to the House); whether it has enough information (if not it puts questions to the Minister, and occasionally questions the Minister in person, until it is satisfied); and whether it should be debated (in a European Standing Committee or, more rarely, on the Floor of the House). Documents are always debated if the Committee recommends it, though the Committee cannot *require* a debate on the Floor. About 1,100 documents are deposited each year, of which about 550 are reported on and 60 recommended for debate. The Committee does not usually express a view on the merits of the proposal, and (once its questions were answered) would not withhold clearance because it disliked a proposal, but it often puts questions to Ministers about unsatisfactory aspects. The Committee has power to request an opinion from a departmental select committee and to require that opinion within a specified time. The time available for the Committee's consideration is often very limited, and if it receives an EM by noon on Thursday it will usually consider the document the following Wednesday.

A crucial part of the scrutiny system is the scrutiny reserve resolution passed by the House, under which Ministers should not agree to proposals which the Committee has not cleared or which are waiting for debate (though exceptions such as urgency are provided for). If Ministers breach the

terms of the resolution without what the Committee regards as good cause, it calls them to give evidence in person.

The Committee also monitors business in the Council (through parliamentary questions and sometimes by questioning Ministers in person), and sometimes conducts general inquiries into legal, procedural or institutional developments in the EU (for example producing three reports relating to matters being discussed in the Convention in 2002-03).

Most debates on EU documents take place in the three European Standing Committees. Each has 13 core Members, but any Member of the House may attend and speak and move amendments (but not vote). They can put questions to the relevant Minister (for up to an hour) and then debate the document (for the remainder of the overall 2½ hours). Each year one or two debates take place instead on the Floor of the House, usually for 1½ hours.

There is a National Parliament Office in Brussels with two members of staff, who are regarded primarily as the European Scrutiny Committee's eyes and ears in Brussels.

Annex 2: Attendance at European Standing Committees

	1998-99	1999-2000	2000-01	2001-02	2002-03	2003-04 (to 21 Apr 2004)
No. of meetings	15	14	14	32	32	15
Average attendance by core Members	9	8	7	8	11	8
Average attendance by other Members (excluding Chairmen)	5	6	6	5	4	5
No. of other Members attending more than once	44	64	59	83	70	55

Annex 3: Debates recommended, by Department (Sessions 2001-02, 2002-03 and 2003-04 to 28 April 2004)

Where necessary, documents are assigned to the Department which would *now* have responsibility. Debates are listed here only once, even when more than one document was recommended for debate and the several documents were the responsibility of more than one Department.

Environment, Food and Rural Affairs

2001-02

- 18 July 2001 Sixth Environmental Action Programme
- 12 Dec 2001 Fisheries TACs and quotas 2002 (additional documents 6 Feb and 20 Mar 2002)
- 30 Jan 2002 Community strategy for dioxins etc.
- 6 Feb 2002 Greenhouse gas emissions trading within the Community
- 24 Apr 2002 Rabies: restrictions on the non-commercial movement of pet animals
- 3 July 2002 Reform of the Common Fisheries Policy (and related documents) (for **Floor**)
- 23 Oct 2002 Sustainable use of pesticides

2002-03

- 18 Dec 2002 Quality of bathing water
- 15 Jan 2003 Fisheries TACs and quotas for 2003 (for **Floor**; debate recommendation withdrawn)
- 15 Jan 2003 CAP mid-term review; milk quotas (for **Floor**) (additional documents 5 Feb 2003)
- 29 Jan 2003 Control of foot and mouth disease
- 30 Apr 2003 Identification and registration system for sheep and goats
- 7 May 2003 Implementation of the Common Fisheries Policy (additional document 10 July 2003)
- 18 June 2003 Recovery of cod stocks (additional document on hake 10 Sept 2003)
- 22 Oct 2003 Emissions of VOCs from solvents used in paints
- 5 Nov 2003 Protection of groundwater against pollution
- 19 Nov 2003 Controls on fluorinated greenhouse gases

2003-04

- 3 Dec 2003 Levels of certain heavy metals etc. in ambient air
- 3 Dec 2003 CAP: reform of tobacco, olive oil, cotton and sugar sectors
- 21 Jan 2004 Fisheries: catch quotas and effort limitation 2004
- 4 Feb 2004 Registration, evaluation and authorisation of chemicals
- 25 Feb 2004 Recovery of sole stocks in the Western Channel and Bay of Biscay
- 31 Mar 2004 Protection of animals during transport

Foreign and Commonwealth Office

2001-02

- 30 Jan 2002 Reports on progress by applicant countries (additional documents 6 and 13 Mar 2002)
- 10 July 2002 Staffing needs of the Commission in the enlarged EU
- 30 Oct 2002 Reports on progress by applicant countries

2002-03

21 May 2003 Annual Policy Strategy for 2004 (Preliminary Draft Budget added 18 June 2003; hence **FCO and Treasury**)

2003-04

17 Mar 2004 Staff Regulations of officials of the European Communities

Health

2001-02

16 Jan 2002 Genetically modified food and feed (**FSA and EFRA**)

20 Mar 2002 Authorisation of human and veterinary medicines (**Health and EFRA**) (additional document on herbal medicinal products 10 Apr 2002)

2002-03

19 Mar 2003 Additives in animal nutrition (FSA)

26 Mar 2003 Official feed and food controls (FSA)

15 Oct 2003 Quality and safety of human tissues and cells

2003-04

10 Mar 2004 Marketing of sweet corn from genetically modified maize (FSA)

24 Mar 2004 Nutrition and health claims made on foods (FSA)

Home Office

2001-02

17 Oct 2001 EU Action Plan on Drugs

28 Nov 2001 European Arrest Warrant (Floor recommended but debate held in Standing Committee)

30 Jan 2002 Status of third-country nationals who are long-term residents; etc.

10 Apr 2002 Execution of orders freezing assets or evidence

22 May 2002 Minimum standards for reception of asylum applicants

2002-03

20 Nov 2002 Mutual recognition of financial penalties (additional document 11 Dec 2002)

29 Jan 2003 Combating corruption in the private sector

2 Apr 2003 Racism and xenophobia

16 July 2003 Asylum systems

5 Nov 2003 Security at European Council meetings etc.

2003-04

17 Dec 2003 Procedures for granting and withdrawing refugee status

International Development

2001-02

15 May 2002 World Summit on Sustainable Development (additional document on “poverty diseases” 22 May 2002)

2002-03

21 May 2003 Programme for action on three major communicable diseases

2003-04

3 Dec 2003 Co-operation with the Occupied Territories of the West Bank and Gaza Strip

Lord Chancellor's Department

2002-03

27 Nov 2002 Judgments in matrimonial matters and matters of parental responsibility (additional document 15 Jan 2003)

Trade and Industry

2001-02

31 Oct 2001 Common rules for internal market in electricity and natural gas

21 Nov 2001 Animal testing and cosmetic products

16 Jan 2002 Amending the 1976 Equal Treatment Directive (responsibility of Cabinet Office in 2002)

13 Feb 2002 Packaging and packaging waste

8 May 2002 Working conditions for temporary workers

12 June 2002 Waste from electrical and electronic equipment; etc.

2002-03

20 Nov 2002 Security of energy supply

11 Dec 2002 Takeover bids (additional document 5 Mar 2003)

15 Jan 2003 A better environment for business in the EU (additional document 19 Mar 2003)

17 Sept 2003 Competition policy: mergers

2003-04

9 Dec 2004 European space policy

14 Jan 2004 Doha Development Agenda

4 Feb 2004 Review of the Working Time Directive

25 Feb 2004 Disposal of batteries and accumulators

Transport

2001-02

21 Nov 2001 Single European Sky (replaced by new documents 6 Mar 2002, for **Floor**)

30 Jan 2002 Commission White Paper on European transport policy

13 Feb 2002 Promotion of the use of biofuels in road transport (**Transport and Customs & Excise**)

6 Mar 2002 Aircraft noise

20 Mar 2002 Second Railway Package

26 June 2002 Major accident hazards involving dangerous substances

3 July 2002 Allocation of slots at Community airports (additional documents 18 Dec 2002)

6 Nov 2002 Guidelines for and financing of Trans-European Networks (additional document 5 Nov 2003; hence **Transport and DTI**)

2002-03

27 Nov 2002 Denied boarding compensation for air passengers

8 Jan 2003 Safety at sea (additional document 5 Feb 2003)
10 July 2003 Maritime transport security

2003-04

3 Dec 2003 Trans-European transport network

Treasury

2001-02

17 Oct 2001 Broad Economic Policy Guidelines

7 Nov 2001 2002 Draft Budget

16 Jan 2002 Sound financial management and fighting fraud, plus Court of Auditors Annual Report

10 Apr 2002 Stability and Convergence Programmes (Broad Economic Policy Guidelines added 22 May 2002 and recommended for Floor, but debate held in European Standing Committee)

10 July 2002 Preliminary Draft Budget 2003

23 Oct 2002 Sound financial management and fighting fraud (Court of Auditors Annual Report added 29 Jan 2003)

2003-03

14 May 2003 Broad Economic Policy Guidelines 2003

10 Sept 2003 Reduced rates of VAT (C & E)

15 Oct 2003 Activities of OLAF and the fight against fraud (additional documents 29 Oct 2003, 14 Jan and 4 Feb 2004, including Court of Auditors report and OLAF reports)

2003-04

3 Dec 2003 Value added tax

24 Mar 2004 Financial Perspective for 2007-13 and reform of Structural and Cohesion Funds (for **Floor; Treasury and DTI**)

Annex 4: Debates recommended for the Floor, and where the debates took place

Session in which recommended	Subject	Where debated
1999-2000	Fisheries: total allowable catches and quotas 2000	Floor
”	Agricultural price proposals 2000-01	Floor
”	White Paper on environmental liability	European Standing Committee
2000-01	Establishment of permanent ESDP bodies	Floor
”	General principles and requirements of food law	Floor
2001-02	Single European Sky	Floor
”	European Arrest Warrant	European Standing Committee
”	Reform of the Common Fisheries Policy	Floor
”	Stability and Convergence Programmes and Broad Economic Policy Guidelines	European Standing Committee
2002-03	Fisheries: total allowable catches and quotas 2003	Debate recommendation withdrawn following Floor debate arranged independently
”	CAP mid-term review	Floor
2003-04	New Financial Perspective 2007-13 and regional and cohesion policy	Debate not yet held