

The European Union Committee

The European Union Committee of the House of Lords considers EU documents and other matters relating to the EU in advance of decisions being taken on them in Brussels. It does this in order to influence the Government's position in negotiations, and to hold them to account for their actions at EU level.

The Government are required to deposit EU documents in Parliament, and to produce within two weeks an Explanatory Memorandum setting out the implications for the UK. The Committee examines these documents, and 'holds under scrutiny' any about which it has concerns, entering into correspondence with the relevant Minister until satisfied. Letters must be answered within two weeks. Under the 'scrutiny reserve resolution', the Government may not agree in the EU Council of Ministers to any proposal still held under scrutiny; reasons must be given for any breach.

The Committee also conducts inquiries and makes reports. The Government are required to respond in writing to a report's recommendations within two months of publication. If the report is for debate, then there is a debate in the House of Lords, which a Minister attends and responds to.

The Committee has seven Sub-Committees which are:

Economic and Financial Affairs and International Trade (Sub-Committee A)
Internal Market (Sub-Committee B)
Foreign Affairs, Defence and Development Policy (Sub-Committee C)
Environment and Agriculture (Sub-Committee D)
Law and Institutions (Sub-Committee E)
Home Affairs (Sub-Committee F)
Social and Consumer Affairs (Sub-Committee G)

Our Membership

The Members of the European Union Committee are:

Baroness Cohen of Pimlico	Lord Plumb
Lord Dykes	Lord Powell of Bayswater
Lord Freeman	Lord Richard
Lord Hannay of Chiswick	Lord Roper (Chairman)
Baroness Howarth of Breckland	Lord Sewel
Lord Jopling	Baroness Symons of Vernham Dean
Lord Kerr of Kinlochard	Lord Teverson
Lord Maclennan of Rogart	Lord Trimble
Lord Mance	Lord Wade
Lord Paul	

Information about the Committee

The reports and evidence of the Committee are published by and available from The Stationery Office. For information freely available on the web, our homepage is:

<http://www.parliament.uk/hleu>

There you will find many of our publications, along with press notices, details of membership and forthcoming meetings, and other information about the ongoing work of the Committee and its Sub-Committees, each of which has its own homepage.

Members' interests are available at the Register of Interests:

http://www.parliament.uk/about_lords/register_of_lords_interests.cfm

General Information

General information about the House of Lords and its Committees, including guidance to witnesses, details of current inquiries and forthcoming meetings is on the internet at

http://www.parliament.uk/about_lords/about_lords.cfm

Contacts for the European Union Committee

Contact details for individual Sub-Committees are given on the website.

General correspondence should be addressed to the Clerk of the European Union Committee, Committee Office, House of Lords, London, SW1A 0PW

The telephone number for general enquiries is 020 7219 5791. The Committee's email address is euclords@parliament.uk

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Enhanced scrutiny of EU legislation with a United Kingdom opt-in

Introduction

1. We referred in our Annual Report for 2008 to the possibility of enhanced scrutiny of proposals for EU legislation with a United Kingdom opt-in—that is, legislation requiring a decision from the Government as to whether the United Kingdom wishes to be bound by it.¹ In this report we inform the House of developments.

Background

2. Title IV of the Treaty establishing the European Community (TEC) deals with visas, asylum, immigration, other policies on freedom of movement and civil justice. With the exception of family law measures, measures under Title IV—first pillar measures—are adopted by qualified majority voting (QMV). Under the terms of the Protocol on the position of the United Kingdom and Ireland, measures adopted under Title IV do not apply to the United Kingdom unless the Government notifies the President of the Council within 3 months of the proposal being presented to the Council that it wishes to take part in the measure—i.e. it opts in to the measure. (What is sometimes described as an opt-out is simply a decision by the Government not to opt in, and requires no action by the United Kingdom.) An opt-in is also possible once the measure has been adopted, but in this case the United Kingdom can play no formal part in the negotiations.
3. Title VI of the Treaty on European Union (TEU) is the third pillar, dealing with police and judicial cooperation in criminal matters. Measures under Title VI are adopted by unanimity, and there is thus no need for an opt-in provision.
4. The Treaty of Lisbon provides for the merger of the first and third pillars. TEC Title IV and TEU Title VI would become Title V of the Treaty on the Functioning of the European Union (TFEU), and almost all these matters would be dealt with by QMV. The Government negotiated a revised Protocol on the position of the United Kingdom in respect of the whole area of Freedom, Security and Justice (FSJ),² extending the TEC Title IV opt-in procedure to what are now TEU Title VI matters.
5. Until now Parliament has dealt with proposals for Title IV (first pillar) measures under the normal scrutiny process. The normal practice has been for the Minister's Explanatory Memorandum (EM) to say that the Government is considering whether to opt in, without more. The Government's decision is usually reached a matter of days, or even hours,

¹ *Annual Report 2008* (32nd Report, Session 2007–08, HL Paper 191), paragraphs 57–59 and Appendix 4

² The Treaty of Lisbon refers to the matters currently in TEC Title IV and TEU Title VI jointly as the area of Freedom, Security and Justice (FSJ). The Commission Directorate-General dealing with these is called Justice, Freedom and Security (JLS—the French acronym). Councils dealing with these matters are called Justice and Home Affairs (JHA).

before expiry of the 3 month period. This Committee has in the past not been informed of that decision until after the period has expired.

An enhanced scrutiny process

6. In anticipation of the entry into force of the Treaty of Lisbon it became all the more important to improve the scrutiny process for FSJ legislation. In April 2008 this Committee invited its then Chairman, Lord Grenfell, to discuss with the then Leader of the House, Baroness Ashton of Upholland, a procedure for improving the scrutiny of opt-in legislation which would allow this Committee to give its view on whether the United Kingdom should opt in to a particular measure well before the 3 month period had expired. Matters came to a head during the Report Stage of the European Union (Amendment) Bill, and on 9 June 2008 Baroness Ashton placed in the Library of the House a “Statement on JHA Opt-ins” agreeing on behalf of the Government to an enhanced scrutiny process for opt-in legislation. That Statement is printed at Appendix 1.
7. Two undertakings by the Government were of particular value. The first was that the Government would not as a general rule notify the Council of a decision to opt in during the first 8 weeks of the 3 month period, and that if within those 8 weeks this Committee expressed an opinion on whether or not the United Kingdom should opt in, that opinion would be taken into account.
8. The second useful undertaking was that if the Select Committee published a report recommending a debate, the Government would make time for the debate; unlike current motions to take note of reports, the debate would be on an amendable motion (hence allowing a vote, if an amendment was tabled); and the Government, although not bound by the views expressed, would take note of them.
9. There were other undertakings which, though useful, were not strictly relevant to the scrutiny of legislation: for example that the Government would table a report each year on the Government’s approach to Justice and Home Affairs policy, and make a Minister available to appear before this Committee in advance of every Justice and Home Affairs Council.
10. Once it became clear that the Treaty of Lisbon would not be coming into force in the near future, Lord Grenfell wrote to Baroness Ashton asking if the Government’s undertakings would apply to current opt-ins in first pillar matters. She replied that the undertakings were specifically linked to the Lisbon Treaty changes, so that the Government would not regard itself as bound by the undertakings unless and until the Treaty came into force.

The Home Secretary’s letter

11. On 20 January 2009 the Home Secretary wrote to Lord Roper a letter which we print at Appendix 2. The undertakings in this letter are not dependent on the Treaty of Lisbon being in force; they apply from now, but of course only in relation to TEC Title IV measures, since these for the present are the only ones where the United Kingdom has an opt-in.
12. The Home Secretary repeats that the Government will not as a general rule opt in during the first 8 weeks, and if within those 8 weeks this Committee expresses an opinion on whether or not the United Kingdom should opt in, that opinion would be taken into account. We assume that this does not

mean that our views will be disregarded if expressed after 8 weeks; only that less weight may at that stage be given to them if the Government is close to reaching its own decision.

13. The second undertaking is in rather different terms. If this Committee makes a recommendation for a debate, the Government no longer undertake “to seek to arrange a debate through the usual channels”, only “to be flexible in principle regarding making time available for debates”. The Home Secretary does not repeat Baroness Ashton’s undertaking that any motion for debate should be amendable.
14. We nevertheless welcome the Government’s position. The entry into force of the Treaty of Lisbon will bring into play the full undertakings given by the Government in June 2008 and set out in Appendix 1, including the undertaking that any motion for debate should be amendable. Until then, the arrangements set out in the Home Secretary’s letter constitute a useful enhancement of the scrutiny process, giving this Committee an opportunity to put forward its views at a time when they can still influence the Government’s thinking.

