



House of Commons

European Scrutiny Committee

**Subsidiarity, National
Parliaments and the
Lisbon Treaty:
Government Response
to the Committee's
Thirty-third Report of
Session 2007–08**

**First Special Report of Session 2008–
09**

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The European Scrutiny Committee

The European Scrutiny Committee is appointed under Standing Order No.143 to examine European Union documents and—

- a) to report its opinion on the legal and political importance of each such document and, where it considers appropriate, to report also on the reasons for its opinion and on any matters of principle, policy or law which may be affected;
- b) to make recommendations for the further consideration of any such document pursuant to Standing Order No. 119 (European Standing Committees); and
- c) to consider any issue arising upon any such document or group of documents, or related matters.

The expression “European Union document” covers —

- i) any proposal under the Community Treaties for legislation by the Council or the Council acting jointly with the European Parliament;
- ii) any document which is published for submission to the European Council, the Council or the European Central Bank;
- iii) any proposal for a common strategy, a joint action or a common position under Title V of the Treaty on European Union which is prepared for submission to the Council or to the European Council;
- iv) any proposal for a common position, framework decision, decision or a convention under Title VI of the Treaty on European Union which is prepared for submission to the Council;
- v) any document (not falling within (ii), (iii) or (iv) above) which is published by one Union institution for or with a view to submission to another Union institution and which does not relate exclusively to consideration of any proposal for legislation;
- vi) any other document relating to European Union matters deposited in the House by a Minister of the Crown.

The Committee’s powers are set out in Standing Order No. 143.

The scrutiny reserve resolution, passed by the House, provides that Ministers should not give agreement to EU proposals which have not been cleared by the European Scrutiny Committee, or on which, when they have been recommended by the Committee for debate, the House has not yet agreed a resolution. The scrutiny reserve resolution is printed with the House’s Standing Orders, which are available at www.parliament.uk.

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First Special Report

On 21 October 2008 the European Scrutiny Committee published its Thirty-third Report of Session 2007-08, *Subsidiarity, National Parliaments and the Lisbon Treaty*. The Government's response to the Report was received on 13 January 2007, in the form of a memorandum.

We publish this document as an Appendix to this Special Report. In the Government response, our original conclusions and recommendations are in bold text and the Government's response is in plain text.

Appendix: Government response

The Government welcomes the European Scrutiny Committee's report on Subsidiarity, National Parliaments and the Lisbon Treaty.

The expertise, judgement and analysis of the Committee is, as always, very valuable and the Government welcomes the positive and significant contribution the Committee makes in the European field and will continue to make in the future.

The Government would like to offer the following comments on the Committee's recommendations and conclusions:

Paragraph 8: We welcome the requirement in the Lisbon Treaty for the transmission of documents to national parliaments because, in some Member States, the government does not automatically bring EU proposals to the attention of its parliament. The requirements will, however, not affect scrutiny in the House of Commons because all EU documents covered by Standing Order No. 143 are deposited by the Government.

The Government welcomes the Committee's observation that under the UK's scrutiny procedures, all of the documents set out in the protocol, apart from the agendas for, and outcome of, Council meetings are indeed caught by the European Scrutiny Committee's Standing Order which defines EU documents for the purposes of scrutiny, and that the transmission of these documents to national Parliaments does not impact upon the UK's processes. The Government will continue to deposit these documents for scrutiny promptly following their publication and transmission to the Council. In addition the Government already provides the House with information before and after Council meetings in the form of written Ministerial Statements.

Paragraph 37: Our conclusions on the provisions of the Lisbon Treaty on subsidiarity are as follows:

- **The substance of the subsidiarity Article in the Lisbon Treaty is the same in its effect as the existing Article in the EC Treaty.**
- **Examination of EU proposals for compliance with the principle of subsidiarity is a long-established and fundamental part of the scrutiny process of the European Scrutiny Committee of the House of Commons.**
- **Whether a proposal does or does not comply is a matter of political judgement and is unlikely to be capable of an entirely objective assessment.**
- **It is very rare for the whole of a proposal to be inconsistent with the principle. It is less rare for one of the provisions not to comply. We see no reason to expect that this will change, although the extension of the EU's competence under the Lisbon Treaty will offer additional areas for subsidiarity disputes if that Treaty is ratified.**
- **Where we have concerns, we presently draw them to the attention of the Government and, where it shares our assessment, Ministers take up the concerns**

with the Commission and other Member States. Again, we see no reason to expect that this will change.

- We expect the Commission to listen to the views of national parliaments even if the number of opinions does not reach the levels set for the yellow and orange cards. We warmly welcome Commissioner Wallström's statement that the Commission should listen to the views of national parliaments even if the number of votes does not reach the threshold.
- For these reasons, we doubt whether the Lisbon Treaty's new subsidiarity provisions about the role of national parliaments would make much practical difference to the influence presently enjoyed by the UK Parliament.

The Government is clear that the Lisbon Treaty gives national parliaments, for the first time, direct powers in enforcing the principle of subsidiarity. The Lisbon Treaty sets out how national parliaments can decide whether EU legislation complies with the principle of subsidiarity. They will be informed directly by the Commission of all draft EU legislation and have 8 weeks to examine it in draft.

If one-third (or one quarter for some JHA proposals) of them consider a proposal goes against the principle of subsidiarity, it must be reviewed (the 'yellow' card). If a majority of national parliaments oppose a Commission proposal, and national governments or MEP's agree, then it can be struck down (the 'orange' card).

Subsidiarity already works. It is taken into account by both the Commission and Member States in bringing forward and considering proposals for EU action. The UK has successfully invoked subsidiarity on a number of occasions such as:

- Tax: where the UK successfully argued that a 2003 Commission proposal to abolish the UK's VAT zero rates on food, children's clothing etc was inconsistent with subsidiarity
- Labour Law: where, following a 2006 Commission report to determine what next was needed on labour law at a European level, the UK successfully argued that no new EU legislation was necessary

The Government is committed to ensuring that the new provisions in relation to national parliaments in the Lisbon Treaty operate effectively, and will work with both Houses of Parliament to make sure they will operate effectively.

Paragraph 45: We see no reason to diverge from the recommendations of the Modernisation Committee as forming the basis for consideration of how the House should give effect to the provisions on subsidiarity, should they ever be implemented. We consider however that, if a debate is not to take place, the Chairman or designated member of the European Scrutiny Committee should outline the reason for the Opinion in a short speech to which a Minister may reply on behalf of the Government.

The Government notes the endorsement by the Committee of the proposals by the Modernisation Committee. Procedures of the House are a matter for the House; the Government notes the Committee's proposals to vary the Modernisation Committee's suggested procedure.

Paragraph 54: The amended EU Treaty does not define the meaning of the “evaluation” of Eurojust or the “scrutiny” of Eurojust. Presumably the two processes differ but how is uncertain. This is not the only question unanswered by Articles 85 and 88. Others include:

- **what is the purpose of the evaluation or scrutiny and what action, and by whom, would be taken on their findings?**
- **what would be the constitutional implications if the Regulations made by the Council and the European Parliament were binding on national parliaments;**
- **similarly, what would be the constitutional implications if the European Court of Justice were given jurisdiction over the compliance of national parliaments with the Regulations?**
- **would each chamber of every national parliament be involved in the evaluation and scrutiny? and**
- **if every chamber had one representative and the European Parliament had equal representation, there would be about 100 representatives at evaluation and scrutiny meetings — is this intended?**

The Government recognises that as with all EU Treaties further work will be needed to set out how some specific provisions will be operated in practice.

However, a distinction can be made between evaluation and scrutiny by reference to the new Europol Council Decision, which is expected to come into force on 01 January 2010. The Europol Management Board is required to commission an external evaluation of Europol's activities every four years [Article 37(11)] and to set the terms of reference for the evaluation. In terms of oversight, or scrutiny, the European Parliament can request the Europol Director and/or the Chair of the Management board to attend to discuss matters relating to the operation of the organisation [Article 48].

The new Eurojust Council Decision agreed this year also has a specific reference to evaluation. The new Article 41a requires the College of Eurojust to commission an independent, external evaluation of the Eurojust's activities every five years.

Paragraph 55: These are important questions and many of them could be answered only by the Eurojust and Europol Regulations. If the Treaty is ratified it will be important for the Council and European Parliament to consult national parliaments about drafts of the Regulations, giving them reasonable time in which to consult each other in COSAC and prepare their comments.

The Government recognises the importance of an open and thorough consultation process involving proposed changes to regulations. Again, using Europol as the example, we have good experience of the benefits to be derived from such an exchange both at the European Parliament and national parliament levels. The scrutiny committees were also fully informed and involved as negotiations were taken forward on the new Eurojust Council Decision earlier this year.

The Government underlines that Eurojust and Europol are well regulated, but agrees there is a need for an oversight role to be provided at both EU and national level for Eurojust and Europol. That said, in our view, it is important to adopt a pragmatic approach to Parliamentary oversight, at whatever level, which needs to be able to add demonstrable value, take account of competence issues and be commensurate with the regulatory frameworks in place for those organisations.

Paragraph 64: We welcome the Minister's readiness to reflect on ways of enhancing the scrutiny process. Since the opt-in arrangements already apply to the significant areas of asylum and immigration and judicial cooperation in civil matters, we see no convincing reason why the commitments offered by the Government in its Statement should not be applied now to those areas, irrespective of what may happen in the future in relation to the Lisbon Treaty.

The Government is always open to looking at ways to improve the scrutiny of European business in conjunction with the Scrutiny Committees in both Houses. We are therefore content to enhance the existing European scrutiny process in the following ways:

- We will continue to do our utmost to ensure that Explanatory Memoranda are submitted within 10 days of deposit of documents.
- We will endeavour to include in the EM a list of factors that we expect to take into account when coming to an opt in decision, and where possible an indication as to whether we expect to opt in.
- We are content to take the views of the Committee into account in the case of Title IV TEC opt-in decisions if they are forthcoming within 8 weeks of the publication of proposals, and therefore not to opt-in within that 8 week period unless it is essential. The final decision as to whether to opt in will of course rest with Ministers.
- We are content to be flexible regarding making time available for debates on policy on which opt in decisions will need to be made, if the Committees recommend such questions for debate. However, this will only be possible if there is early, informal communication with the Clerks to the Committees to forewarn us when a debate might be desirable, and on the condition that the 8 week period for giving a view on the opt-in decision cannot be extended even if it proves impossible to hold a debate before that deadline.