

BRIEFING SERIES ON THE EUROPEAN UNION:

BRIEFING 3 LEGISLATIVE SCRUTINY ARRANGEMENTS FOR EUROPEAN UNION MATTERS IN THE UNITED KINGDOM AND OTHER MEMBER STATES

Introduction

This briefing – Briefing 3 in a three-part series - addresses arrangements in the United Kingdom (UK) and other Member States that enable legislative scrutiny of European Union (EU) developments about law and policy. The briefing seeks to facilitate the Members of the Committee of the Office of the First Minister and Deputy First Minister (the Committee) in taking decisions about the Committee's future handling of European matters.

Building on Briefings 1 (EU institutions and decision-making) and 2 (relevance of EU policy and law to Northern Ireland (NI) governance), this briefing outlines the following:

1.0 UK Parliamentary/Assembly Scrutiny of EU Matters

- 1.1 Key Treaties, Legislation and Agreements relating to the Scrutiny Arrangements
- 1.2 UK Houses of Parliament
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1.0 UK Parliamentary/Assembly Scrutiny of EU Matters

In the UK, prevailing Parliamentary/Assembly arrangements for scrutinising EU matters involve the UK Houses of Parliament on a central government basis and the Scottish Parliament (SP), the National Assembly for Wales (NAW) and the Northern Ireland Assembly (NIA) on a regional basis. These scrutiny arrangements are largely defined by treaties, legislation and agreements, which collectively make all foreign policy issues and relations with the EU the sole responsibility of the UK Government and Parliament, acting as the EU Member State; and doing so with the support of the regional bodies. In practice, this translates into the devolved institutions making relevant contributions through appropriate channels, and the UK Government and Parliament taking lead responsibility in:

(i) Representation of central and regional UK interests when:

(a) *Formulating and representing the UK-negotiation line* - This means that at a Member State level both the UK Central Government and Parliament, as well as the devolved institutions, are supposed to work to ensure that central and regional UK interests are fully and properly represented when formulating the UK-negotiation line regarding EU policy and law; a line which later is represented at the European level by the UK Central Government (for example, by the Prime Minister/relevant Cabinet ministers/relevant departmental officials and representatives), when the European Institutions formulate and agree EU policy and law.

(b) *Transposing and Implementing EU obligations centrally and regionally in the UK* – This means both the UK Central Government and Parliament, as well as the devolved institutions, allow for central and regional differences when transposing and implementing such obligations throughout the UK, whenever possible and appropriate.

(ii) UK compliance with EU obligations centrally and regionally:

This requires both the UK Central Government and Parliament, as well as the devolved institutions, to ensure that the UK complies with European obligations that the UK Central Government has agreed to as the Member State.

When reading the below sub-sections, bear in mind that UK EU scrutiny arrangements potentially face future changes, given on-going developments at EU, central and regional levels to enhance transparency and scrutiny of European matters. At the European level, there has been consideration of scrutiny issues relating to, for example, subsidiarity. Such consideration arose in the context of the regional/national parliament provisions found in the draft Constitutional Treaty, which will be debated in Brussels over the next period. In addition, the Committee of the Regions conducted a pilot project to establish a European network of regional and local authorities to strengthen the monitoring of the principle of subsidiarity. Similarly in the UK, recent examination of scrutiny arrangements by committees in both Houses of Parliament (since about 2004) looked at, for example: efforts to improve Parliamentary scrutiny and transparency of EU business, for example, the Government providing the scrutiny committees with information before and after Council meetings and discussion about how to improve subsidiarity and proportionality monitoring, including the potential establishment a new Joint European Grand Committee in the UK Parliament. Moreover, the Scottish Parliament and the National Assembly for Wales have been reviewing their handling of

European matters (since approximately 2005), which includes consideration of recommendations seeking to ensure greater Parliamentary/Assembly scrutiny of EU matters.

1.1 Key Treaties, Legislation and Agreements relating to the Scrutiny Arrangements

Key treaties, legislation and agreements that relate to UK EU parliamentary/assembly scrutiny arrangements are discussed in the below paragraphs. They pertain to three levels of governance - EU, central and regional. It is noteworthy that many informal, *ad hoc* understandings also relate to the daily operation of those arrangements.

1.1.1 Treaties, Legislation and Agreements relating to the EU and the UK

Since the UK joined the European Community in 1973 to date, European treaties have been ratified by the UK Foreign Secretary, or his or her representative, acting on behalf of the Crown. This is a modern constitutional practice whereby Government Ministers exercise Prerogative powers (the “Royal Prerogative”). In practical terms, this translates into the Government representing the UK at the European level (for example, in the Council of Europe and the European Council – see Briefing 1 for an explanation of each).

Enacted by the UK Parliament, the *European Communities Act 1972* (1972 Act) made the obligations under the *1972 Accession Treaty* and European law made there under, applicable to the UK (including NI). On subsequent occasions when a new European treaty has been agreed, Parliament has enacted new pieces of UK legislation to amend the 1972 Act. Such legislation makes those parts of new treaties that are intended to have domestic legal effect applicable within the UK.

Pursuant to the 'Protocol on the Role of National Parliaments' in the *Amsterdam Treaty*, the European Commission (the Commission) is required to promptly forward to Member States' national parliaments (such as the UK Parliament) all Commission consultation documents (Green and White Papers and communications). Moreover, the Member States' Governments (such as the UK Central Government) are to make legislative Commission proposals available to their national parliaments (such as the UK Parliament), as appropriate.

Finally, there is a 'European Scrutiny Reserve Resolution' between the UK Government and each House of the UK Parliament. In essence, each Reserve Resolution requires Ministers not to formally agree to EU legislative or other proposals until Parliamentary scrutiny is completed: this includes consideration by the European committees in both Houses. Each Resolution allows for exception, but in limited circumstances. (Refer to sub-section 1.2 for further detail.)

1.1.2 Legislation and Agreements relating to the Regions within the UK Member State

The “devolution statutes” prescribe the roles and responsibilities of UK central and regional governance. These statutes are the *Northern Ireland Act 1998*, the *Scotland Act 1998* and the *Government of Wales Act 1998*. With respect to the EU, the statutes' most significant provisions dividing power between the centre and the regions include the UK government retaining responsibility for foreign relations.

Moreover, the statutes place the devolved bodies under a statutory obligation not to legislate or act in a manner that is contrary to EU law. They also provide them with concurrent power (shared with the UK government) to observe, transpose and implement Community law.

In addition, the regions help Central Government in developing the UK position for European level negotiations/discussions, for example, to formulate and agree EU policy. Inter-governmental relations play a critical role in this respect, and "concordats" govern such relations. The principal one is the "*Memorandum of Understanding*" (MOU) and *supplementary agreements*, including the Joint Ministerial Committee - Europe, which among other tasks, brokers inter-administration agreement at political level throughout the UK, and the four overarching concordats, one of which concerns the co-ordination of EU policy issues.

There also are '*bilateral concordats*' between the individual UK Governmental departments and their counterparts in the devolved administrations: these cover matters that have been considered best capable of regulation in the context of the relationship between the two parts of the government machine.

1.2 UK Houses of Parliament

To contextualise EU scrutiny in the UK Parliament, it is noteworthy that national parliaments of Member States currently have no direct formal role in the passage of EU legislation; (although some new formal powers are envisaged under the draft Constitutional Treaty). Rather, national parliaments influence and hold to account Ministers of their own national governments in their capacity as members of the Council of the EU (also known as 'the Council of Ministers' or 'the Council').

In relation to the UK, legislative scrutiny arrangements are primarily, though not exclusively, document-based: they revolve around the consideration of draft legal instruments before they are agreed by the Council. Moreover, each House has its own well-established set of procedures for examining EU documents, which complement one another. EU-related issues also often arise at question time, in debates on Government business and Opposition days, in select committee inquiries and adjournment debates, and through the whole range of Parliamentary activity. (House of Commons Select Committee on Modernisation of the House. Second Report 2004-05, at para 19)

In the Commons, the principle vehicle for scrutiny is examination of documents by the European Scrutiny Committee (ESC), followed by standing committee debates which enable any Member of the House to attend and speak on the instrument. The scrutiny arrangements in the Commons provide for wide coverage, rapid scrutiny where necessary and a published analysis of all documents found to be of legal and political importance. Whereas in the Lords, arrangements allow for more detailed and considered scrutiny of a carefully-selected range of documents. Collectively the Commons' and the Lords' arrangements provide for "a scrutiny of EU legislation which is both broad and deep". (Second Report 2004-05, at para 20)

Underpinning these scrutiny arrangements is the '*European Scrutiny Reserve Resolution*' of each House, which reflects the House's agreement with Central Government as follows:

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- The Commons' Reserve Resolution provides that no Minister may agree in the Council of the EU or the European Council to a proposal which is still 'subject to scrutiny' by the Commons". This means either that the European Scrutiny Committee has not completed its scrutiny of the relevant document or that the document is awaiting debate.
- The Lords' Reserve Resolution states that there are 4 ways that a document can clear scrutiny in the House of Lords: (i) if the Chairperson of the EU Select Committee decides at the weekly sift that it requires no further consideration; (ii) if the relevant sub-committee has considered it, but decided that it requires no further scrutiny; (iii) if the document has been the subject of a report to the House, when the report has been debated; or, (iv) if the document has been the subject of correspondence with a Minister, when the correspondence is closed and the committee has cleared the document.

In light of the above, this sub-section briefly outlines roles and responsibilities of key players in the EU scrutiny arrangements of the UK Houses of Parliament. They include the:

- (i) House of Commons European Scrutiny Committee;
- (ii) House of Commons European Standing Committees;
- (iii) Chamber of the House of Commons;
- (iv) House of Lords Select Committee on the European Union;
- (v) House of Lords Sub-committees of the Select Committee on the European Union; and
- (vi) Chamber of the House of Lords.

(i) The House of Commons European Scrutiny Committee

The process of the Commons' European Scrutiny Committee (ESC) begins with EU documents deposited in the Parliament, usually within 2 working days of the document's receipt in London. These documents (approximately 1,200 per year) concern a wide spectrum of business, including:

- (a) any proposal under the Community Treaties for legislation by the Council of the EU or the Council of the EU acting jointly with the European Parliament;
- (b) any document which is published for submission to the European Council, the Council of the EU or the European Central Bank;
- (c) any proposal for a common strategy, a joint action or a common position under Title V of the Treaty on EU (Provisions on a Common Foreign and Security Policy) which is prepared for submission to the Council of the EU or the European Council;
- (d) any proposal for a common position, framework decision, decision or a convention under Title VI of the Treaty of the EU (Provisions on Cooperation in the Fields of Justice and Home Affairs) which is prepared for submission to the Council of the EU;

- (e) any document not falling within (b-d) above, which is published by one EU institution for or with a view to submission to another EU institution and which does not relate exclusively to consideration of any proposal for legislation; and
- (f) any other document relating to EU matters, which was deposited in the House by a Minister.

The UK Government has committed itself to producing an Explanatory Memorandum (EM) on each document within 10 working days of it being deposited. The EM constitutes the Minister's evidence to the Parliament about the document, and should cover a number of specific subjects, such as the likely impact on the UK, any subsidiarity problems and the UK Government's policy on the document.

The ESC considers each deposited document and its accompanying EM, in order to perform the following functions:

- (a) report its opinion on the legal and political importance of each document, and where it considers appropriate, also reports the reasons for its opinions and on any matters of principle, policy or law that may be affected;
- (b) make recommendations for the further consideration of any such document in a Commons European Standing Committee; and
- (c) consider any issue arising upon any such document or group of documents or related matters.

The ESC's main role is to sift EU documents on behalf of the House, assessing the legal and political importance of each and deciding which should be debated. This sift helps to ensure that scrutiny begins at an early stage and that the most important documents are debated in the Standing Committee or on the floor of the House, holding Ministers to account. The ESC often requests further written information from the Minister before it is willing to clear a document.

Moreover, as part of its efforts to improve scrutiny and transparency in EU business, the Government provides the ESC (and other scrutiny committees) with detailed information before and after Council meetings, which enables the ESC: to have a regular dialogue with departments about forthcoming Council business; to track the progress of business during each EU Presidency; and, to enable issues to be identified at an early stage on which it would be appropriate for the ESC to seek further written or oral evidence. (House of Lords Select Committee on the EU, Forty-Fifth Report 2005-06, 'Annex A - Pre- and Post- Council Scrutiny').

It also is noteworthy that the ESC relies on informal channels to gather intelligence and information.

The ESC produces a weekly report, wherein it discusses the reasons for its decisions on each deposited document.

(ii) The House of Commons European Standing Committees

The European Standing Committees deliberate the political and legal importance of documents referred to them by the ESC. There are three standing committees:

A – Environment, Food and Rural Affairs, Transport, Local Government and the Regions, Forestry Commission, and analogous responsibilities of Scotland, Wales and Northern Ireland Offices;

B – HM Treasury (including HM Customs and Excise), Work and Pensions, FCO, International Development, Home Office, Lord Chancellor's Department, together with any matters not otherwise allocated by this order; and

C– Trade and Industry, Education and Skills, Culture, Media and Sport, and Health.

Similar to the ESC, the standing committees rely on detailed information received from the Government before and after Council meetings.

Standing committee proceedings usually begin with a short statement from the responsible Minister, followed by questions, which last up to one hour. The committee then debates a substantive Government motion on the document it is considering, to which amendments may be moved. The debate usually lasts for another hour and a half. The committee's resolution then is reported to the House in the 'Votes and Proceedings'. (Second Report 2004-05, at para 29)

(iii) The Chamber of the House of Commons

After a standing committee reports its resolution, a Government motion (usually in the same terms as the committee's resolution) is moved in the House and the questions on the motion and any amendments to it are put forward straight away. If the motion is reached after the scheduled end of main business, which usually is the case, and no amendment to it has been selected to it, then it is subject to a deferred division. This means that there is no further opportunity for debate on the document in the House. Even in cases where the committees have amended the Government's motion, the Government is free to table the motion in the House in its unamended form; and that it is the House's decision which constitutes clearance of the document, and not the standing committee's debate. (Second Report 2004-05, at paras 30-31)

On the limited occasions where the ESC recommends that a document should be debated by the House, rather than in a standing committee, it is noteworthy that such a debate does not necessarily follow such recommendation.

Finally, individual Members may choose to use oral and written questions, motions and debates to hold Ministers to account in relation to EU matters.

(iv) The House of Lords Select Committee on the European Union

The principal vehicle of EU scrutiny in the Lords is the European Union Select Committee (EUSC). Unlike the Commons ESC, the Lords EUSC has a much broader remit: it considers EU documents and other matters relating to the EU. It largely operates through seven sub-committees. (See below.)

Each member of the EUSC is also on at least one of the sub-committees, but other Peers are co-opted onto the sub-committees so that there are around 70 members of the Lords involved in EUSC work.

The EUSC Chairperson conducts a 'sift' of the deposited EU documents, deciding which ones are of sufficient importance to be referred to a sub-committee for further examination. (The 2004-05 Second Report states that this usually concerns about a quarter of the total - see para 33.)

Similar to the ESC, the EUSC relies on detailed information received from the Government before and after Council meetings.

In addition to the sift, the EUSC does the following:

- (a) oversees the work of the Sub-Committees;
- (b) approves draft Reports from Sub-Committees for publication;
- (c) conducts inquiries into cross-cutting issues; and
- (d) hears evidence from every incoming EU Presidency and from the UK Minister for Europe after major European Councils.

(v) The House of Lords Sub-committees of the Select Committee on the European Union

The EUSC sub-committees currently include:

- A – Economic and Financial Affairs, Trade and External Relations;
- B – Internal Market;
- C – Foreign Affairs, Defence and Development Policy;
- D – Environment and Agriculture;
- E – Law and Institutions;
- F – Home Affairs; and
- G - Social Policy and Consumer Affairs.

Each sub-committee considers the documents referred to it by the EUSC and decides which it will examine more closely by conducting an inquiry. In addition, the sub-committee may decide to:

- (a) make a report on it after taking written and oral evidence where necessary;
- (b) correspond with Ministers on documents which either do not warrant a full inquiry or are being proceeded with too quickly to permit one; or,
- (c) clear it from scrutiny without any further comment.

Similar to the ESC, the EUSC sub-committees rely on detailed information received from the Government before and after Council meetings.

(vi) The Chamber in the House of Lords

The House may debate on a document that has been reported to it; and only after the conclusion of such debate, can the document be cleared. (Refer to Reserve Resolution discussed above.)

Finally, individual Members may choose to use oral and written questions, motions and debates to hold Ministers to account in relation to EU matters.

1.3 Scottish Parliament

The Scottish Parliament as a whole receives copies of all briefings prepared by the UK Government for the UK MEPs and for Explanatory Memoranda (which are prepared by the UK Government and accompany EU documents). The Scottish Executive automatically forwards such information to the Parliament once receiving it from the Cabinet Office. These briefings outline the UK Government's position on EU legislative developments, and are available to all Members and all Scottish Parliament committees, including the European and External Relations Committee and the subject committees.

Further imminent change is likely in the Scottish Parliament EU scrutiny arrangements, and should be monitored. Such change is anticipated given the recommendations outlined in the 2007 Second Report of the Parliament's European and External Relations Committee concerning the Parliament's second session - see paragraphs 66-78.

This sub-section briefly outlines roles and responsibilities of key players in the EU scrutiny arrangements of the Scottish Parliament. They include:

- (i) the Scottish Parliament European and External Relations Committee (mandatory committee);
- (ii) the Scottish Parliament Subject Committees; and,
- (iii) the Chamber of the Scottish Parliament.

(i) The Scottish Parliament European and External Affairs Committee

The European and External Relations Committee (EERC) considers and reports to the Scottish Parliament on:

- (a) proposals for European Communities legislation;
- (b) the implementation of EC legislation;
- (c) any EC or EU issue;
- (d) the development and implementation of the Scottish Administration's links with countries and territories outside Scotland, the EC (and their institutions) and other international organisations; and
- (e) co-ordination of the international activities of the Scottish Administration.

The EERC has seven core tasks that relate to: (a) scrutiny of draft EC/EU legislation; (b) scrutiny of the transposition and implementation of EC/EU legislation; (c) inquiries; (d) external relations; (e) networks and networking; and (f) civic engagement. These tasks are:

- regular sift of draft EC/EU legislation received in the Parliament;
- pre- and post- Council of the EU scrutiny;
- quarterly review of the state of play with transposition and implementation (currently under review to improve procedures);
- production of inquiry reports, including full committee and through reporters;
- new activities, including inquiries, support to SP and handling of visitors; involvement of MSPs in various networks; and
- activities with the people of Scotland.

To perform its scrutiny-related tasks, the EERC receives a bi-weekly list of EU proposals prepared by Parliamentary staff, which is categorised by subject. The EERC considers the list and then refers relevant items to subject committees for detailed consideration. On occasion, the EERC decides that it will consider specific proposals in detail. The idea is to prevent duplication of work.

Finally, the Scottish Parliament Brussels Officer (a post filled in 2005) facilitates the EERC in carrying out, among other things, its scrutiny responsibilities and duties.

(ii) The Scottish Parliament Subject Committees

In addition to the items referred by the EERC to a subject committee, a subject committee may engage with EU issues, including conducting inquiries, assuming such issues pertain to its remit and the work of Minister(s) and department(s) that it seeks to hold to account.

Moreover, these committees receive EU-related information directly from the Scottish Executive, for example: six-monthly statement on the Scottish Executive's global and departmental priorities for forthcoming EC/EU legislation and its implementation; regular pre-and post-Council of the EU documents (including annotated agendas and post meeting reports); quarterly statement and report in the transposition and implementation of EC/EU legislation, outlining dates, deadlines, descriptions of the legislation, plans for derogations, etc.; fortnightly listing of recent legislative developments in the EU, sorted by committee and further classified to highlight documents of special importance.

(iii) The Chamber of the Scottish Parliament

The Parliament may debate on a document that has been reported to it by the EERC or a standing committee.

Moreover, individual Members may choose to use oral and written questions, motions and debates to hold Ministers to account in relation to EU matters.

1.4 National Assembly for Wales

Since 2005, the EU scrutiny arrangements in the National Assembly for Wales (NAW) are based on the premise that a limited number of high priority issues are to be selected

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for scrutiny by the NAW's committees, based on the European Commission's Annual Work Programme, given the issues' importance to the NAW. This is a departure from sifting all EU documents deposited in the UK Parliament, as such sifting was not always found effective in bringing important issues to the committees' attention.

It also is noteworthy that the NAW's Panel of Committee Chairs agreed a protocol for committees to deal with the scrutiny of EU legislation and policy proposals (19 April 2007). The protocol establishes that the key to influencing proposals is to engage with the right players at the right time, and recommends a general approach for a committee to maximise their effectiveness, including:

- (i) who and when the Welsh Assembly Government (WAG), UK Central Government and European institution officials/Ministers and UK MEPs should be invited to appear before a committee;
- (ii) when and why co-ordinating work amongst committees is needed;
- (iii) when and how to promote the committee's views on the WAG's/the UK Government's position on an issue or on a European Commission proposal;
- (iv) when to promote the committee's views on particular issues to the UK Parliament European scrutiny committees and the Committee on the Regions, as well as inter-regional European associations/institutions;
- (v) how to monitor progress on proposals through the decision-making process;
and
- (vi) why to reassess the committee's views on an issue during evolving negotiations.

Further imminent change is likely in the NAW EU scrutiny arrangements, and should be monitored. Such change is anticipated given queries raised about, for example: the feasibility of continued 'mainstreaming' of EU scrutiny work if domestic work increases as is expected; the participation of external stakeholders in helping the committees' development of dialogue on European and international matters within Wales; and, the development of links with other European scrutiny committees and European institutions, to explore possibilities of joint working. (NAW European and External Affairs Committee, Legacy Paper 2003-07, 28 February 2007)

This sub-section briefly outlines roles and responsibilities of key players in the EU scrutiny arrangements of the NAW. They include:

- (i) The NAW European and External Affairs Committee;
- (ii) The NAW Subject Committees; and,
- (iii) The Chamber of the NAW.

(i) The National Assembly for Wales European and External Affairs Committee

The role of the European and External Affairs Committee (EEAC) is to maintain an

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overview of all EU issues affecting Wales. The EEAC does this by identifying potentially important issues arising from the European Commission's Annual Work Programme, and then monitoring and scrutinising them, particularly in relation to:

- (a) the NAW's relations with the regions, other nations and institutions of the European Union, and its methods for informing and advising those institutions of the needs of Wales;
- (b) the NAW's liaison arrangements with UKRep, and with United Kingdom government departments on European issues;
- (c) the NAW's methods and procedures for the consideration of documents, issues and questions emanating from European institutions, having particular regard to the need for liaison with Members of Parliament responsible for scrutiny of European matters of particular relevance to Wales; and
- (d) the NAW's relations with regions and nations external to the European Union and the Assembly's involvement in European and international organisations.

Finally, the NAW Brussels Officer (a post filled in approximately 2005) facilitates the EEAC in carrying out, among other things, its scrutiny responsibilities and duties.

(ii) The National Assembly for Wales Subject Committees

The subject committees of the NAW identify potentially important issues arising from the European Commission Annual Work Programme, in light of their remit. In the course of their daily business, they rely on the protocol (discussed above) and tailor their approach in accordance with the issues identified for further monitoring and scrutiny.

(iii) The Chamber of the National Assembly for Wales

The NAW may debate on a document that has been reported to it by the EEAC or a standing committee.

Moreover, individual Members may choose to use oral and written questions, motions and debates to hold Ministers to account in relation to EU matters.

1.5 Northern Ireland Assembly

This sub-section briefly outlines roles and responsibilities of key players in the EU scrutiny arrangements of the Northern Ireland Assembly. They include:

- (i) the Northern Ireland Assembly Committee on the Office of First Minister and Deputy First Minister (formerly the Committee of the Centre);
- (ii) the Northern Ireland Assembly Statutory Committees; and,
- (iii) the Chamber of the Northern Ireland Assembly.

(i) The Northern Ireland Assembly Committee on the Office of First Minister and Deputy First Minister (formerly the Committee of the Centre)

Prior to suspension of the Northern Ireland Assembly (NIA) in October 2002, the Committee of the Centre (CoC (which then was a standing committee, and now is a statutory committee re-named the 'Committee of the Office of First Minister and Deputy

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First Minister") examined and reported on the functions of the Office of First Minister and Deputy First Minister, including, but not limited to, European affairs and any other related matters determined by the NIA. In 2002, the CoC undertook an "Inquiry into the approach if the Northern Ireland Assembly and the Devolved Government on European Union Issues", which sought to evaluate the effectiveness of the Assembly's and the devolved government's approach in engaging NI with EU institutions. The Inquiry's main findings revealed that: the NIA committees do not feel they are being involved at an early stage in discussions that require a distinct NI position; not all links are in place between Whitehall and the relevant NI departments; when appropriate there should be an increased involvement of NI Ministers at meetings of the Council of the EU; the considerable backlog on implementing EU Directives as well as the possible cost of infraction proceedings for late or inadequate delivery; and, the lack of clarity around the role of the North South Ministerial Council in its EU remit.

The Inquiry further highlighted "that informal networks and inter-regional alliances could complement the formal channels to London" as "important tools in influencing policy at any early stage in Brussels".

It also recommended that consideration be given to the establishment of a Standing Committee on EU Affairs, after a sub-committee of the CoC gave further consideration to details such as membership, quorum, remit, workload, etc.

(ii) The Northern Ireland Assembly Statutory Committees

Pre- and post- suspension, the NIA's statutory committees also have responsibility for EU matters relating to their remit. In the past, there was varied and limited engagement on such matters.

(iii) The Chamber of the Northern Ireland Assembly

The Northern Ireland Assembly may debate on a document that has been referred to it by a committee.

Moreover, individual Members may choose to use oral and written questions, motions and debates to hold Ministers to account in relation to EU matters.

2.0 Other Member States' Legislative Scrutiny Arrangements

This section highlights themes arising from EU scrutiny arrangements employed in other Member States' legislatures, and also profiles key aspects of Finland's arrangements. It is intended to provide a starting point for discussion about such arrangements, which can be further developed if the Committee of the Office of First Minister and Deputy First Minister requires detail about countries' specific arrangements. The following paragraphs significantly draw on the 2004-05 Second Report of the House of Commons Select Committee on the Modernisation of the House (see paragraphs 36-41).

2.1 Legislative Scrutiny Themes

Legislative arrangements for dealing with the scrutiny of EU business vary widely. Nearly every parliament has a committee on European affairs, and that committee and others usually play a central role. However, significant differences arise from these committees'

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remits, powers and composition, as well as their relationship with other parliamentary committees.

In general terms, scrutiny arrangements may be divided into two categories: (i) document-based systems (such as the UK's); and, (ii) Council-based systems, where Ministers attend a committee meeting before each Council meeting in order to establish a mandate for negotiations, which may be legally or politically binding to a greater or lesser extent (such as the Nordic system, established by Denmark and since adopted in modified form by Sweden and Finland). However, the distinction is weak since the majority of systems contain elements of both, for example, Finland's scrutiny arrangements.

2.2 Key Aspects of Finland's Arrangements

Finland has markedly different arrangements from those employed in the UK. The Commons' Select Committee on the Modernisation of the House set out the Finnish arrangements (in Annex 2 of its 2004-05 Second Report) as follows:

The Finnish Parliament

1. The Finnish Parliament, the Eduskunta, is a unicameral body of 200 Members elected every four years by a direct proportional system. The country has only 15 constituencies,^[123] each electing a number of MPs according to the size of its population. Seats are allocated to each party in each constituency on the basis its share of the vote. Helsinki, for example, with a population of 560,000, returns 21 Members from seven parties. The current composition of the Eduskunta is as follows:

- Finnish Centre Party, 55 seats;
- Social Democratic Parliamentary Group, 53 seats;
- National Coalition Party, 41 seats;
- Left Alliance, 19 seats;
- Green Parliamentary Group, 14 seats;
- Swedish Parliamentary Group, 9 seats;
- Christian Democratic Parliamentary Group, 6 seats; and
- True Finns Party, 3 seats.

2. This electoral system inevitably produces coalition governments, which are also in keeping with Finland's strongly consensual political culture. The current Government consists of 18 Ministers, eight each from the Centre Party and SDP and two from the Swedish Group.

Parliament's constitutional role in foreign affairs

3. Parliament's role in foreign affairs changed markedly in 2000, five years after accession, with the adoption of the new Constitution. Its provisions relating to international relations represented a departure from the previous arrangements, in which the President of the Republic was substantially in charge of foreign policy. The new system is a compromise reached in the inter-party negotiations preceding the adoption of the new Constitution, between the old Presidential system and greater influence for the Parliament. Section 93 of the Constitution provides that

- (1) The foreign policy of Finland is directed by the President of the Republic in co-operation with the Government. However, the Parliament accepts Finland's international obligations and their denouncement and decides on the bringing into force of Finland's international obligations in so far as provided in this Constitution. The President decides on matters of war and peace, with the consent of the Parliament.
- (2) The Government is responsible for the national preparation of the decisions to be made in the European Union, and decides on the concomitant Finnish measures, unless the decision requires the approval of the Parliament. The Parliament participates in the national preparation of decisions to be made in the European Union, as provided in this Constitution
- (3) The redefinition of the relationship between Parliament and President in the sphere of foreign affairs was prompted at least in part by Finland's accession to the EU. As matters which had previously been considered entirely as part of domestic policy moved to be considered at the EU level, they moved from the realm of domestic to foreign policy and so from the responsibilities of Parliament to those of the President.^[124] The new Constitution addresses this problem by giving Parliament the responsibility for considering those matters which would, but for Finland's membership of the EU, fall within its competences (known as U-matters); and the right to consider, at its own request or at the suggestion of the Government, any other matter relating to foreign and security policy (known as E-matters). The formal distinction between these two types of matter—which is central to the Parliament's systems for EU scrutiny—is discussed in more detail below.

Types of EU matter

4. A central distinction is made between several different types of EU matter. The two most important categories are U-matters and E-matters.
5. U-matters are 'those proposals for acts, agreements and other measures which are to be decided in the European Union and which otherwise according to the Constitution, would fall within the competence of the Parliament'.^[125]
6. E-matters are matters which fall outside Parliament's normal competence or which do not consist of legislative proposals. Parliament has a constitutional right to receive information about international affairs and EU matters 'upon request and when otherwise necessary'.^[126] E-matters are mostly written statements from a Government Ministry submitted to Parliament under this provision.

The division into U-matters and E-matters is for procedural purposes and is no reflection of the importance of a given matter. Some U-matters are of little significance whereas some E-matters are very important. One merit of the distinction, we were told, was that it meant that the Government was required to examine every proposal at an early stage in order to determine which category it fell into. Whereas the Government is required to submit all U-matters to Parliament without delay, it has a degree of discretion as to whether to submit something as an E-matter or not.

7. When the scrutiny system was established, it was assumed that the emphasis would be on U-matters. In fact, E-matters have consistently outnumbered U-matters by a wide margin. In 2002, for example, the Grand Committee considered 85 new U-matters and 154 new E-matters. In 2003, a general election year, the figures were 70 and 107 respectively.

The Grand Committee and the subject committees

8. The Parliamentary body with primary responsibility for EU matters is the Grand Committee, though subject committees also play an important role.^[127] Historically the Grand Committee long predates Finland's accession and it has had various other functions at various times, but it is now almost exclusively concerned with EU matters. It has 25 members and 13 alternates, including the Chairs of half the 14 subject committees. Each party is represented on it and its Chair is a member of an opposition party. The Committee usually meets twice a week, on Wednesdays to consider U- and E-matters and on Fridays to hear Ministers who are to attend EU Council meetings the following week. The Chairman of the Committee, Mr Jari Vilén, told us that the Wednesday meetings were often short and routine, and the Friday meetings more substantial. The week before we visited Helsinki, half of the Cabinet had attended the Friday meeting. Like all Committees of the Eduskunta, the Grand Committee meets in camera, with formal minutes and certain of the committee's working documents being released afterwards. No record of discussions in the Committee, including discussions with Ministers and civil servants, is published.

U-Matters

9. The Government communication of a new U-matter is approved by a full session of the Government and sent as an official communication to the Speaker, who announces its arrival in the Plenary Session.^[128] He then decides which of the subject committees should provide an opinion to the Grand Committee on the matter, and those committees are then obliged to do so. The Grand Committee then usually issues a formal statement of opinion to the Government, based on the opinions of the subject committees. The opinion of the Grand Committee constitutes the opinion of Parliament and there is no need for it to be ratified in the Plenary Session.
10. We were told that the opinion of the Parliament is politically binding on the Government. There is no legal or constitutional provision that prevents it from taking a contrary stance in negotiations. But the political reality of the situation is that a Minister in a coalition Government, having received a mandate from a committee which is large in comparison to the overall size of the Parliament,^[129] contains representatives from all parties and which

usually proceeds on the basis of consensus rather than majority vote, would find it very difficult to go against that mandate. Where, for whatever reason, the Government is unable to act in accordance with the Grand Committee's opinion, it informs the Committee immediately of the reasons why this is the case.

11. The timing of these proceedings is crucial. The Grand Committee normally issues its statements early enough for them to be available when Finland's representatives in the Council's working groups need to indicate their national position.

E-Matters

12. The handling of e-matters is somewhat less formal. Rather than a government communication to Parliament, they usually take the form of a simple letter from the relevant Ministry. The Grand Committee itself decides from which committees to seek an opinion, leaving it up to them whether to provide an opinion or not. The Grand Committee then simply forwards those opinions it receives to the Government, with or without an opinion of its own.
13. There is a third category, UTP-matters, which are those matters relating to the Common Foreign and Security Policy. The procedure for dealing with them is substantially the same as for E-matters, except that the Foreign Affairs Committee takes the role of the Grand Committee. Where the opinion of another Committee is sought, it is usually the Defence Committee.

Subject committees

14. We have already described the role of subject committees in EU matters: they are required to provide the Grand Committee with an opinion on a U-matter if the Speaker asks them to and they have an opportunity to provide an opinion on an E-matter if the Grand Committee asks them to. In the former case, the Grand Committee will take their opinion into account when determining the opinion of Parliament; in the latter case the Grand Committee will communicate their opinion to the Government.
15. The Eduskunta is a committee-based Parliament. Much of the substance of the Parliament's work is carried out in committee with the Plenary Session confirming or challenging the committees' findings where necessary. Each subject committee deals with all matters that fall within the responsibility of the corresponding Ministry, including domestic legislation, and inquiries similar to select committee inquiries in the UK. MPs told us that committee work took up most of their time—most Members are on two committees and each committee meets up to four times a week.
16. EU business accounts for about half of the Eduskunta's workload, and this means that it is often necessary for committees to prioritise fairly ruthlessly, dealing very briskly with some proposals in order to focus sufficient attention on the most important ones.

Procedure before Council meetings

17. In addition to its consideration of U- and E-matters, the Grand Committee meets every Friday for hearings—again, in camera—with Ministers who are to attend Council meetings the following week. The Committee is provided in

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advance with a copy of the agenda and a commentary by the Government on each agenda item setting out its proposed position. Since each agenda item will previously have been dealt with as a U- or E-matter, the committee is able to compare the Government's position with its own previous decisions.

18. Although it is this part of the Finnish system which is often held up as the exemplar of effective parliamentary scrutiny, the view in Helsinki seems to be that it is more of a formality: a final opportunity to confirm the positions which the Committee will already have taken when the agenda items were before it as U-matters. Much of the business of the Council is decided at the working group stage, often only leaving a few details for negotiating at the Council itself. The opinions on U-matters, issued before the working groups reached their conclusions, were therefore seen as having more impact than anything done on the eve of the Council meeting.
19. The relevant Ministry submits a written report to the Grand Committee after the Council meeting, though the Committee does not usually discuss its contents with the Minister until he or she returns to give evidence before the next meeting.

Proceedings in the Plenary

20. As might be expected in a committee-based parliament, debates on EU matters in the Plenary are rare. The Speaker's Council, which sets the agenda for Plenary Sittings, can put any U-, E- or UTP- matter on the agenda of the Plenary for debate but no decision is possible since the power to determine the Parliament's opinion rests with the Grand Committee. In practice, such debates are usually reserved primarily for treaty revisions. (Second Report 2004-05, at paras 1-20)

The Select Committee stated that:

... one of the most attractive features of the Finnish Parliament's arrangements for dealing with EU business was the close co-operation between Members and Ministers as national positions are prepared. It can be immensely valuable to any Minister negotiating with his or her counterparts from other Member States to be able to assert that the great majority of the national parliament supports his or her approach. In making proposals in this Report we have it in mind that Ministers should seek to work closely with all the available parliamentary bodies to seek reinforcement of their positions. This represents a challenge for Ministers, but also for the European Scrutiny Committee, the European standing committees, departmental select committees and the House itself. (Second Report 2004-05, at para 40)

The Select Committee further found that:

...the Finnish approach is that the quality of both scrutiny of EU legislation and its transposition, where required, into domestic law, is improved by raising the elected Members' interest in, and involvement with, this work. (Second Report 2004-05, at para 41)

3.0 Conclusion - key points and issues for consideration

When the Committee of the First Minister and Deputy First Minister (COFMDFM) considers its future handling of European matters, there are a number of factors that should be kept in mind.

First, devolution opened up the EU debate within the UK, exposing EU policy formulation to new pressures and agendas set outside the confines of central government, and forcing it to be less exclusive and more open. This largely arises from the fact that pre-devolution UK European policy-making took place within a framework of collective ministerial responsibility. So any tensions arising therein between the regions and central government were sorted out within Cabinet.

However, under the devolution arrangements, devolved ministers may have different views arising from regional concerns and are under greater local pressure to make their position publicly known. Moreover, there always will be issues about trust, confidentiality, sensitivity and timetabling constraints in this area, as developments in the EU are driving the pace, not the UK, resulting in information not getting through in full or too slowly, or sometimes not at all due to delay and or caution. Inevitably these factors create points of potential tension and conflict that inevitably impacts the co-ordination and scrutiny of EU business in the UK. COFMDFM should ensure their decisions in this area give proper consideration to these matters.

Second, UK EU scrutiny arrangements potentially face future changes, given on-going developments at EU and UK central/regional levels to enhance transparency and scrutiny of European matters. Such developments on the European level have included consideration of scrutiny issues relating to, for example, subsidiarity. Such consideration has arisen in the context of the regional/national parliament provisions found in the draft Constitutional Treaty, which will be debated in Brussels over the next period. In addition, the Committee of the Regions has conducted a pilot project to establish a European network of regional and local authorities to strengthen the monitoring of the principle of subsidiarity.

Similarly in the UK, developments have included recent examination of scrutiny arrangements by committees in both Houses of Parliament (since about 2004) looked at, for example: efforts to improve Parliamentary scrutiny and transparency of EU business, for example, the Government providing the scrutiny committees with information before and after Council meetings and discussion about how to improve subsidiarity and proportionality monitoring, including the potential establishment a new Joint European Grand Committee in the UK Parliament. Moreover, the Scottish Parliament and the National Assembly for Wales have been reviewing their handling of European matters (since approximately 2005), which includes consideration of recommendations seeking to ensure greater Parliamentary/Assembly scrutiny of EU matters. Consequently, the COFMDFM should monitor legislative scrutiny arrangements throughout the UK, and learn from the experiences of the UK Parliament, the Scottish Parliament and the National Assembly for Wales.

Third, as revealed by a cursory review of other Member States' legislative scrutiny arrangements, it is critical that COFMDFM give consideration to both the theoretical basis and the practical operation of such arrangements, in that the theory underpinning

them could appear powerful on the surface, but in practice they are ineffectual. And conversely, the theory may appear weak, but the practical operation of such arrangements is actually quite influential. The 2004-05 Second Report of the House of Commons Select Committee on the Modernisation of the House cites an example of the former, stating:

the committees of the two Houses of the Austrian Parliament have the power to issue a 'binding opinion' constituting a negotiating mandate from which the Government may not deviate. However, the number of binding opinions has fallen since Austria joined the EU and they are now often worded so as to permit the Government greater latitude. (Second Report 2004-05, at para 37)

Finally, if decisions are taken to make recommendations seeking to change the current NIA arrangements for handling EU matters, such recommendations should include well-grounded proposals relating to staffing requirements, including numbers of staff and their roles and responsibilities, to ensure efficiency and effectiveness in the NIA's scrutiny of European matters.

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