



**Tithe an Oireachtais**

**An Comhchoiste um Ghrinnscrúdú Eorpach**

An Chéad Tuarascáil

**Tuarascáil Speisialta maidir leis an Ról Méadaithe do  
Pharlaimintí Náisiúnta i gConradh Liospóin um  
Athchóiriú**

**Bealtaine 2008**

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**Houses of the Oireachtas**

**Joint Committee on European Scrutiny**

First Report

**Special Report on the Enhanced Role for National  
Parliaments in the Lisbon Reform Treaty**

**May 2008**

## INDEX

FOREWORD.....	3
EXECUTIVE SUMMARY.....	4
BACKGROUND.....	5
LISBON TREATY PROVISIONS	
▪ Article 5.....	6
▪ Article 12.....	6
▪ Protocol on the role of National Parliaments.....	6
▪ Protocol on Subsidiarity and Proportionality.....	7
MEETING WITH MINISTER OF STATE ROCHE.....	8
POST-LISBON IMPLICATIONS.....	10
CONCLUSIONS.....	11
APPENDICES	
▪ Orders of Reference of Joint Committee.....	14
▪ Members of the Joint Committee.....	16
▪ Articles 5 and 12 of Lisbon Treaty.....	17
▪ Protocol on the role of National Parliaments.....	18
▪ Protocol on Subsidiarity and Proportionality.....	21



## FOREWORD

On behalf of the Joint Committee on European Scrutiny I am pleased to present this Report on the enhanced role for National Parliaments in the Lisbon Reform Treaty to both Houses of the Oireachtas. The Lisbon Treaty is fundamentally about modernising the EU's institutions to ensure they work better for EU citizens. The Committee has undertaken a detailed consideration of the Lisbon Treaty provisions on National Parliaments. The Committee strongly supports these provisions as one of the most significant features of the new Treaty.

A recent Eurobarometer survey showed that while a large majority of Irish people support EU membership, only a quarter of us believe that our opinion counts when the EU makes decisions. This is an indication of how disconnected citizens feel between their everyday lives and the EU institutions. The reality is, however, that EU legislation, in the form of directives, regulations or decisions, has a real impact on the everyday lives of all EU citizens and it is negotiated on behalf of citizens by their governments. The primary legislator in European society is the national parliament, the true democratic representative of the citizen.

In recognition of the growing importance of EU legislation and the need to hold the Government accountable for the negotiation of this legislation, the Joint Committee on European Scrutiny examines every item of proposed EU legislation. On the basis of those detailed examinations, the Joint Committee produces timely scrutiny reports which make recommendations to the Government on negotiation positions to be adopted in Brussels. The reports also act to alert the Oireachtas and the public to any proposal for EU legislation that may have a significant impact for Ireland.

The Lisbon Treaty provisions would strengthen the ability of the Oireachtas to scrutinise proposed EU legislation and assess its impact on the everyday lives of Irish citizens. This would represent a significant enhancement of the democratic dimension of the European Union.

The Committee presents this Report to both Houses of the Oireachtas to contribute to the public debate during the referendum campaign in Ireland. The Committee will be seeking a debate on the Report in the Dáil and Seanad to raise awareness of the significant proposals involved. If the Treaty is ratified the Oireachtas can play a greater role on behalf of the public in EU policy formulation.

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*John Perry T.D.*  
*Chairman*  
*23 May 2008*

# THE LISBON REFORM TREATY

## ENHANCED ROLE FOR NATIONAL PARLIAMENTS

### EXECUTIVE SUMMARY

The Committee has considered the Lisbon Treaty provisions that would enhance the role of National Parliaments. This Report looks at how the new provisions will affect the work of the Oireachtas on EU matters. Having assessed the available evidence and the likely benefits for the Oireachtas, the Committee has agreed on the following conclusions:

1. **The Committee strongly supports the Lisbon Treaty provisions to enhance the role of National Parliaments in the EU political process.** The Committee notes that the proposals have been supported by the European Parliament, other EU National Parliaments, the majority of Oireachtas members, and a number of Irish representative groups.
2. **The Committee welcomes the new subsidiarity policing role for National Parliaments. This should result in better legislation at EU level.**
3. **National Parliaments are for the first time being given a defined role in EU matters separate to that of their national governments.** This will give greater representation to citizens through their local parliamentarians.
4. **The Committee feels that there is a need for greater public awareness about the important work done by the Oireachtas on European matters.** The Oireachtas has an important message to sell. This Committee will have to further consider how to better communicate its important role in EU legislation to the public.
5. **The Committee strongly recommends that significant reforms are made to Dáil and Seanad procedures to ensure regular consideration of EU matters in plenary session.** As an important start, the Dáil and Seanad should allocate a specific day once a month to consider EU business.
6. **The Committee welcomes the commitment by the Government to consult with this Committee on the legislative and procedural changes necessary to implement the Treaty proposals to enhance the role of National Parliaments.**
7. **Of particular importance will be the need for the Government to support an independent role for the Oireachtas in order that the enhanced role of National Parliaments is given full expression.**

The Committee will be seeking a debate on this Report in the Dáil and Seanad.

## BACKGROUND

1. The Lisbon Reform Treaty was signed by the leaders of the 27 EU Member States in Lisbon on 13 December 2007. Before it can enter into force on schedule in January 2009 it must be ratified by each Member State according to its own constitutional or legal requirements. In Ireland this will be by way of a referendum. The Twenty Eighth Amendment of the Constitution Bill 2008, containing the proposal to enable the State to ratify the Treaty, has been passed by the Oireachtas and the proposal will be submitted to a referendum on 12 June. If approved by the people, the Bill will then signed into law by the President, thereby enabling the State to formally ratify the Lisbon Treaty. A number of EU Member States have already ratified the Treaty.
2. It is one of the explicit aims of the Lisbon Treaty, set out in its Preamble, to enhance the “democratic legitimacy of the Union”. In this context the Lisbon Reform Treaty presents substantially new provisions concerning the enhanced role of National Parliaments. The Treaty represents a significant transfer of powers to the Parliaments of the European Member States. This Report looks at how the new provisions will affect the work of the Oireachtas on EU matters.
3. The Orders of Reference of this Committee are set out at pages 14/15 and the list of Committee members is at page 16. The main function of the Committee is to consider every item of proposed EU legislation and decide what level of scrutiny is warranted on each individual proposal (approximately 500 per annum). Scrutiny in this sense is an absolutely essential part of the legislative process, and is particularly important to ensure the transparency of the European legislative process for the citizen. This detailed examination can involve discussions with affected stakeholders. On the basis of its examinations, the Committee produces timely scrutiny reports which make recommendations to the Government on negotiation positions to be adopted in Brussels. The reports also act to alert the Oireachtas to any proposals for EU legislation that may have a significant impact for Ireland.

## LISBON TREATY PROVISIONS

4. An important objective of the Lisbon Reform Treaty, drawing from years of debate about the future of Europe, is to strengthen the democratic legitimacy of the Union. It is recognised that the role of national legislatures is crucial in this respect. The Lisbon Treaty proposes to give the National Parliaments of Member States a direct input into the EU political process as set out in paragraphs 6 to 9.
5. The four major Treaty proposals relevant to National Parliaments are:
  - **Article 5** in relation to National Parliaments ensuring compliance with the principle of subsidiarity.
  - A new **Article 12** in relation to how National Parliaments can contribute to the good functioning of the Union.
  - A revised **Protocol** to the Treaties on the role of National Parliaments in the European Union.
  - A revised **Protocol** to the Treaties on the application of the principles of subsidiarity and proportionality.

6. **Article 5**

The proposed Article 5 (see page 17 for text) deals with the competences of the EU. The Union must only act within the limits of the competences conferred by the Member States in the Treaties. The principle of subsidiarity in Article 5 is that the EU shall only act if the objectives can be best achieved at Union level. This is designed to ensure that the EU takes action only when necessary and appropriate.

Article 5(3) provides that:

*“The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of Subsidiarity<sup>1</sup> and Proportionality<sup>2</sup>. **National Parliaments ensure compliance with the principle of subsidiarity** in accordance with the procedure set out in that Protocol.”*

While the principle of subsidiarity was established in previous Treaties<sup>3</sup>, this is the first time that National Parliaments are being given the express power to ensure that the EU institutions comply with the principle and only act in areas where the objectives of the proposed action cannot be sufficiently achieved at national or local level.

7. **Article 12**

A new Article 12 is proposed (see page 17 for text) which sets out that “*National Parliaments can contribute actively to the good functioning of the Union*”. Among the specified ways are:

- Receipt of information and draft legislation direct from the EU institutions
- Ensuring compliance with the subsidiarity principle (discussed below at paragraph 9)
- Taking part in evaluation of EU policies in the area of freedom, security and justice
- Monitoring and scrutiny of Europol
- Involvement in evaluation of the activities of Eurojust
- Taking part in any future Treaty revision
- Being notified of applications to join the EU
- Interparliamentary cooperation, both with other National Parliaments and with the European Parliament.

It is the first time ever that an EU Treaty contains a specific article acknowledging the role of National Parliaments in the EU.

8. **Protocol on the Role of National Parliaments in the EU**

The new Protocol<sup>4</sup> annexed to the Treaties (see pages 18/20 for text) has 10 articles setting out provisions for Information for National Parliaments (Articles 1 to 8) and

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<sup>1</sup> Article 5 of the Treaty provides that “Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level”.

<sup>2</sup> Proportionality provides that “the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties”. While the Treaty sets out a specific power for national parliaments to give reasoned opinions that draft legislative acts do not comply with the subsidiarity principle (ie yellow and orange cards) it does not have a similar provision for the proportionality principle. National Parliaments will continue to police the proportionality principle by the other means at their disposal.

<sup>3</sup> EC Treaty at Maastricht (1992) and Amsterdam (1997).

<sup>4</sup> This replaces Protocol No 9 to the EC Treaty (1997).

Interparliamentary Cooperation (Articles 9/10). It states in the Preamble that Member States desire to

*“encourage greater involvement of **national Parliaments** in the activities of the European Union and to enhance their ability to express their views on draft legislative acts of the European Union as well as on other matters which may be of particular interest to them.”*

The Protocol provides in detail as follows-

- First, it spells out the extended right of parliaments to receive documents direct from the Commission (or other originating institution) including draft legislative acts, Commission consultation documents, Council agendas and minutes, and the Court of Auditors’ annual report (Articles 1, 2, 5, 7).
- Except in cases of stated urgency, at least eight weeks must elapse between the provision to National Parliaments of a piece of draft EU legislation and it being placed on a Council agenda for decision. There should normally be a ten day gap between the publication of an agenda and the taking of a decision. This is intended to give National Parliaments more time for consideration and debate (Article 4).
- Article 3 provides that National Parliaments may send a reasoned opinion on whether a draft legislative act complies with the principle of subsidiarity as laid out in the Protocol on Subsidiarity and Proportionality (see paragraph 9 below).
- The Protocol provides a Treaty basis for cooperation between National Parliaments and the European Parliament (Articles 9 and 10). COSAC<sup>5</sup> is recognised and it may submit contributions to the EU institutions. National Parliaments and the European Parliament “shall together determine the organisation and promotion of effective and regular interparliamentary cooperation”.

#### 9. Protocol on Subsidiarity and Proportionality

A new Protocol<sup>6</sup> is annexed to the Treaties (see pages 21/23 for text) with 9 articles further developing the role of National Parliaments in relation to the implementation of these important principles. The Protocol introduces a new early warning mechanism known as the “**yellow and orange cards**.” These give National Parliaments the right to send to all EU institutions, within 8 weeks, a “reasoned opinion” stating why it considers that a draft legislative act does not comply with the principle of subsidiarity (Article 6). Under Article 7 a voting system then applies, with two votes for each National Parliament. In the EU27 this means a total of 54 votes.

1. **Yellow Card** – If, within 8 weeks, at least one third of available votes (currently 18) are cast against a proposal in this way, the institution which made it must review it. For proposals on judicial cooperation in criminal matters and police cooperation, the threshold is one quarter of votes (i.e. 14 at present).

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<sup>5</sup> COSAC is the Conference of European Affairs Committees of the national parliaments as well as representatives from the European Parliament. Both the Joint Committees on European Scrutiny and European Affairs represent the Oireachtas at COSAC meetings.

<sup>6</sup> This replaces Protocol No 30 to the EC Treaty (1997).

2. **Orange Card** – Under the ordinary legislative procedure, if a majority of available votes (currently 28) are cast against a proposal within 8 weeks, the Commission must review it. If they wish to maintain the proposal it can be struck down by the European Parliament (by a majority of the votes cast) or the Council of Ministers (by a majority of 55%).

This so-called yellow and orange card system is a major development which will bring National Parliaments directly into the EU decision-making process. The use which is made of this mechanism will depend on the capacity of National Parliaments, individually and collectively, to prepare reasoned opinions within the timescale laid down. The application of the principle of subsidiarity is intended to take place primarily before the adoption of legislation. However, in another important innovation, the European Court of Justice is empowered to adjudicate on alleged infringements of this principle in laws adopted by the EU. Such actions may be brought by a Member State or notified by it on behalf of its National Parliament.

10. In its White Paper, the Government has welcomed the Treaty provisions giving an enhanced role to National Parliaments: <sup>7</sup>

*“The Government attaches particular importance to those elements of the Reform Treaty which serve to strengthen democracy and accountability at EU level. In 2004, it presided over negotiations which devised the “yellow card” procedure for use by national parliaments with regard to possible breaches of the subsidiarity principle. The Reform Treaty further strengthens the position of national parliaments and the Government welcomes this outcome. It considers that national parliaments have an invaluable role to play in connecting the Union’s institutions with the interests and aspirations of the people of Europe.”*

## **MEETING WITH MINISTER OF STATE ROCHE**

11. The Joint Committee held a meeting with Minister of State Dick Roche on 29<sup>th</sup> April to discuss the new Treaty provisions relating to National Parliaments (transcript available on Oireachtas website). Some of the main points made by the Minister in his presentation to the Committee were:
  - The Treaty makes the largest historical step in the history of the European Union in extending democracy in the Union. It is revolutionary rather than evolutionary in this regard.
  - If we want more democracy and effectiveness, and to bring the decision-making processes in Europe closer to the people of Europe and the citizens of Ireland, the way to do it is to vote “Yes” on 12 June.
  - The Treaty provisions give the citizens of the member states a much earlier opportunity to have an input into the EU law-making process, to influence the process and to articulate their concerns. People will have a direct say for the first time in the rules, laws, regulations and directives that affect their daily lives and the way they do their business.
  - The Treaty, if ratified, will give the Houses of the Oireachtas a unique opportunity to work hand in hand with its sister parliaments right across the Union. It will build a network of parliamentary oversight which was not the reality previously.

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<sup>7</sup> Government White Paper, April 2008, p32.

- If we are concerned, as many people have expressed in the past 35 years, that there is an encroachment or slippage of power to Brussels, we will have the capacity to address it. We and our fellow elected members in the parliaments of Europe will be the guardians of subsidiarity.
- Any move by the European Council to allow decisions previously determined unanimously to be made by QMV or to extend the co-decision procedure, can be blocked by a single national parliament or government.
- The terms of the Referendum Bill underline the Government's desire to maximise the enhanced role of the Oireachtas in the development of future EU legislation.
- The Government will consult closely with this Committee on the legislative and procedural changes to fully implement these important Treaty proposals.

12. **In their contributions Committee members spoke in favour of the Treaty provisions. Members welcomed the enhanced role being given to National Parliaments to work together to ensure that national prerogatives are respected in the further development of the Union.**

Deputy John Perry, Committee Chairman, referred to the public lack of awareness on the role of the Oireachtas or of European issues. While many issues have been raised, the enhanced role of National Parliaments has, somewhat disappointingly, been lost and overlooked in the debate on the Lisbon Treaty. The Chairman also stated that there is a massive information deficit among people aged between 18 and 25, who are not aware of the role of this Committee or of the effectiveness of its work in consulting with representative groups, interest groups and Government Departments.

Deputy Sean Connick, Committee Vice-Chairman, referred to the issues being debated at public meetings around the country, including the allegedly complicated nature of the Treaty. He referred to the benefits of being part of an EU partnership of 27 countries that brings together various nationalities and communities. The EU is a work in progress and more countries are interested in joining.

Deputy Joe Costello stated that the new role for National Parliaments is an exciting innovation and the Oireachtas should develop a robust and proactive response to it. National Parliaments will now have a direct, immediate role in the legislative process, not *post factum* or through grace and favour, but on a legal basis. Deputy Costello referred to the mechanism to be used for the subsidiarity checking, the need for resources and considerable professional back-up skills for parliamentarians to carry it out, and the establishment of links with other parliaments. The other issues raised by Deputy Costello were the need for sensitive negotiations with the Government in order that the role of parliament is given full expression, and the need for changes in Dáil and Seanad procedures. Deputy Costello suggested that in the short term the Dáil should dedicate a specific day once a month to consideration of EU business, which should build up to at least one day a week in the Dáil and Seanad chambers.

Deputy Damien English also referred to the need to inform the public of the central role of the European Scrutiny Committee in its preliminary consideration of all draft EU laws before they are enacted. He spoke of a tendency of politicians from various parties to blame Europe over the years when it suited them for matters in which Ireland itself played a very important role. Deputy English highlighted the need to explain the procedures and the significant role of the Oireachtas in everything that happens in Europe. He also spoke of the perception that Ireland is more vigorous than other countries in implementing and enforcing EU regulations which leaves Irish interests at a significant disadvantage.

Senator Paddy Burke referred to the work being done in promoting the provisions of the Treaty at public meetings throughout the country and the type of issues that are being raised by the public, including taxation and neutrality. He also referred to the Committee's work in January 2008 when a delegation met with 8 of the EU Commissioners and senior officials in the Commission and European Parliament.

## POST-LISBON IMPLICATIONS

13. If the Lisbon Treaty is ratified, the four major Treaty elements as set out in paragraphs 6 to 9 above will come into force in relation to National Parliaments. It will be a matter for each parliament to decide how to apply the relevant provisions within its own constitutional and parliamentary setting. Based on previous experience, the Committee expects that the following issues are among those likely to arise in the Irish system-
  - 1) **European Scrutiny Act 2002** – The Act may require amendment to give statutory effect to the enhanced role of the Oireachtas in scrutinising EU affairs. In particular, the Oireachtas will need to consider how it will take part in the subsidiarity checking mechanism (ie the 8 week period to operate the yellow and orange card procedures on subsidiarity grounds). The Houses may decide to consider such matters directly or delegate them to a Committee to make recommendations in that regard.
  - 2) **Standing Orders** – It may be necessary to amend the Standing Orders of Dáil and Seanad Eireann to underpin the mechanism whereby each House will have a separate vote in the yellow and orange card procedures.
  - 3) **Committee's Orders of Reference** – The current Orders of Reference of the Joint Committee (copy at pages 14 and 15) give practical effect to the provisions of the European Scrutiny Act 2002. They may need to be changed to take account of the Treaty provisions and any possible consequential amendments to the European Scrutiny Act 2002. Some of the areas for clarification would be:
    - The operation of the yellow and orange card procedures including liaison with other National Parliaments<sup>8</sup>
    - Enhanced interparliamentary cooperation<sup>9</sup> including at COSAC
    - Increased contacts with the European institutions including the European Commission, the European Parliament and its Committees, and the Council of Ministers and its secretariat.
  - 4) **Resource Implications** – There will be resource implications in giving effect to the Treaty provisions. This can be assessed in more detail when it is proposed to make any necessary changes to the European Scrutiny Act 2002 and the Committee's Orders of Reference.

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<sup>8</sup> The COSAC Report on a pilot for the subsidiarity check mechanism (February 2008) concluded that “*The coordination of the work of national parliaments in order to assure the necessary quota, especially the majority needed to produce the orange card, constitutes a challenge and will require the stepping up of interparliamentary cooperation. The exchange of information between national parliaments and efforts to develop a common understanding of subsidiarity may need to be intensified.*”

<sup>9</sup> COSAC is the Conference of European Affairs Committees of the national parliaments as well as representatives from the European Parliament.

## CONCLUSIONS

Having considered the Treaty provisions in detail, the available evidence and the likely benefits for the Oireachtas, the Committee has agreed on the following Conclusions:

14. **The Committee strongly supports the Lisbon Treaty provisions to enhance the role of National Parliaments in the EU political process.** Greater powers for National Parliaments represent one of the most significant features of the new Treaty and are part of the solution to the perceived democratic deficit. The Treaty gives the National Parliaments greater scope to participate alongside the European institutions in the work of the Union. The Treaty clearly sets out the rights and duties of the National Parliaments within the EU. It deals with their right to information, the way they monitor subsidiarity, their role in evaluating policy in the field of freedom, security and justice, and their involvement in procedures for reforming the Treaties. **The Committee expects that the Treaty provisions should strengthen the democratic legitimacy of the EU and make it more accountable.**
15. **The innovations concerning the role and influence of National Parliaments in the EU is acknowledged by an overwhelming majority of other Member State parliaments as an added value, since it would enhance their participation in the EU policy formulation process.<sup>10</sup> The Committee notes also that the majority of Oireachtas members who participated in the debate on the Referendum Bill have expressed their support for the enhanced role for National Parliaments in EU matters. The European Parliament has also endorsed the proposals.<sup>11</sup>**

In addition the Committee notes that a number of groups who gave evidence to the Joint Committee on European Affairs<sup>12</sup> expressed their support for these provisions. These include IBEC, Chambers Ireland, the ICMSA and the ICOS.

16. **The Committee welcomes the new subsidiarity powers as a significant role for National Parliaments. National Parliaments will have greater power under the principle of subsidiarity to re-claim decisions in areas where the EU need not be involved.** Subsidiarity means that – except in the areas where it has exclusive powers – the EU should act only where action will be more effective at EU-level than at national level. Any National Parliament will be able to flag a proposal for EU legislative action which it believes does not respect this principle. This will enhance democracy in EU lawmaking by requiring that all future EU draft laws can be first discussed in the 27 Parliaments of the Member States before they can be proceeded with at EU level by the European Parliament and the Council of Ministers.

This change could have a marked effect. If the Oireachtas does its work, and if that work is properly reported in the media, it will mean that Irish people will be able to debate and understand the issues about which the EU is proposing to legislate much earlier and in a much more informed way than is now the case. **It will also mean that the EU will have better legislation, because it will be better informed of conditions in Member States. This is especially important given the estimates that 75% of domestic legislation arises from the implementation of EU measures.**

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<sup>10</sup> COSAC 9<sup>th</sup> Biannual Report, May 2008.

<sup>11</sup> Report of the Committee on Constitutional Affairs of the European Parliament, 29 January 2008.

<sup>12</sup> Interim Report of the Joint Committee on European Affairs on the Lisbon Reform Treaty, February 2008.

17. **National Parliaments are for the first time being given a defined role in EU matters separate to that of their national governments. This will give greater representation to citizens through their local parliamentarians.** National governments have been significant actors in the EU decision-making process with a mandate to express Member States' interests. However, National Parliaments who directly represent their citizens, have not to date had a clear role outside of scrutinising their representatives on the Council of Ministers. EU decision making has been dominated by the Union's institutions and seeks to balance the supranational (Commission), the intergovernmental (Council), and the multi-national (European Parliament). **The Treaty provisions give powers to National Parliaments to directly influence the EU political process.** This will go further towards the EU becoming more of an interparliamentary democracy as opposed to its intergovernmental and supranational features to date.
18. **The Committee feels that there is a need for greater public awareness about the important work done by the Oireachtas on European matters.** Anecdotal evidence suggests that few people are aware that all draft EU laws receive individual consideration by the European Scrutiny Committee and are not foisted on Member States by Brussels without consultation. A recent Eurobarometer survey showed that while a large majority of Irish people support EU membership, only a quarter believe that their opinion counts when the EU makes decisions. It is clear that increased media coverage is needed at local and national levels, particularly for the work of Oireachtas Committees, to try to bridge the information deficit that currently exists. **The Oireachtas has an important message to sell, particularly in the context of the Lisbon Treaty debate, and the enhanced role envisaged for National Parliaments. As set out in paragraph 19 below, this Committee has concluded that at least one sitting day per month should be allocated in both Houses to EU business.** This would reflect the increased importance of National Parliaments having a formal role in EU decision-making as policy is being formulated rather than when EU legislation has already been passed (ie by Regulations or Directives). While the National Parliaments are currently informed about draft legislation, the new Treaty provisions reflect the increased role of National Parliaments.

The current media coverage for parliamentary business tends to be primarily concerned with plenary sittings and does not adequately reflect the detailed work being done by Oireachtas Committees. **This Committee will be further considering how to better communicate its important role in EU legislation to the public, the media, representative bodies, interest groups and other stakeholders.**

19. **The Committee strongly recommends that significant reforms are made to Dáil and Seanad procedures to ensure regular consideration of EU matters in plenary session.** This will be particularly important if the Lisbon Treaty is ratified so that the Oireachtas can give full effect to the enhanced role established for National Parliaments. While initiatives like the 2006 Europe Day in the Dáil, and the recent appearance in the Seanad by the President of the European Parliament are welcome, there is a clear need to establish EU business as part of the regular routine of both Houses.

**The Committee recommends that as an initial measure the Dáil and Seanad each allocate at least one sitting day per month to EU matters. Among the matters which could be considered in plenary session are:**

- The reports of the European Scrutiny Committee<sup>13</sup> on important draft EU laws
- The ongoing work programme of the Joint Committee on European Affairs
- The implementation of the Lisbon Treaty if it is ratified
- Briefing by Ministers on major policy matters being considered by the Council of Ministers
- Proposals by National Parliaments to have draft EU laws struck down on subsidiarity grounds.

The Committee will be requesting the party whips to seek support from the Committees on Procedures and Privileges for this proposal.

20. **The Committee welcomes the commitment by the Government to consult with this Committee, if the referendum is passed, to seek its input into the legislative and procedural changes which would be necessary to implement the Treaty proposals to enhance the role of National Parliaments.** Some of the changes that may be necessary are detailed in paragraph 13 above. Minister of State Roche confirmed to the Committee at its meeting on 29<sup>th</sup> April that the Government wishes to maximise the role of the Oireachtas in the future development of EU legislation. Detailed consideration will be necessary to put together the mechanism required to give practical effect to this important feature of the Treaty.

**Of particular importance will be the need for the Government to support an independent role for the Oireachtas so that the enhanced role of National Parliaments is given full expression.**

## **DECISION OF THE JOINT COMMITTEE**

21. It is agreed that the Report of the Joint Committee is to be:
- published on 23 May, laid before the Houses of the Oireachtas and put on the Oireachtas Website
  - put on both Order Papers with a request that a debate thereon be held in both Houses
  - sent to all Oireachtas Members and interested parties.

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<sup>13</sup> Since it was established in November 2007 the Committee has published 16 reports on topics including GM foods, food safety, airport charges, life assurance, and VAT.

# Appendices

## Orders of Reference of Joint Committee

**\*Dáil Éireann on 23 October 2007 ordered:**

- (1) (a) That a Select Committee, consisting of 11 Members of Dáil Éireann, be appointed to be joined with a Select Committee to be appointed by Seanad Éireann to form the Joint Committee on European Scrutiny to-
- (i) scrutinise, in the context of European Union issues and measures to be taken by the Council of Ministers of the European Union-
    - (I) any proposals 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,and
    - (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 the consideration of any proposal for legislation,as it may select;
  - (ii) consider such other matters as may be referred to it from time to time by both Houses of the Oireachtas;
- And
- (iii) represent both Houses of the Oireachtas at the Conference of Community and European Affairs Committees of Parliaments of the European Union (COSAC) jointly with the Joint Committee on European Affairs;
- and report thereon to both Houses of the Oireachtas in consultation with the Joint Committee on European Affairs.
- (b) The Joint Committee shall have:
- (i) the powers defined in Standing Order 83(1) to (9) inclusive;
  - (ii) the power to refer a proposal for EU legislation which has been considered by it (and which has been concluded to be of sufficient importance to require additional scrutiny) to a Joint Committee on which has been conferred the power defined in Standing Order 83(4) to consider such proposals;
  - (iii) the power to request the attendance of Members of the Government (or Ministers

of State nominated in their stead) and provide, in private session if so desired by the Member of the Government or Minister of State, oral briefings to enable the Joint Committee to make known its views;

- (iv) the power to request the attendance of the Secretary General of a Government Department (or a nominated representative) to discuss the six monthly reports laid before each House of the Oireachtas under section 2(4) of the European Union (Scrutiny) Act 2002 and other developments related to the European Union which falls within the remit of that Department;

And

- (v) the power, in accordance with Standing Order 88, to refer by way of a report, a proposal for EU legislation which has been considered by it (and which has been concluded to be of sufficient importance to require further debate) to either or both Houses of the Oireachtas.

- (c) The following persons may attend meetings of the Joint Committee and may take part in proceedings without having a right to vote or to move motions and amendments-

- (i) Members of the European Parliament elected from constituencies in Ireland (including Northern Ireland);

And

- (ii) at the invitation of the Joint Committee, other Members of the European Parliament.

- (d) The quorum of the Joint Committee shall be five, of whom at least one shall be a Member of Dáil Éireann and one a Member of Seanad Éireann.

- (3) The Chairman of the Joint Committee, who shall be a Member of Dáil Éireann, shall also be Chairman of the Select Committee.

*\* Seanad Eireann made a similar order on 24<sup>th</sup> October 2007*

# JOINT COMMITTEE ON EUROPEAN SCRUTINY

## List of Members



**Chris Andrews T.D.**  
(FF)



**Seán Connick T.D.**  
(FF) (Vice-Chairman)



**Joe Costello T.D.**  
(Lab)



**Lucinda Creighton T.D.**  
(FG)



**Timmy Dooley T.D.**  
(FF)



**Damien English T.D.**  
(FG)



**Noel Grealish T.D.**  
(PD)



**Michael Mulcahy T.D.**  
(FF)



**Noel O'Flynn T.D.**  
(FF)



**Aengus Ó Snodaigh T.D.**  
(SF)



**John Perry T.D.**  
(FG) (Chairman)



**Senator Paddy Burke**  
(FG)



**Senator Alan Kelly**  
(Lab)



**Senator Terry Leyden**  
(FF)



**Senator Kieran Phelan**  
(FF)

### *Article 5*

1. The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality.
2. Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States.
3. Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality. National Parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in that Protocol.

4. Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties.

The institutions of the Union shall apply the principle of proportionality as laid down in the Protocol on the application of the principles of subsidiarity and proportionality.

### *Article 12*

National Parliaments contribute actively to the good functioning of the Union:

- (a) through being informed by the institutions of the Union and having draft legislative acts of the Union forwarded to them in accordance with the Protocol on the role of national Parliaments in the European Union;
- (b) by seeing to it that the principle of subsidiarity is respected in accordance with the procedures provided for in the Protocol on the application of the principles of subsidiarity and proportionality;
- (c) by taking part, within the framework of the area of freedom, security and justice, in the evaluation mechanisms for the implementation of the Union policies in that area, in accordance with Article 70 of the Treaty on the Functioning of the European Union, and through being involved in the political monitoring of Europol and the evaluation of Eurojust's activities in accordance with Articles 88 and 85 of that Treaty;
- (d) by taking part in the revision procedures of the Treaties, in accordance with Article 48 of this Treaty;
- (e) by being notified of applications for accession to the Union, in accordance with Article 49 of this Treaty;
- (f) by taking part in the inter-parliamentary cooperation between national Parliaments and with the European Parliament, in accordance with the Protocol on the role of national Parliaments in the European Union.

PROTOCOL  
**ON THE ROLE OF NATIONAL PARLIAMENTS IN THE EUROPEAN  
UNION**

THE HIGH CONTRACTING PARTIES,

RECALLING that the way in which national Parliaments scrutinise their governments in relation to the activities of the European Union is a matter for the particular constitutional organisation and practice of each Member State;

DESIRING to encourage greater involvement of national Parliaments in the activities of the European Union and to enhance their ability to express their views on draft legislative acts of the European Union as well as on other matters which may be of particular interest to them,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community:

TITLE I

INFORMATION FOR NATIONAL PARLIAMENTS

*Article 1*

Commission consultation documents (green and white papers and communications) shall be forwarded directly by the Commission to national Parliaments upon publication. The Commission shall also forward the annual legislative programme as well as any other instrument of legislative planning or policy to national Parliaments, at the same time as to the European Parliament and the Council.

*Article 2*

Draft legislative acts sent to the European Parliament and to the Council shall be forwarded to national Parliaments.

For the purposes of this Protocol, 'draft legislative acts' shall mean proposals from the Commission, initiatives from a group of Member States, initiatives from the European Parliament, requests from the Court of Justice, recommendations from the European Central Bank and requests from the European Investment Bank for the adoption of a legislative act.

Draft legislative acts originating from the Commission shall be forwarded to national Parliaments directly by the Commission, at the same time as to the European Parliament and the Council.

Draft legislative acts originating from the European Parliament shall be forwarded to national Parliaments directly by the European Parliament.

Draft legislative acts originating from a group of Member States, the Court of Justice, the European Central Bank or the European Investment Bank shall be forwarded to national Parliaments by the Council.

#### *Article 3*

National Parliaments may send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion on whether a draft legislative act complies with the principle of subsidiarity, in accordance with the procedure laid down in the Protocol on the application of the principles of subsidiarity and proportionality.

If the draft legislative act originates from a group of Member States, the President of the Council shall forward the reasoned opinion or opinions to the governments of those Member States.

If the draft legislative act originates from the Court of Justice, the European Central Bank or the European Investment Bank, the President of the Council shall forward the reasoned opinion or opinions to the institution or body concerned.

#### *Article 4*

An eight-week period shall elapse between a draft legislative act being made available to national Parliaments in the official languages of the Union and the date when it is placed on a provisional agenda for the Council for its adoption or for adoption of a position under a legislative procedure. Exceptions shall be possible in cases of urgency, the reasons for which shall be stated in the act or position of the Council. Save in urgent cases for which due reasons have been given, no agreement may be reached on a draft legislative act during those eight weeks. Save in urgent cases for which due reasons have been given, a ten-day period shall elapse between the placing of a draft legislative act on the provisional agenda for the Council and the adoption of a position.

#### *Article 5*

The agendas for and the outcome of meetings of the Council, including the minutes of meetings where the Council is deliberating on draft legislative acts, shall be forwarded directly to national Parliaments, at the same time as to Member States' governments.

#### *Article 6*

When the European Council intends to make use of the first or second subparagraphs of Article 48(7) of the Treaty on European Union, national Parliaments shall be informed of the initiative of the European Council at least six months before any decision is adopted.

#### *Article 7*

The Court of Auditors shall forward its annual report to national Parliaments, for information, at the same time as to the European Parliament and to the Council.

#### *Article 8*

Where the national Parliamentary system is not unicameral, Articles 1 to 7 shall apply to the component chambers.

## TITLE II

### INTERPARLIAMENTARY COOPERATION

#### *Article 9*

The European Parliament and national Parliaments shall together determine the organisation and promotion of effective and regular interparliamentary cooperation within the Union.

#### *Article 10*

A conference of Parliamentary Committees for Union Affairs may submit any contribution it deems appropriate for the attention of the European Parliament, the Council and the Commission. That conference shall in addition promote the exchange of information and best practice between national Parliaments and the European Parliament, including their special committees. It may also organise interparliamentary conferences on specific topics, in particular to debate matters of common foreign and security policy, including common security and defence policy. Contributions from the conference shall not bind national Parliaments and shall not prejudge their positions.

## PROTOCOL

### **ON THE APPLICATION OF THE PRINCIPLES OF SUBSIDIARITY AND PROPORTIONALITY**

THE HIGH CONTRACTING PARTIES,

WISHING to ensure that decisions are taken as closely as possible to the citizens of the Union,

RESOLVED to establish the conditions for the application of the principles of subsidiarity and proportionality, as laid down in Article 5 of the Treaty on European Union, and to establish a system for monitoring the application of those principles,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

#### *Article 1*

Each institution shall ensure constant respect for the principles of subsidiarity and proportionality, as laid down in Article 5 of the Treaty on European Union.

#### *Article 2*

Before proposing legislative acts, the Commission shall consult widely. Such consultations shall, where appropriate, take into account the regional and local dimension of the action envisaged. In cases of exceptional urgency, the Commission shall not conduct such consultations. It shall give reasons for its decision in its proposal.

#### *Article 3*

For the purposes of this Protocol, 'draft legislative acts' shall mean proposals from the Commission, initiatives from a group of Member States, initiatives from the European Parliament, requests from the Court of Justice, recommendations from the European Central Bank and requests from the European Investment Bank for the adoption of a legislative act.

#### *Article 4*

The Commission shall forward its draft legislative acts and its amended drafts to national Parliaments at the same time as to the Union legislator.

The European Parliament shall forward its draft legislative acts and its amended drafts to national Parliaments.

The Council shall forward draft legislative acts originating from a group of Member States, the Court of Justice, the European Central Bank or the European Investment Bank and amended drafts to national Parliaments.

Upon adoption, legislative resolutions of the European Parliament and positions of the Council shall be forwarded by them to national Parliaments.

#### *Article 5*

Draft legislative acts shall be justified with regard to the principles of subsidiarity and proportionality. Any draft legislative act should contain a detailed statement making it possible to appraise compliance with the principles of subsidiarity and proportionality. This statement should contain some assessment of the proposal's financial impact and, in the case of a directive, of its implications for the rules to be put in place by Member States, including, where necessary, the regional legislation. The reasons for concluding that a Union objective can be better achieved at Union level shall be substantiated by qualitative and, wherever possible, quantitative indicators. Draft legislative acts shall take account of the need for any burden, whether financial or administrative, falling upon the Union, national governments, regional or local authorities, economic operators and citizens, to be minimised and commensurate with the objective to be achieved.

#### *Article 6*

Any national Parliament or any chamber of a national Parliament may, within eight weeks from the date of transmission of a draft legislative act, in the official languages of the Union, send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why it considers that the draft in question does not comply with the principle of subsidiarity. It will be for each national Parliament or each chamber of a national Parliament to consult, where appropriate, regional parliaments with legislative powers.

If the draft legislative act originates from a group of Member States, the President of the Council shall forward the opinion to the governments of those Member States.

If the draft legislative act originates from the Court of Justice, the European Central Bank or the European Investment Bank, the President of the Council shall forward the opinion to the institution or body concerned.

#### *Article 7*

1. The European Parliament, the Council and the Commission, and, where appropriate, the group of Member States, the Court of Justice, the European Central Bank or the European Investment Bank, if the draft legislative act originates from them, shall take account of the reasoned opinions issued by national Parliaments or by a chamber of a national Parliament.

Each national Parliament shall have two votes, shared out on the basis of the national Parliamentary system. In the case of a bicameral Parliamentary system, each of the two chambers shall have one vote.

2. Where reasoned opinions on a draft legislative act's non-compliance with the principle of subsidiarity represent at least one third of all the votes allocated to the national Parliaments in accordance with the second subparagraph of paragraph 1, the draft must be reviewed. This threshold shall be a quarter in the case of a draft legislative act submitted on the basis of Article 76 of the Treaty on the Functioning of the European Union on the area of freedom, security and justice.

After such review, the Commission or, where appropriate, the group of Member States, the European Parliament, the Court of Justice, the European Central Bank or the European Investment Bank, if the draft legislative act originates from them, may decide to maintain, amend or withdraw the draft. Reasons must be given for this decision.

3. Furthermore, under the ordinary legislative procedure, where reasoned opinions on the non-compliance of a proposal for a legislative act with the principle of subsidiarity represent at least a simple majority of the votes allocated to the national Parliaments in accordance with the second subparagraph of paragraph 1, the proposal must be reviewed. After such review, the Commission may decide to maintain, amend or withdraw the proposal.

If it chooses to maintain the proposal, the Commission will have, in a reasoned opinion, to justify why it considers that the proposal complies with the principle of subsidiarity. This reasoned opinion, as well as the reasoned opinions of the national Parliaments, will have to be submitted to the Union legislator, for consideration in the procedure:

- (a) before concluding the first reading, the legislator (the European Parliament and the Council) shall consider whether the legislative proposal is compatible with the principle of subsidiarity, taking particular account of the reasons expressed and shared by the majority of national Parliaments as well as the reasoned opinion of the Commission;
- (b) if, by a majority of 55 % of the members of the Council or a majority of the votes cast in the European Parliament, the legislator is of the opinion that the proposal is not compatible with the principle of subsidiarity, the legislative proposal shall not be given further consideration.

#### *Article 8*

The Court of Justice of the European Union shall have jurisdiction in actions on grounds of infringement of the principle of subsidiarity by a legislative act, brought in accordance with the rules laid down in Article 263 of the Treaty on the Functioning of the European Union by Member States, or notified by them in accordance with their legal order on behalf of their national Parliament or a chamber thereof.

In accordance with the rules laid down in the said Article, the Committee of the Regions may also bring such actions against legislative acts for the adoption of which the Treaty on the Functioning of the European Union provides that it be consulted.

#### *Article 9*

The Commission shall submit each year to the European Council, the European Parliament, the Council and national Parliaments a report on the application of Article 5 of the Treaty on European Union. This annual report shall also be forwarded to the Economic and Social Committee and the Committee of the Regions.