

XXIIIrd COSAC - Versailles - 16-17 October 2000

**Questionnaire for the Parliaments of Member States
Answers of the House of Commons (United Kingdom)**

Scrutiny of european policy by member states national parliaments
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1°) Since 1995, has the role of your committee been modified, either in its proceedings or in its relationship to other bodies in your Parliament?

Yes, the European Scrutiny Committee's terms of reference (its powers and duties) were modified after a debate in the House of Commons in November 1998. The main changes were that it was given new powers to scrutinise Second and Third Pillar documents; and it was given power to request formal Opinions from the subject-related Committees in the House of Commons. The Scrutiny Reserve Resolution of the House of Commons (which in essence says that Ministers may not give their assent to legislative proposals unless the House of Commons has completed its scrutiny of documents) was altered at the same time to take into account the Committee's new responsibilities for Second and Third Pillar documents. The opportunity was also taken to update and clarify both the terms of reference and the Scrutiny Reserve Resolution.

2°) Do you think that your committee receives European legislative proposals in sufficient time ? Has the protocol on the role of the national Parliaments in the European Union of the Treaty of Amsterdam improved the situation?

The Committee receives most First and Third Pillar proposals in sufficient time to give them preliminary scrutiny before they are considered by the Council of Ministers. However, problems often arise if the documents are likely to be significantly modified by the Council (see answer to Question 3 below). The Protocol has not noticeably changed the time at which the Committee receives the documents: there is a long-standing agreement between Parliament and the UK Government that all documents that meet certain criteria (set out in the Committee's terms of reference) must be deposited in Parliament within four days of their being received in London by the Foreign Office from the UK Permanent Representation.

3°) Do you think that your committee gets an adequate period of time to consider these legislative proposals? Has the aforementioned protocol improved the situation?

The Committee has not had much difficulty with scrutinising initial legislative proposals after their publication by the Commission: its main problem has been obtaining information about subsequent amendments to the proposed legislation. Of course, with particularly

controversial proposals (like the recent Discrimination Directives and the End of Life Vehicles Directive) the main difficulty often is the details of the provisions rather than the principle of the legislation, and these details may be changed radically in discussions within the Council and between the Council, European Parliament and Commission. Very frequently, there is no further “official” text after the Commission’s initial proposal; discussions take place in private both within the Council and in the Conciliation Committee; and any agreements are rushed to Council with little or no notice; and the result is that it is extremely difficult - sometimes almost impossible - to discover how the text has been changed, and it is very often impossible to give the amended text proper scrutiny before it is considered in Council.

This, of course, contrasts widely with what happens in National Parliaments, where amendments to legislation are debated and voted on openly and - in the UK and, we assume, in other national legislatures - up-to-date copies of the proposed amendments and the texts as amended are publicly available throughout the process of consideration. The Committee has said that it is wrong in principle for there to be no public record of stage by stage proceedings on legislation in the Council.

The Protocol has done nothing to improve this situation, since it applies only to the initial Commission proposal and not to subsequent stages of consideration.

A significant improvement would be for the Council’s Rules of Procedure to be amended to require the publication of the text of legislation as agreed to at each stage by Council. This would, of course, be different from the publication of the current informal texts that reveal negotiating positions: the formal texts would show which Articles were agreed on, and would highlight the areas of disagreement in the rest of the text. National Parliaments would then have at least some chance of following the proceedings, and of influencing their Governments on the points still at issue.

4°) Art.. 7 of the Rules of Procedure of the Council of the European Union is the base for the notion of legislative proposal' as understood by the protocol on the role of the national Parliaments in the European Union of the Treaty of Amsterdam. In your opinion, is this definition satisfactory or do you think that some acts, not deemed as legislative by art. 7, should be included in the definition?

If so, which ones?

The House of Commons European Scrutiny Committee does not rely on the text of the Protocol (and therefore the definition in the Council’s Rules of Procedure) to define the documents which have to be submitted to Parliamentary scrutiny: it relies instead on the Standing Orders of the House of Commons (the House’s Rules of Procedure) which lay down a much wider definition of European documents that have to be submitted for scrutiny.

*However, looking at the Protocol and the Council’s Rules of Procedure, it appears arguable that the definitions of legislation can - and should - be interpreted fairly widely. The phrase “rules which are **legally binding in or for the Member States** ... on the basis of the relevant provisions of the **Treaties**” [our emphasis] would appear to cover not only the First Pillar*

but also all other acts which create rules binding on Member States in international law - which would cover even Second Pillar instruments. The list of three First Pillar instruments in the Rules (Council regulations, directives and decisions) is illustrative rather than exclusive.

Title VI TEU (Police and Judicial Co-operation in criminal matters) is, of course, explicitly covered by the Protocol. However, it is not entirely clear to us that the Protocol covers Title VI measures brought forward on the initiative of individual Member States rather than the Commission.

In our view, the definitions clearly exclude only the exceptions listed in the Rules of Procedure. Of these, we already scrutinise budgetary acts, some acts concerning inter-institutional and international relations and many non-binding acts. We place especial emphasis on our scrutiny of the European Budget, which enables the House of Commons to hold a debate on the subject of EU expenditure at least once a year. We have found it useful to look at the more important Inter-Institutional Agreements, especially on financial matters. Non-binding acts may have importance nationally: even if not legally binding, they may have legal, and often have significant political, consequences. As for international relations, we find Treaties (apart from the amendment of the European Treaties themselves) very problematic from a scrutiny point of view because so much of the negotiations over, for example, the adoption of the Commission mandate are necessarily confidential. However, the UK Government does make efforts to keep the Scrutiny Committee informed informally about proposals for Treaties.

Although we receive these types of documents already, if other National Parliaments find their Governments unwilling to supply them in good time for scrutiny, then perhaps some amendment should be made either to the Protocol or to the Council's Rules of Procedure to take them into account. Alternatively, National Parliaments could consider altering their own Rules of Procedure (within their constitutional constraints) to require their Governments to supply these documents.

5°) Do you think your committee sufficiently informed, and in good time, on the proceedings of other EU affairs committees? In what ways could the system be improved?

No, the Committee is not sufficiently informed of the proceedings of other EU affairs committees (with the exception of the House of Lords European Union Committee), but it is difficult to see how the system could be improved. The National Parliaments have given widely different remits to their European Affairs Committees, with some (like this Committee) having the duty to scrutinise and publish Reports on a wide variety of documents (the Committee reports on some 900 - 1000 documents a year, and the Reports are published in hard copy and on the Internet within 8 - 10 days of the Committee's meeting), while others deal with a smaller selection of documents, may not publish their conclusions on them, or publication may take longer. On individual documents, therefore, the purpose of National Parliamentary scrutiny - and the timing of Committees' findings - varies so widely that it would be very difficult if not impossible to exchange information in time for Committees to take one another's views into account. This sort of co-ordination is only possible in respect of very important, slow-moving issues like the IGC.

However, this does not mean that the Commons Committee is not interested in leaning the views of other Committees, even though it may - and often will have - already published its own views. In its Reports, it has, for example, taken up points made by sister Committees in France and the Netherlands. So more information on what sort of documents are publicly available from sister Committees, and where they may be obtained, would be useful.

6°) Are members of your committee participants to the joint meetings organized by the European Parliament? If such is the case, is there any improvements you would like to suggest?

Yes, members of this - and the subject-related Committees of the House of Commons - have participated in joint meetings with the EP. One of the major difficulties experienced by the Commons Committees has been insufficient notice from the EP: Members of all Parliaments have very busy lives and it has often proved impossible to find a Member who can re-arrange his/her appointments at short notice in order to fit in a meeting in Brussels. From our experience, we need one month's notice, and longer (because of people's absence on holiday) if the meeting is to be in September or early October.

Another problem is that the agendas are sometimes too ambitious: too many issues are raised to have a proper discussion. A narrower focus would often provide a more informative and productive debate, and it would be easier for Members to decide whether the meeting was one in which they were really interested and to which they could make a useful contribution.

Finally, Members are unlikely to want to attend these meetings if they are not able to contribute: if they have to cancel/re-arrange appointments and travel to Brussels, often staying overnight, they do not want simply to sit and listen to large numbers of key-note speakers - they want to take part! Discussions, for example in COSAC, often seem to be better when, ideally, there is a short paper (distributed in advance) to help focus the discussion, with a brief introduction by one or at most two rapporteurs on the main themes, followed by an open debate.