



TITHE AN OIREACHTAIS

An Comhchoiste um Ghnóthaí Eorpacha
An Comhchoiste um Ghrinnscrúdú Eorpach

TUARASCÁIL ÓN GCOMH-FHOCHOISTE UM ATHBHREITHNIÚ AR RÓL AN OIREACHTAIS I NGNÓTHAÍ EORPACHA

7 Iúil 2010

HOUSES OF THE OIREACHTAS

Joint Committee on European Affairs
Joint Committee on European Scrutiny

REPORT

REVIEW OF THE ROLE OF THE OIREACHTAS IN EUROPEAN AFFAIRS

7 July 2010

REPORT OF THE JOINT SUB-COMMITTEE ON THE REVIEW OF THE ROLE OF THE OIREACHTAS IN EUROPEAN AFFAIRS

DECISION OF THE JOINT COMMITTEES

On 10 December 2009 a resolution was passed by both Dáil Éireann and Seanad Éireann which put in place the arrangements for managing and conducting the rights and obligations provided in Lisbon Treaty and implemented through the European Union Act 2009. The Resolutions provided for the Joint Committees to report on a review of these interim arrangements to both Houses.

The Joint Committees at a joint meeting on 7 July 2010 considered the Report of the Joint sub-Committee on the Review of the Role of the Oireachtas in EU Affairs and agreed to report back to Dáil Éireann and Seanad Éireann and that the report, as presented, should be laid before both Houses of the Oireachtas, and published on the Oireachtas website.

John Perry TD
Chairman
Joint Committee on European Scrutiny

Bernard J. Durkan
Chairman
Joint Committee on European Affairs

7 July 2010



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CHAIRPERSON'S FOREWORD

I am delighted to present the final report of the Joint Sub-Committee on the Review of the Role of the Oireachtas in EU Affairs. It was an enormous honour to chair this committee over the past number of months and I am extremely indebted to my political colleagues and to the committee secretariat for the unflagging support and commitment they showed to this important project.



I would like to thank the many witnesses who gave of their time and knowledge in appearing before the Sub-Committee. Their expertise and insight was crucial in reviewing both the role that the Oireachtas currently plays in EU affairs, and more importantly the role that it *could* play in the future.

The Lisbon Treaty has wide-ranging effects on the relationship between institutions of the European Union and the national institutions of individual member states. This Sub-Committee was entrusted with the task of examining the crucially important relationship between the Houses of the Oireachtas and the European institutions.

The entry into force of the Lisbon Treaty provided the impetus for change, but this review goes further than merely recommending those changes mandated by the Treaty. The terms of reference of the Sub-Committee recognised that the task of re-balancing of the role of the Oireachtas presented an opportunity, as well as presenting a challenge for the Houses of the Oireachtas. This opportunity was to re-evaluate how European issues are examined by the National Parliament, and how the Parliament works with the Executive to maximise democratic accountability at both national and European levels. Neither the internal workings of the Houses of the Oireachtas nor their relationship with the institutions of the European Union get much media attention. They are not the stuff of heated popular debate. Yet the low profile of the institutional issues belies their enormous importance for democracy at both national and European level.

The Oireachtas can lead the way in bridging a disconnect that has often been felt between the people and the European Union. An enhanced role for the Oireachtas in European Affairs can only enhance democratic participation and democratic accountability. Measures and policies shaped in Brussels play an increasing role in our daily affairs, and for that reason this Report recommends that the Houses of the Oireachtas play an increased role in shaping, scrutinising, overseeing and implementing those measures. Should the committee's recommendations be substantially implemented, I am confident that a more engaged and transparent relationship between the Oireachtas and the EU will inevitably follow.

A handwritten signature in blue ink, appearing to read 'Lucinda Creighton'.

Lucinda Creighton TD,
Chairperson

REPORT OF THE JOINT SUB-COMMITTEE ON THE REVIEW OF THE ROLE OF THE OIREACHTAS IN EUROPEAN AFFAIRS

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INTRODUCTION

1. With the entry into force of the Lisbon Treaty, the European Union has formally recognised that national parliaments have a key role to play in the European Union. Article 12 of the Treaty on the European Union states that “national parliaments contribute actively to the good functioning of the Union”. On this basis, the Treaties contain a series of obligations and rights for national parliaments aimed at enhancing their role in the political process of the EU. These roles include, for example:
 - the receipt of information from the EU institutions, including all non-legislative and legislative documents;
 - the evaluation of policies conducted in the area of freedom, security and justice, including the monitoring of Europol and Eurojust;
 - participation in conventions dealing with Treaty changes;
 - objecting to legislation not complying with the principle of subsidiarity, through the “yellow card” and “orange card” procedures or by bringing an action before the Court of Justice;
 - veto over Treaty changes in the simplified revision procedure (the general *passerelle* clause);
 - veto over measures of judicial cooperation in civil-law matters, in particular family law;
2. It is clear, therefore, that the Lisbon Treaty has substantially changed the relationship between the institutions of the EU and the national parliaments of the Member States. This has had an effect on how the Houses of the Oireachtas conduct their business in relation to EU matters. This has been recognised through the adoption on 10 December 2009 of a resolution by both Dáil Éireann and Seanad Éireann which put in place the arrangements for managing and conducting the rights and obligations provided in Lisbon Treaty and implemented through the European Union Act 2009.
3. It was also recognised that the entry into force of the Lisbon Treaty offered an opportunity to critically review how the Oireachtas deals with EU matters and to examine if there were ways to improve the current EU scrutiny system so that the powers provided by the Treaty could be optimised. Therefore, it was agreed to put the arrangements in place on an interim basis so that this review could be undertaken. Since 28 April, a Joint Sub-Committee of the Joint Committees on European Affairs and European Scrutiny has held five public hearings with leading practitioners in the area of EU affairs and parliamentary control as well as with the Irish MEPs and the Minister for Foreign Affairs. The Joint Sub-

Committee on the review of the role of the Oireachtas in EU affairs had a clear Terms of Reference:

- to review the Interim Arrangements in the Oireachtas implementing the powers conferred by the European Union Act 2009;
 - to examine the implementation of the recommendations made by the Sub-Committee on Ireland's Future in the European Union (November 2008) in relation to enhancing the role of the Oireachtas in EU affairs;
 - to consider the enhancement of inter-parliamentary cooperation;
 - to examine the optimisation of the consideration of EU affairs by the Oireachtas, in particular the need to mainstream consideration of EU matters;
 - to consider the transposition of EU law; and
 - to assess resource and training requirements.
4. Based on the public hearings, the Joint Sub-Committee has identified a number of key themes that are important in respect of enhancing a national parliament's role in the scrutiny and oversight of EU matters. These are:
- (i) *Prioritisation* – The EU produces a huge volume of policy documents and legislative proposals annually. It is impossible for any national parliament to consider each of these documents in detail. National Parliaments should seek to prioritise documents and proposals which are of domestic importance or strategic significance;
 - (ii) *Early engagement* – national parliaments should seek to influence policy developments at the earliest stage and engage with the EU's legislative process at the first opportunity;
 - (iii) *Better Oversight* – national parliaments should seek to be better informed of national positions to be adopted by Ministers at EU Council meetings in advance of these meetings;
 - (iv) *Better cooperation* – it is important that national parliamentarians are aware of the views and concerns of other parliamentarians across the EU and have more interaction with the European Parliament, and in particular their national MEPs;
 - (v) *Mainstreaming* – national parliaments should seek to get every member of parliament interested in EU affairs and to use the policy expertise of sectoral committees more effectively in relation to EU matters;

- (vi) *Domestic impact* – national parliaments should seek to exercise more accountability in respect of the transposition of EU law in order to fully consider the regulatory impact of this law at the national level.
5. The Joint Sub-Committee makes a number of recommendations in these areas. It also examines the interim arrangements for the implementation of the Lisbon Treaty provisions and assesses the possible resource requirements. Finally, an important element of this work, namely the promotion of more public understanding of and engagement in EU issues is considered. First, by way of context, the report outlines briefly the current role of the Oireachtas in EU affairs.

CURRENT ROLE OF THE OIREACHTAS

6. The role of the Oireachtas in EU affairs has steadily developed since Ireland's accession to the EU in 1973. With the passage of the European Communities Act, a Joint Committee on Secondary legislation of the European Communities was established to oversee the transposition of EU law into Irish law. This Committee was reconstituted in 1993 as the Joint Committee on European Affairs in response to the need for the Oireachtas to play an oversight role in terms of Ireland's membership of the EU, which after the Maastricht Treaty was also concerned with greater political integration as well as economic integration. In the wake of the Nice I and Nice II referendums, the EU (Scrutiny) Act 2002 was enacted which has led to the establishment of the Joint Committee on European Scrutiny (JCES) to work along side the Joint Committee on European Affairs (JCEA).
7. The 2002 Act places a statutory obligation on Government Departments to inform the Oireachtas of draft EU measures. Each Department on receipt of a proposal from the Commission/Member State prepares an information note and submits this along with the draft EU law to the JCES within 20 days of publication. The type of proposals covered by the Act includes directives, regulations, Council decisions and CFSP measures. At its meetings, the JCES conducts an examination of these proposals in public session and determines which of those presented require further scrutiny. The JCES has a number of options open to it on how to deal with the proposal. On the basis of this detailed scrutiny, the JCES prepares a report containing recommendations, which is laid before the Houses and sent to the relevant Minister. Under the 2002 Act, the Minister is obliged to have regard to the recommendations of the JCES.
8. The JCEA has responsibility for the consideration of European Commission Green and White Papers. These documents usually precede the publication of draft legislative acts and act as consultation documents. They provide an overview of the policy in question and outline possible policy initiatives and actions. In

accordance with the Departmental Guidelines on Oireachtas Scrutiny and in the spirit of the 2002 Act, the Departments provide information notes on all Green and White Papers. These information notes together with the Commission's document are considered by the JCEA. If the Green or White Paper is scrutinised by the JCEA, the Committee will always make a submission to the European Commission which is also sent to the relevant Government Department.

9. Under the 2002 Act, Government Departments are also obliged to provide the Oireachtas with six-monthly reports on the EU measures, proposed measures and other developments within the Departments area of responsibility. These six-monthly reports are considered by the JCES as well as the relevant sectoral committee. In addition, the Government is obliged to make an annual report to each House of the Oireachtas on developments in the EU.
10. All Oireachtas Committees also have the power to invite Ministers to brief the relevant sectoral committee in advance of an EU Council meeting. The JCEA, for instance, holds monthly briefings with the Minister for Foreign Affairs in advance of the General Affairs Council and the Foreign Affairs Council. There is also Taoiseach's Statements, followed by questions and answers, in the Dáil following most European Council meeting.
11. The Oireachtas also plays an active role in two other aspects of EU business – the Justice and Home Affairs (JHA) area and Irish participation in CSDP operations. On the latter, Irish participation in EU military operations under the CDSP is subject to the triple lock mechanism – UN mandated, cabinet approval and Dáil approval. Therefore, if the Irish Defence forces were to become involved in a CSDP mission, the Dáil must approve this participation. In the JHA area, in accordance with Article 29.4.7 of the Constitution, the Government must secure Dáil approval before it can decide to opt into a measure under Title V of the EU Treaties.
12. The Oireachtas can also play a role in the transposition of EU law. Ministerial regulations or S.I.s made under the European Communities Acts 1972-2007 in order to transpose EU law can provide for summary and indictable offences. Regulations creating indictable offences must be laid before each House of the Oireachtas as soon as possible after it was made. Each House can pass a resolution annulling the Regulations within 21 days. There is no requirement, under the Acts, to lay Regulations creating summary offences before the Houses. In addition, the JCEA has the power to recommend to the Houses that any Regulation be annulled. If the Houses agree in the form of a resolution passed within one year, then the Regulations are annulled. Section 4 of the European Communities Act 2007 allows for Ministerial Regulations to be made under other primary legislation (i.e.

other primary legislation other than the European Communities Acts 1972-2007). There is no requirement under the 2007 Act for such Regulations to be laid before the Houses of the Oireachtas. This would be a matter for the relevant primary legislation on foot of which the Regulation is made.

13. The Sub-Committee on Ireland's Future in the EU (SCIFE), which report in November 2008, identified a number of weaknesses in the current role of the Oireachtas in EU affairs. These included:

- the lack of influence of the Oireachtas in the EU decision making process;
- a lack of Oireachtas oversight of the procedures giving effect to EU law in Ireland (i.e. transposition); and
- the organisation of how EU business is handled by the Oireachtas.

These weaknesses, coupled with the de-politicisation of EU affairs in Ireland and lack of media coverage of EU issues, have contributed to the democratic deficit and the lack of public engagement. Therefore, in addition to the innovations introduced by the Lisbon Treaty, the Joint Sub-Committee reiterates the conclusion of SCIFE that the current Oireachtas role in EU affairs needs to be reformed and enhanced

Post-Lisbon – Role of the Oireachtas under the EU Act 2009

14. The European Act 2009 provides for the operation of the provisions of the Lisbon Treaty in respect of the role of national parliaments by the Houses of the Oireachtas. In particular, Section 7 (1) and Section 7 (2) provide for the operation of the new powers of the Houses of the Oireachtas in accordance with Article 48.7 of the Treaty of the European Union and Article 81.3 of the Treaty on the Functioning of the European Union. These are known as *passerelle* or bridging clauses and enable national parliaments to block such decisions. This has become known as the 'Red Card'. Section 7 (3) and Section 7 (4) provides for the operation of the new powers for the House of the Oireachtas under the terms of Protocol 2 of the Lisbon Treaty on the application of the principles of subsidiarity and proportionality. It puts in place an early warning system known as the 'Yellow and Orange Card' procedure which gives EU national parliaments the power to ensure that the EU institutions respect the principle of subsidiarity.

15. The Oireachtas has given practical effect to these new powers in a Resolution which both Houses adopted on 10 December 2009. The key points of the Resolution are:

- the detailed work to support the new role is conducted through the Oireachtas Committee system, while respecting the sole authority of the Dáil and the Seanad to adopt the necessary resolutions under the 2009 Act;
- the separate and equal responsibilities of both Houses are respected by providing for separate Select Committees of the Dáil and Seanad, while also recognising that the Committees may, in the interests of efficiency, conduct their work jointly;
- the Joint Committee on European Scrutiny was delegated with responsibility for the day-to-day operation of the “Yellow and Orange Card” procedure in considering whether draft legislative acts comply with the principle of subsidiarity, and for reporting to the Dáil on cases of non-compliance;
- the Joint Committee on European Affairs supports the “Red Card” procedure, on referral by the Dáil, by considering notifications of decisions under the general *passerelle* clause, and reporting any opposition to such decisions to the Dáil;
- the Joint Committee on Justice, Equality, Defence and Women’s Rights, on referral by the Dáil, is responsible for considering notifications of decisions under the specific *passerelle* clause relating to family law issues with cross-border implications, and will report to the Dáil where it considers that such decisions should be opposed;
- the Joint Committees on European Scrutiny and European Affairs each has responsibility for identifying acts of the EU institutions which may infringe the principle of subsidiarity and for reporting to the Dáil for the purposes of requesting the Minister for Foreign Affairs to bring proceedings before the European Court of Justice;
- The motion also provided that the Dáil would consider the necessary motions under the 2009 Act, which are to be tabled by the relevant Committees on foot of their reports, and which are to be given priority on the Order Paper (subject to the sole discretion of the Taoiseach under Standing Order 26(2) to decide the order in which business shall be taken). The motion also provides for the role of the Ceann Comhairle in transmitting the decisions of the Dáil to the relevant EU institutions.

16. In addition, a system has been established by the Clerks of the Dáil and Seanad for the receipt and circulation of documents received from the European Commission

and the Council of the EU. The Clerks lay a report in the Dáil and Seanad on a weekly basis containing a list of all documents received by the Oireachtas from the EU pursuant to Protocol 1 on the role of National Parliaments. This means that every TD and Senator is able to view these documents and not just the members of the JCEA and JCES. This is in line with the principle that the new powers given to national parliaments by the Lisbon Treaty are given to the plenary and not to Committees.

A REVIEW OF THE INTERIM ARRANGEMENTS

17. The procedures agreed in the interim arrangements, especially with regard to the subsidiarity checking mechanism, have not yet been tested fully. In line with the resolution, the JCES has been considering since the entry into force of the Lisbon Treaty, whether legislative proposals have been respecting the principle of subsidiarity. No problems have been identified to date but it is still quite early in terms of the formal implementation of the Lisbon Treaty provisions. However, it remains important that the Oireachtas has procedures in place should a problem be found by the JCES and a subsidiarity check initiated.

Recommendation 1

It is recommended that the interim arrangements agreed in the Resolution of 10 December 2009 are placed on a permanent basis through an amendment to the Dáil and Seanad Standing Orders. The amendment to the Standing Orders should provide for an annual review of these permanent arrangements.

18. In relation to the transmission of EU documents to the Oireachtas, the Joint Sub-Committee welcomes the initiative by the Clerks of the Dáil and Seanad to lay a weekly report in both houses of all documents received from the EU institutions. The report enables individual TDs and Senators to exercise their own scrutiny of EU documents, including draft legislation. It is open to members to contact the JCEA or JCES, to which these documents stand referred, to provide views on the documents or to seek that they be fully considered. This report is also in line with the important principle that the powers of the Lisbon Treaty have been given to the national parliaments and not just to a specialised committee of the national parliaments. The Joint Sub-Committee attaches great importance to this principle and believes that it can be further emphasised if the Ceann Comhairle and Cathaoirleach lay the weekly report. However, the Joint Sub-Committee recognises that this could undermine that impartiality and independence of the Office of the Ceann Comhairle and the Office of the Cathaoirleach. The Leas-Cheann Comhairle and the Leas-Cathaoirleach could instead fulfil this role given

that they are ordinary members of the Houses and can take a deliberative role in parliamentary proceedings.

Recommendation 2

It is recommended that the weekly report on EU documents should be laid by the Leas-Cheann Comhairle and the Leas-Cathaoirleach. It is also recommended that the weekly report be published on the Oireachtas website.

19. The Library & Research Service (L&RS) has the responsibility for the preservation, management and promotion of the weekly reports. It therefore falls to the L&RS to handle the vast amount of documents received directly from the EU as well as the documents laid by the Departments in accordance with the 2002 Act. This role is governed by the Houses of the Oireachtas (Laying of Documents) Act 1966 which stipulates that all documents must be physically laid. In terms of the EU documents, this causes a significant, and probably unnecessary, administrative burden. This burden would be significantly reduced if the L&RS could accept electronic versions of documents for laying before both Houses.

Recommendation 3

It is recommended that the Houses of the Oireachtas (Laying of Documents) Act 1966 should be amended so that documents can be laid electronically.

PRIORITISATION

20. Given the limited resources available to national parliaments and the high volume of EU documents, it is generally accepted that national parliaments need to be better at prioritising which EU policies and legislative proposals require extensive consideration. The Houses of the Oireachtas should become more robust at selecting policy initiatives or legislative proposals which are of particular importance to Ireland and its interests within the EU, or have a strategic importance but are not directly relevant to Ireland. There is a very strong case for streamlining decision making on which EU legislative proposals should be considered in detail. Such streamlining should be aimed at making it easier to select proposals which are of real importance to Ireland while at the same time making the high volume of EU documents more accessible to members and reducing the administrative burden.

Recommendation 4

It is recommended that the current system employed by the Joint Committee on European Scrutiny be changed so that legislative proposals received in accordance with the 2002 Act are divided into two lists: a list of proposals of limited significance and a list of proposals of greatest significance/implications for Ireland.

21. The six-monthly reports prepared by Departments for the Oireachtas in accordance with the 2002 Act, which now include a forward looking element, are a useful planning tool and help to guide the Committees on what should be prioritised in the coming six months. The Government is also required to prepare an Annual Report on developments in the EU. The Joint Sub-Committee believes that the annual report is historical and therefore its purpose is limited. A greater emphasis should be placed on the six-monthly reports and their timely submission, and in particular the reports' overview of progress made in legislative proposals considered by the Oireachtas and their look ahead to the priorities of the coming six months. Therefore, the reporting requirements under the 2002 Act should be streamlined in order to meet the needs of the Oireachtas. Such a change would also lighten the administrative burden.

Recommendation 5

It is recommended that the 2002 Act be amended so that each Government Department is obliged to prepare a six-monthly report on developments in the EU, on the measures proposed and progressed in that period and on the main priorities for the coming six months. There should no longer be a requirement to prepare an annual report.

EARLY ENGAGEMENT

22. It is important that national parliaments have the capacity to influence the policy and legislative agenda of the EU before firm proposals are formed. This requires early engagement in both the planning and policy processes within the EU. In this respect, the Joint Sub-Committee welcomes the fact that the JCEA considers all Commission consultation documents, including Green and White Papers and communications, and prepares submissions to the Commission on the most important ones. However, two of the most important documents in terms of planning and setting priorities within the EU are the Commission's Annual Policy Strategy (APS) and the Annual Legislative Work Programme (ALWP). The APS is a consultation document. Via the APS, the Commission seeks the views of all stakeholders, including national parliaments. On the basis of these responses to the APS, the Commission prepares the ALWP. In the last number of years, the JCEA has consistently made a contribution to the Commission in response to the APS. Notwithstanding this, the Joint Sub-Committee believes that there should be a more systematic consideration of the APS and the ALWP.

Recommendation 6

It is recommended that the Annual Policy Strategy (APS) should continue to be debated in the JCEA and a report prepared. This report should be laid in both Houses and debated in plenary session. The Standing Orders should be amended

to stipulate that such a debate must be held. Only after this debate is held, should the JCEA make its final contribution to the Commission.

Recommendation 7

It is also recommended that the JCES should continue to consider the Annual Legislative Work Programme (ALWP) in detail. This consideration should always include a presentation on the ALWP by a Commission representative. The JCES should prepare a report on the ALWP which should be laid in the Houses and circulated to all sectoral committees for consideration.

BETTER OVERSIGHT

23. It is generally accepted that a national parliament's role in EU affairs would be significantly enhanced if mechanism were put in place to ameliorate its primary function of conducting oversight of government decisions and keeping Government ministers accountable in respect of EU matters. The Joint Sub-Committee has studied some of the mechanisms which are employed in other Member State parliaments with a view to improving the current scrutiny system as underpinned by the 2002 Scrutiny Act. The main affect of the mechanisms assessed by the Joint Sub-Committee is that the governments in question are encouraged to share more information with the parliament in relation to EU matters and that the parliament has a more effective way of influencing government positions on important EU policy or legislative proposals.

Pre-Council Briefings

24. A key way of strengthening a national parliament's oversight of EU matters is to hold regular discussions with Government Ministers who represent the country's interests at EU Council meetings where important policy initiatives and legislation are agreed. Government Ministers should be required to discuss Council agendas with the relevant sectoral committee in advance of the Council meeting. The main goal should not be to issue voting instructions or to place severe constraints on Ministers but to give members of parliament the opportunity to put questions and force the Minister to study the measure at hand. It is a way of exerting some political influence over the position which a Minister proposes to adopt at the Council meeting. Ministers should also report back to the committee on the outcome of the Council.

25. The Orders of Reference of all sectoral committees currently state that "the Joint Committee shall have the power to require that the Minister (or a Minister or Minister of State nominated in his or her stead) shall attend before the Joint Committee and provide, in private session if so desired by the Minister or Minister of State, oral briefings in advance of EU Council meetings to enable the Joint

Committee to make known its views". However, the Joint Sub-Committee notes that this prerogative is rarely practiced. The JCEA is the only Committee to regularly hold such briefings with the Minister for Foreign Affairs in advance of General Affairs and Foreign Affairs Councils.

Recommendation 8

It is recommended that all Government Ministers should be obliged, by way of an amendment to the EU Scrutiny Act, 2002 to attend the relevant sectoral committee in advance of a Council meeting in order to discuss the Council agenda and to report back to that committee on the outcome of the Council meeting.

26. The Joint Sub-Committee welcomes the practice whereby the Taoiseach makes a statement to the Dáil on the outcome of a European Council meeting which is usually followed by a Questions and Answers session. However, the Joint Sub-Committee believes that statements on the European Council prior to the meeting would be of more benefit in terms of greater engagement from the Oireachtas, the media and the public. The Joint Sub-Committee understands the well placed concerns that the Government should not be placed in a position where it feels obliged to reveal important negotiation positions or strategies in advance of the European Council. This could be damaging to Ireland's interests. However, the Joint Sub-Committee is convinced that it is still possible to hold a general debate around the topics to be discussed by the upcoming European Council.

Recommendation 9

It is recommended that statements and questions and answers on the European Council take place in the Dáil prior to the European Council.

27. The Joint Sub-Committee notes that at the European Council on 17 June 2010, it was agreed that from 2011 onwards, in the context of a "European semester", Member States' Stability and Convergence Programmes should be presented to the Commission in the spring for the upcoming years. The Commission and the Council will assess national budgetary rules and medium term frameworks to ensure that they are in line with the Stability and Growth Pact. The European Council agreed that this new procedure should take account of national budgetary procedures.

Recommendation 10

It is recommend that the Government should come forward, as a matter of urgency, with proposals on how the Oireachtas will examine Ireland's Stability and Convergence Programme and budgetary framework before they are submitted to the Council and the Commission for assessment.

Scrutiny Reserve

28. An additional mechanism for improving oversight which the Joint-Committee believes would suit the current scrutiny system is the introduction of a scrutiny reserve. This was in fact recommended by the Sub-Committee on Ireland's future in the EU (SCIFE), which reported in 2008. The effect of a scrutiny reserve system is that a Minister should not formally agree to EU legislation until the national parliament has completed its scrutiny process. The main purpose of such a system is to ensure that the Minister is aware of the position and recommendations of the parliament before the draft legislation is agreed at the Council. The introduction of such a system into the Irish scrutiny system would act to strengthen the current system under which a Minister is already obliged to have due regard to the recommendations of the Oireachtas in respect of a particular legislative measure.

29. The Joint Sub-Committee is aware of certain concerns regarding the introduction of a scrutiny reserve system. It could present issues about the constitutional role of Government in the conduct of Ireland's international relations. The Joint Sub-Committee recommends that legal advice is sought in this regard. It is clear, however, that such a reserve would only apply to legislative decisions and not executive decisions. Therefore, the scrutiny reserve would only apply to measures as defined in Section 1(1)(a) and 1(1)(c) of the 2002 Act, i.e. not council decisions as defined in Section 1(1)(b) of the 2002 Act. Essentially, it would apply to legislative proposals which are adopted by the ordinary legislative procedure (i.e. directives and regulation adopted under the Treaty on the Functioning of the EU).

30. The Joint Sub-Committee also understands the concerns that a scrutiny reserve system could pose political and pragmatic difficulties. It has been emphasised to the Joint Sub-Committee that such a system could seriously constrain the capacity of an Irish Minister to negotiate the best outcome for Ireland at Council meetings. Also, if Irish Ministers were routinely placing parliamentary reserves on draft EU legislation, preventing agreement, it could undermine our credibility and our capacity to influence. The Joint Sub-Committee would reiterate, however, that the goal of such a system is not to issue voting instructions to Ministers or to place severe constraints on a Minister's room for manoeuvre during negotiations but to give TDs and Senators an opportunity to question a legislative proposal and to make their views known to a Minister before a proposal is agreed by the Council.

31. Notwithstanding this, the Joint Sub-Committee believes that these concerns could be addressed in two ways:

- (i) any amendment to the 2002 Act would include an urgency clause which would allow a Minister to override a parliamentary reserve and agree the EU legislation in question at Council. If the Minister invokes this clause, (s)he would have to justify the decision in writing to the relevant Committee; the Committee would reserve the right to require the Minister to appear before it if it was not satisfied with this explanation;
- (ii) any amendment to the 2002 Act would also include a provision that a reserve would automatically lapse within a certain period of time, perhaps within eight weeks of receiving the information note from the Government. This would encourage Oireachtas committees to complete their scrutiny in a timely fashion. It should help to ensure that a Minister would not have to invoke a parliamentary reserve at Council meetings on a regular basis. The measure would also encourage Departments to meet the 20 day deadline for the submission of information notes.

The practical implementation of such a scrutiny reserve system could also be set out in a Memorandum of Understanding between the Oireachtas and the Government. The aim of such a memorandum would be to ensure the smooth running of the system in terms of the proper and timely flow of information between the Oireachtas and the Government.

Recommendation 11

It is recommended that the 2002 Scrutiny Act be amended to include a scrutiny reserve system. This amendment would include an urgency clause enabling a Minister to override the reserve but obliging the Minister to justify this decision to the relevant Committee in writing with the Committee reserving the right to require the Minister to appear before it if it is not satisfied with the explanation. Such an amendment to the 2002 Scrutiny Act would also include a provision whereby a reserve imposed by an Oireachtas committee would automatically lapse within a certain period of time, perhaps within eight weeks of receiving the information note from the Government.

Recommendation 12

It is also recommended that a Memorandum of Understanding is agreed between the Oireachtas and the Government on the operation of the scrutiny reserve system.

Optimisation of the consideration of EU affairs by the Oireachtas

32. It is clear that pre-Council briefings and a scrutiny reserve would place additional burden on the Oireachtas and its committees. It would be resource intensive, requiring adequate staffing and strict adherence to administrative procedures and

reporting duties. This is particularly relevant if EU matters are mainstreamed more into sectoral committees (this issue is dealt with later in the report). The Joint Sub-Committee believes that the current European committees system should be streamlined. However, given practical constraints, the Joint Sub-Committee proposes that the current system of a Joint Committee on European Affairs and a Joint Committee on European Scrutiny should continue for the duration of the current Dáil. As recommended in this report, these committees would take on an enhanced role in certain areas, including adopting of a more visible coordinating role vis-à-vis the sectoral committees. However, from the 31st Dáil on, the Joint Sub-Committee believes that the two committees should be amalgamated to form a single standing committee dealing with EU scrutiny and European Affairs. This single committee could establish sub-committees to deal with certain aspects of its work such as the consideration of legislative proposals and transposition instruments. This change would bring greater coherence to Oireachtas work on EU related issues, would make a better use of resources and would help to ensure that the detailed scrutiny work is completed in timely manner by adopting a clearly defined coordinating role.

Recommendation 13

In the 31st Dáil, it is recommended that the JCEA and JCES are amalgamated to form the Joint Committee on EU Scrutiny and European Affairs, which would become a standing committee of the Oireachtas. This Joint Committee will have sub-committees dealing with EU legislation, including transposition. The Joint Committee would have an overall co-ordinating role, including in relation to the work of sectoral committees on EU matters, and would also deal with EU institutional questions as well as the pre-Foreign Affairs and General Affairs Council ministerial briefings.

BETTER COOPERATION

33. It is important that cooperation both between national parliaments and between national parliaments and the European Parliament is enhanced if the new powers under the Lisbon Treaty are to be effective. This is particularly true in respect of the subsidiarity check and the so-called ‘Yellow and Orange Card Procedures’ which requires a specified number of national parliaments to agree if a formal subsidiarity check is to be triggered. The Joint Sub-Committee notes that both the EU Speakers’ Conference and the Conference of the European Affairs Committees (COSAC) are continuing their consideration on how interparliamentary cooperation can be improved. Progress has already been made, including on:

- enhancing the role for the Brussels based national parliament representatives in exchanging information on issues concerning subsidiarity and the consideration of draft legislative acts;
- improving the planning and coordination of interparliamentary activities, including Joint Parliamentary meetings, through enhancing the role of the Trio Presidency;
- calling on the EU institutions to consult adequately with national parliaments before finalising regulations dealing with the parliamentary oversight of Europol and Eurojust;
- encouraging more contacts between the sectoral committees of the national parliaments on EU related issues, including possible attendance at COSAC meetings when an issue of relevance to particular sectoral committees is being considered.

34. The Joint Sub-Committee also notes that the examination of how interparliamentary cooperation could be used for the monitoring of the CFSP and CSDP in light of the dissolution of the WEU and the European Security and Defence Assembly (ESDA), is likely to be the major focus of the COSAC in October this year and the next Speakers' Conference in April 2011. Article 10 of the Protocol on the role of national parliaments stipulates that "interparliamentary meetings can be organised on specific topics, in particular to debate matters of CFSP, including CSDP." The French Senate has proposed the creation of a structure to bring together parliamentarians who are members of defence committees to conduct the scrutiny of the CSDP in a similar manner to COSAC. The Joint Sub-Committee believes that any developments in this area should be closely monitored to ensure that any new structures that may be established fully respect Ireland's traditional policy of military neutrality.

35. The Joint Sub-Committee believes that interparliamentary cooperation is essential to the successful implementation of the Lisbon Treaty provisions on enhancing the role of national parliaments. An exchange of views and information between national parliamentarians within the EU is a cornerstone to the proper functioning of the Union. The hosting of joint parliamentary meetings in different Member States can help to encourage and facilitate these exchanges and promote more public interest and engagement in EU affairs.

Recommendation 14

It is recommended that the Houses of the Oireachtas should host an interparliamentary meeting on an annual or bi-annual basis to discuss a topical EU policy area or legislative proposal.

Interaction with MEP's and the European Parliament

36. Given its increased powers in deciding on EU legislation following the entry into force of the Lisbon Treaty, it is important that national parliaments improve their interaction with the European Parliament. To this end, the Joint Sub-Committee believes that there should be more regular contact between Oireachtas members and the Irish MEPs. The JCEA and JCES could also engage more regularly with the Rapporteurs of European Parliament committees when they are considering specific policy or legislative proposals.

Recommendation 15

It is recommended that the JCEA and JCES have regular meetings with the Irish MEPs to discuss issues of mutual concern on the EU's agenda. There should also be regular meetings between the Irish MEPs who are members of key European Parliament Committees and the relevant sectoral committees. Due to constraints imposed by travel and other work commitments, these regular contacts could be facilitated through the use of video-conferencing.

Recommendation 16

It is also recommended that the JCEA and JCES, as well as appropriate sectoral committees, consider holding consultations with the Rapporteur of the European Parliament Committee dealing with the policy or legislative proposal under scrutiny.

37. The Joint Sub-Committee also encourages political parties to establish more regular contact with their respective MEPs and seek better cooperation within the framework of their political groupings. More interaction between Oireachtas members and MEPs could also be facilitated by making office facilities within Leinster House available to MEPs during the European Parliament's constituency weeks.

MAINSTREAMING

38. It is generally accepted that involving sectoral committees and the plenary in EU affairs, and not restricting consideration to only EU affairs committees, facilitates greater debate and engagement in EU matters as well as enhancing parliamentary oversight and accountability. Given the growing importance of EU regulation in all areas of the economy and society, it seems only appropriate that sectoral committees, with their specific policy expertise, should be the committee to consider EU policy and legislative initiatives which fall within their area of responsibility. Pre-Council briefings by Ministers as recommended above would

go a long way to mainstreaming EU matters into sectoral committees as they would be obliged to consider EU issues on a regular and routine basis.

39. Currently, the orders of reference of the JCEA and JCES give them the power to refer proposals to sectoral committees. The orders of reference of the sectoral committees states that they may consider “such proposals for EU legislation and related policy issues as may be referred to it from time to time, in accordance with Standing Order 83(4)”. Standing Order 83(4) confers on select committees the power “to consider and report to the Dáil on such proposals for EU legislation as may be referred to it from time to time by any Committee established by the Dáil (whether acting jointly with the Seanad or otherwise) to consider such proposals and upon which has been conferred the power to refer such proposals to another Select Committee”. At present, therefore, there is no real obligation on a sectoral committee to consider an EU proposal referred to it by the JCEA or JCES and there is no obligation for them to report back to the JCEA or JCES. If there is to be effective mainstreaming, and as a result the JCEA and JCES would refer policy and legislative proposals to the relevant sectoral committees, there must be some assurance that these documents will be properly examined. In this respect, the JCES and/or the JCEA would be required to take on a co-ordinating or ‘policing’ role. To facilitate this, the powers of referral to Sectoral Committees by the JCEA and JCES should be rationalised and strengthened by enshrining them in the standing orders of the Houses and by including a requirement for sectoral committees to report back to the JCEA and JCES on documents referred to them by the European committees. The orders of reference of the sectoral committees should be amended accordingly.

Recommendation 17

It is recommended that the powers of referral of EU documents by the JCEA and JCES and the powers of consideration by the sectoral committees are rationalised through inclusion in the Houses’ Standing Orders and strengthened by including a requirement that sectoral committees must report back to the JCEA and JCES. The JCEA and JCES should take on a co-ordinating role to ensure that sectoral committees receive the proper support when considering EU matters.

40. The Joint Sub-Committee also believes that the consideration of EU matters could be greatly enhanced by the more effective use of Rapporteurs. A Rapporteur system can assist with driving the work on a particularly important EU policy area or legislative proposal. Greater use of Rapporteurs could also give the work of the Oireachtas on EU matters more of a public profile. A Rapporteur could track an EU initiative from the pre-legislative stage, through the legislative stage, to the transposition stage. Given that there could be up to 50 legislative proposals selected

for detailed scrutiny in a given year, it does not seem practical that there could be Rapporteurs appointed for all these proposals. The system, therefore, should be employed on an ad-hoc case-by-case basis. Also, members of the Oireachtas who have an interest in a particular proposal can volunteer to become Rapporteurs.

Recommendation 18

It is recommended that a Rapporteur system be introduced for the consideration of important EU policy and legislative proposals. All members of the Oireachtas could be appointed a Rapporteur on a case-by-case, voluntary basis.

41. In terms of mainstreaming issues into the plenary, it is generally agreed that there should be regular debates in both the Dáil and Seanad on important EU related issues. This would not only help to increase members' interest in EU affairs but would also facilitate greater media coverage of EU issues which in turn would promote greater public understanding and engagement.

Recommendation 19

It is recommended that the Standing Orders of both Houses be amended so that reports of the JCEA and JCES which are specifically recommended for debate in the Houses are taken for debate within a certain period of time.

Recommendation 20

It is also recommended that selected sectoral committees would be obliged to report to the Seanad periodically in respect of its EU related work. The Chair of the sectoral committee would be expected to present the committee's work to Seanad and to hold a discussion with the Seanad. In addition to facilitating debate on EU issues within the Seanad, this initiative would also help to ensure that sectoral committees complete the EU related work that is referred to them.

Recommendation 21

It is also recommended that the week of 9 May, Europe Day, each year should be set aside by the Dáil as a week for debates and events on EU related topics. This could include discussions on Ireland's priorities within the EU as well as debates with EU Commissioners and other leading practitioners from the EU institutions. It could also be the occasion for the hosting of the annual interparliamentary meeting as outlined in Recommendation 14.

DOMESTIC IMPACT

42. The impact of EU regulation through the transposition of the EU Directives has the potential to cause public dissatisfaction if the new regulations are not properly applied or are not communicated well enough in advance. The Joint Sub-

Committee believes that enhancing Oireachtas oversight of transposition could help in ensuring that problems which may emerge when new EU regulations are applied locally are avoided. All significant EU Directives should be transposed by primary legislation as this would mean that they would be exposed to the full rigours of parliamentary scrutiny. However, the Joint Sub-Committee accepts that given the high volume of regulations, this would be too time consuming and impose unnecessary administrative burdens. Therefore, ways must be found to ensure that the most significant Directives are transposed by primary legislation while at the same time Oireachtas oversight of secondary legislation or Statutory Instruments (S.I.s) implementing EU Directives is enhanced.

Recommendation 22

It is recommended that Regulatory Impact Assessments (RIAs), which Government Departments are expected to prepare for all EU Directives, should be circulated to the JCEA and JCES as well as the relevant sectoral committee. On the basis of the RIA, the relevant committees, as part of their scrutiny of the draft EU legislative proposal, should advise the Minister on whether a proposed EU Directive should be transposed by S.I. or primary legislation.

Recommendation 23

It is also recommended that S.I.s should be circulated to all Oireachtas members six weeks before they are signed by the relevant Minister. They should also stand referred to the JCEA for scrutiny. The Minister should provide an explanation of why (s) he is transposing these measures by S.I. if requested by the JCEA. The JCEA may also decide to refer significant S.I.s to either House for a full plenary debate. The explanatory memorandum provided by Departments for every S.I. should be used as a tool to explain clearly the measures being introduced by the S.I.

Recommendation 24

It is also recommended that the Seanad play an important role in the area of monitoring the transposition of EU Directives. To facilitate such a role, the recommendation of SCIFE that a new Seanad vocational panel of 5 members be established should be actively considered. Alternatively, the Taoiseach's nominees for the Seanad should be influenced by a desire to appoint individuals with a background in EU affairs.

Recommendation 25

It is also recommended that the JCEA should be briefed on infringement actions taken or pending against Ireland for the non-transposition or improper transposition of EU Directives. In this respect, and in line with the previous two recommendations, there should be a constant exchange of information between

the Oireachtas European Committees and the Interdepartmental Coordinating Committee on EU Affairs (ICCEU) which oversees the transposition of EU Directives and which is chaired by the Minister of State for European Affairs.

43. A key aim of these recommendations would be to guard against so-called ‘gold plating’ (i.e. the inclusion of additional domestic regulations not required by the EU Directive). They would also help to combat widely held perceptions that Ireland, in comparison to other EU Member States, implements EU regulations more stringently. In this regard, the Joint Sub-Committee believes that it would be useful to undertake a body of work to establish if the burden of transposition of EU Directives in Ireland is similar to that experienced in other member States in order to ensure a level playing field. Prioritising areas that have caused concern and controversy, this work should include a comparative analysis so that it can be established if greater flexibility is being applied in other EU Member States. Submissions from the public who have concerns about the impact of EU regulations on their lives or businesses could be invited.

Recommendation 26

It is recommended that the JCEA should undertake a study of selected EU Directives transposed in Ireland which have caused the greatest concern in terms of regulation. This study should include a comparative analysis of how these Directives have been applied in other EU Member States.

PUBLIC COMMUNICATION

44. One of the conclusions of SCIFE was that EU matters do not play as prominent a role as they should in Irish politics, media or public discourse. The SCIFE report made a number of recommendations aimed at improving public engagement and understanding. These recommendations should continue to be actively considered. Some of the recommendations outlined in this report, particularly those related to mainstreaming and more plenary debate, should help to facilitate more media coverage and in turn public discourse. However, more efforts should be made to inform the public about EU affairs and the role of the Oireachtas in respect of EU matters.

Recommendation 27

It is recommended that an EU information kiosk is established in the lobby entrance of the visitors’ gallery of Leinster House. The aim of such a kiosk is to provide information on the EU to the approximately 50,000 member of the public who visit Leinster House annually, a good proportion of which are primary and secondary level students.

Recommendation 28

It is also recommended that the Oireachtas should form a more formal link with the Representatives Offices of the Commission and the European Parliament in Ireland in order to maximise their joint remit to communicate Europe. Initiatives that could be considered include the establishment of a planned tour for students which encompasses a visit to Leinster House and a visit to the EU Offices; the organisation by the Commission and/or European Parliament of outreach programmes, meetings and competitions, particularly in schools, which TDs and Senators could be invited to provide input.

RESOURCES

45. There is no doubt that the new powers given to national parliaments by the Lisbon Treaty have created greater responsibilities and challenges for the national parliaments. These new responsibilities inevitably place a greater burden on resources. Moreover, if the recommendations outlined in this report are fully implemented, especially with regard to the oversight of transposition, the burden on resources would be even greater. While recommendations relating to prioritisation should result in a better use of resources, the Joint Sub-Committee is firmly of the position that more resources, and in particular staff, should be directed towards the EU area. In addition, the Joint Sub-Committee believes that the L&RS should be better resourced and should be available to the Committees and/or Rapporteurs involved in EU scrutiny.

46. Specifically, the Joint Sub-Committee believes that the following recommendations, if implemented, would require the allocation of additional resources:

Recommendations 11&12 (Scrutiny Reserve) – a reserve system would place additional burden on the Oireachtas and its committees in terms of the need to thoroughly analysis draft legislative proposals and to prepare scrutiny reports in a timely fashion. There would have to be very quick turn around times between the initial consideration of a proposal, a decision to place a reserve on the proposal and the preparation and adoption of the final scrutiny report. It is therefore proposed that two additional policy advisors are assigned to the committees' secretariat;

Recommendation 17 (mainstreaming) – If sectoral committees are to become more involved in the consideration of EU non-legislative and legislative documents, it is important that they receive the proper support to undertake this work in an efficient and effective manner. The assignment of two additional policy advisors as proposed above would also assist in this regard;

Recommendation 18 (Rapporteur system) – When a Rapporteur is appointed to prepare a report on a particular EU policy or legislative initiative, it is important that (s)he receive the proper support in terms of research and policy analysis. It is suggested that the L&RS could be best placed to provide some of this support. It is therefore proposed that an additional researcher is assigned to the L&RS;

Recommendation 22 (transposition) – the consideration of S.I.s prior to their entry into force by the JCEA would place a significant additional burden on the committee. In 2009, 590 S.I.s were signed into law by a Minister, 115 of which were brought under the European Communities Acts 1973-2007. A significant number of EU Directives were also transposed by S.I.s brought under other primary legislation which is an option open to Ministers in accordance with the European Communities Act 2007. It would fall to the JCEA Secretariat to manage this flow of information and to provide analysis. It is therefore proposed that additional two staff members (an administrator and policy advisor) are assigned to undertake these duties.

These requests for additional staff are indicative and are subject to proper analysis and the preparation of a full business case.

47. Furthermore, if EU affairs are to be mainstreamed across the Oireachtas, information and training seminars on EU matters should be more widely available to members and staff. Such seminars could focus on the functioning of the EU, and in particular the EU legislative process, the role of the Oireachtas and its powers in respect of the EU and how to use information sources on the EU (e.g. IPEX, Prelex, EUR-Lex etc.).

RECOMMENDATIONS

48. With a view to enhancing the role of the Oireachtas in EU affairs, especially in light of the entry into force of the Lisbon Treaty, through better prioritisation, earlier engagement, better oversight, better cooperation, more mainstreaming and the consideration of the domestic impact of EU law, the Joint Sub-Committee recommends:

1. that the interim arrangements agreed in the Resolution of 10 December 2009 are placed on a permanent basis through an amendment to the Dáil and Seanad Standing Orders. The amendment to the Standing Orders should provide for an annual review of these permanent arrangements;

2. that the weekly report on EU documents should be laid by the Leas-Cheann Comhairle and the Leas-Cathaoirleach. It is also recommended that the weekly report be published on the Oireachtas website;
3. that the Houses of the Oireachtas (Laying of Documents) Act 1966 should be amended so that documents can be laid electronically;
4. that the current system employed by the Joint Committee on European Scrutiny be changed so that legislative proposals received in accordance with the 2002 Act are divided into two lists: a list of proposals of limited significance and a list of proposals of greatest significance/implications for Ireland.
5. that the 2002 Act be amended so that each Government Department is obliged to prepare a six-monthly report on developments in the EU, on the measures proposed and progressed in that period and on the main priorities for the coming six months;
6. that the Commission's Annual Policy Strategy (APS) should continue to be debated in the JCEA and a report prepared. This report should be laid in both Houses and debated in plenary. The Standing Orders should be amended to stipulate that such a debate must be held. Only after this debate is held, should the JCEA make its final contribution to the Commission;
7. that the JCES should continue to consider the Commission's Annual Legislative Work Programme (ALWP) in detail. This consideration should always include a presentation on the ALWP by a Commission representative. The JCES should prepare a report on the ALWP which should be laid in the Houses and circulated to all sectoral committees for consideration;
8. that all Government Ministers should be obliged, by way of an amendment to the EU Scrutiny Act, 2002 to attend the relevant sectoral committee in advance of a Council meeting in order to discuss the Council agenda and to report back to that committee on the outcome of the Council meeting;
9. that statements and questions and answers on the European Council take place in the Dáil prior to the European Council;
10. that the Government should come forward, as a matter of urgency, with proposals on how the Oireachtas will examine Ireland's Stability and Convergence Programme and budgetary framework before they are submitted to the Council and the Commission for assessment;

11. that the 2002 Scrutiny Act be amended to include a scrutiny reserve system. This amendment would include an urgency clause enabling a Minister to override the reserve but obliging the Minister to justify this decision to the relevant Committee in writing with the Committee reserving the right to require the Minister to appear before it if it is not satisfied with the explanation. Such an amendment to the 2002 Scrutiny Act would also include a provision whereby a reserve imposed by an Oireachtas committee would automatically lapse within a certain period of time, perhaps within eight weeks of receiving the information note from the Government;
12. that a Memorandum of Understanding is agreed between the Oireachtas and the Government on the operation of the scrutiny reserve system;
13. that, in the 31st Dáil, the JCEA and JCES are amalgamated to form the Joint Committee on EU Scrutiny and European Affairs, which would become a standing committee of the Oireachtas. This Joint Committee will have sub-committees dealing with EU legislation, including transposition. The Joint Committee would have an overall co-ordinating role, including in relation to the work of sectoral committees on EU matters, and would also deal with EU institutional questions as well as the pre-Foreign Affairs and General Affairs Council ministerial briefings;
14. that the Houses of the Oireachtas should host a joint parliamentary meeting on an annual or bi-annual basis to discuss a topical EU policy area or legislative proposal;
15. that the JCEA and JCES have regular meetings with the Irish MEPs to discuss issues of mutual concern on the EU's agenda. There should also be regular meetings between the Irish MEPs who are members of key European Parliament Committees and the relevant sectoral committees;
16. that the JCEA and JCES, as well as appropriate sectoral committees, consider holding consultations with the Rapporteur of the European Parliament Committee dealing with the policy or legislative proposal under scrutiny;
17. that the powers of referral of EU documents by the JCEA and JCES and the powers of consideration by the sectoral committees are rationalised through inclusion in the Houses' Standing Orders and strengthened by including a requirement that sectoral committees must report back to the JCEA and JCES. The JCEA and JCES should take on a co-ordinating role to insure that sectoral committees receive the proper support when considering EU matters;

18. that a Rapporteur system be introduced for the consideration of important EU policy and legislative proposals. All members of the Oireachtas could be appointed a Rapporteur on a case-by-case, voluntary basis;
19. that the Standing Orders of both Houses be amended so that reports of the JCEA and JCES which are specifically recommended for debate in the Houses are taken for debate within a certain period of time;
20. that selected sectoral committees would be obliged to report to the Seanad on periodically in respect of its EU related work. The Chair of the sectoral committee would be expected to present the committee's work to Seanad and to hold a discussion with the Seanad. In addition to facilitating debate on EU issues within the Seanad, this initiative would also help to ensure that sectoral committees complete the EU related work that is referred to them;
21. that the week of 9 May, Europe Day, each year should be set aside by the Dáil as a week for debates and events on EU related topics. This could include discussions on Ireland's priorities within the EU as well as debates with EU Commissioners and other leading practitioners from the EU institutions. It could also be the occasion for the hosting of the annual or bi-annual interparliamentary meeting as outlined in recommendation 14;
22. that Regulatory Impact Assessments (RIAs), which Government Departments are expected to prepare for all EU Directives, should be circulated to the JCEA and JCES as well as the relevant sectoral committee. On the basis of the RIA, the relevant committees, as part of their scrutiny of the draft EU legislative proposal, should advise the Minister on whether a proposed EU Directive should be transposed by S.I. or primary legislation;
23. that S.I.s should be circulated to all Oireachtas members six weeks before they are signed by the relevant Minister. They should also stand referred to the JCEA for scrutiny. The Minister should provide an explanation of why (s) he is transposing these measures by S.I. if requested by the JCEA. The JCEA may also decide to refer significant S.I.s to either House for a full plenary debate. The explanatory memorandum provided by Departments for every S.I. should be used as a tool to explain clearly the measures being introduced by the S.I.;
24. that the Seanad play an important role in the area of monitoring the transposition of EU Directives;

25. that the JCEA should be briefed on infringement actions taken or pending against Ireland for the non-transposition or improper transposition of EU Directives. In this respect, and in line with the previous two recommendations, there should be a constant exchange of information between the Oireachtas European Committees and the Interdepartmental Coordinating Committee on EU Affairs (ICCEU) which oversees the transposition of EU Directives and which is chaired by the Minister of State for European Affairs;
26. that the JCEA should undertake a study of selected EU Directives transposed in Ireland which have caused the greatest concern in terms of regulation. This study should include a comparative analysis of how these Directives have been applied in other EU Member States;
27. that an EU information kiosk is established in the lobby entrance of the visitors' gallery of Leinster House;
28. that the Oireachtas should form a more formal link with the Representatives Offices of the Commission and the European Parliament in Ireland in order to maximise their joint remit to communicate Europe. Initiatives that could be considered include the establishment of a planned tour for students which encompasses a visit to Leinster House and a visit to the EU Offices; the organisation by the Commission and/or European Parliament of outreach programmes, meetings and competitions, particularly in schools, which TDs and Senators could be invited to provide input.

APPENDIX I

**JOINT SUB-COMMITTEE ON THE REVIEW OF THE ROLE OF THE
OIREACHTAS IN EUROPEAN AFFAIRS**

LIST OF MEMBERS



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



John Perry T.D.
**(FG) (Chairman, Joint Committee
on European Scrutiny)**



Joe Costello T.D.
(Lab)



Timmy Dooley T.D.
(FF)



Michael Kitt T.D.
(FF)



Mary O'Rourke T.D.
(FF)



Senator Paschal Donohoe
(FG)



Senator Terry Leyden
(FF)



Senator John Hanafin
(FF)



Senator Alex White
(Lab)

APPENDIX II

JOINT SUB-COMMITTEE ON THE REVIEW OF THE ROLE OF THE OIREACTHAS IN EUROPEAN AFFAIRS

ORDERS OF REFERENCE

The Joint Committee on European Affairs and the Joint Committee on European Scrutiny agreed:

- (1) That a Joint sub-Committee of the Joint Committees on European Affairs and European Scrutiny which shall be called the Joint sub-Committee on the review of the role of the Oireachtas in European Affairs, be established to consider:

- Modules 1 to 6 of the Terms of Reference for the Review by the Joint Committees on European Affairs and European Scrutiny of the Interim Arrangements in the Houses of the Oireachtas implementing the new powers of National Parliaments under the Lisbon Treaty and the future Role of the Oireachtas in EU Affairs;

and shall report thereon to the Joint Committee on European Affairs and the Joint Committee on European Scrutiny by 27 May 2010.

- (2) The Sub-Committee shall have the powers defined in Standing Order 83(1), (2) and (4) to (8) inclusive.
- (3) The Membership of the Joint sub-Committee shall be Deputies Joe Costello, Lucinda Creighton, Timmy Dooley, Michael Kitt, Mary O'Rourke and John Perry, and Senators Paschal Donohoe, John Hanafin, Terry Leyden and Alex White.
- (4) The quorum of the Sub-Committee shall be 4.

Review by the Joint Committees on European Affairs and European Scrutiny of the Interim Arrangements in the Houses of the Oireachtas implementing the new powers of National Parliaments under the Lisbon Treaty and the future Role of the Oireachtas in EU Affairs

The Lisbon Treaty changes the relationship between the EU and the national parliaments of the Member States and for the first time, the Treaties formally recognise that national parliaments have a key role to play in the good functioning of the EU. This will have an effect on how the Houses of the Oireachtas conduct their business in relation to EU matters and will also impact on the cooperation between the Houses of the Oireachtas and the national parliaments of the 26 other EU Member States.

In addition, and beyond the implementation of the Lisbon Treaty provisions, the Joint Committees recognise that the role of the Houses of the Oireachtas in EU affairs needs to be improved; a matter considered by the Sub-Committee on Ireland's Future in the European Union (SCIFE).

The 10 December Resolutions require both Joint Committees to review the operation of the interim arrangements of the Resolutions and to jointly report thereon, and on such related matters as the Committees think fit, to Dáil Éireann/Seanad Éireann within six months. On the basis of the Committees report, the Committee on Procedure and Privileges of each House shall recommend to the Dáil/Seanad such amendments to the Standing Orders of Dáil Éireann/Seanad Éireann and the Orders of Reference of Committees as may be required.

Terms of Reference for Review

(An expanded version listing specific issues for that might be included is annexed to this document)

MODULE 1: Review of the Interim Arrangements in the Houses of the Oireachtas implementing the powers conferred by the European Union Act 2009

- 1.1 Role of the Oireachtas in monitoring Subsidiarity in accordance with the Protocol on the application of the principles of subsidiarity and proportionality.
- 1.2 Role of the Oireachtas with regard to the “Red Card” procedure applicable to the use of the General passerelle and the Specific passerelle
- 1.3 Other roles of the Oireachtas conferred by the Lisbon Treaty not contemplated by the European Union Act 2009
- 1.4 Transmission of Documents

MODULE 2: Recommendations made by the Sub-Committee on Ireland's Future in the European Union

- 2.1 Scrutiny reserve mechanism
- 2.2 Consultation in advance of publication of the Annual Policy Strategy (APS) and Commission Legislative Work Programme (CLWP)
- 2.3 Structured arrangements for Pre Council meetings with Committees across all sectors
- 2.4 Other recommendations made by the Sub-Committee on Ireland's future in the European Union, (SCIFE)

MODULE 3: Interparliamentary Co-operation

- 3.1 Enhancement of inter-parliamentary cooperation to ensure that it is capable of rapid reaction and is properly resourced

MODULE 4 : Optimisation of the consideration of EU Affairs by the Houses of the Oireachtas

- 4.1 Role of Oireachtas Stakeholders
- 4.2 Mainstreaming

MODULE 5: Transposition of EU Law and Regulatory Impact Assessment

- 5.1 Oireachtas oversight of the Transposition of EU Law
- 5.2 Regulatory Impact Assessments

MODULE 6 : Resources and Training

An administrative review of implications for resources and training to be produced by the Houses of the Oireachtas Service for Committee consideration

- 6.1 Resources and Training supports required in light of new demands
- 6.2 EU Information office

THE REVIEW PROCESS

The review will draw on the Lisbon Treaty provisions, the recommendations of the Sub-Committee on Ireland's future in the EU and discussions at the level of COSAC and the EU Speakers' Conference and will be undertaken in consultation with key stakeholders, including the Government, Party Whips, Leader of the Seanad, Party Leaders and the Irish MEPs.

The Joint Committees may also seek position papers from each of the Oireachtas political parties based on the terms of reference above. The Ceann Comhairle and the Cathaoirleach will also be consulted in respect of any issues arising from the EU Speakers Conference.

It is envisaged that in order to conduct the review in as efficient a manner as possible, the Joint Committees on European Affairs and European Scrutiny will each nominate 5 members (3 Members of Dáil Éireann and 2 members of Seanad Eireann) to form a Joint Sub-Committee to conduct the review. The Joint Sub-Committee will consider and report on each module to both Joint Committees.

The Joint Sub-Committee will consider the position papers received and hold discussions with Oireachtas stakeholders. The Joint Sub-Committee may consider holding a series of public meetings, possibly 4 days over two weeks, after which the Sub-Committee will finalise its report.

The Joint Sub-Committee should finalise its work by 27 May 2010 in order that the matter may be concluded by both Joint Committees within the six-month deadline of 10 June 2010.

Annex

MODULE 1:	Review of the Interim Arrangements in the Houses of the Oireachtas Implementing the powers conferred by the European Union Act 2009	
1.1	Role of the Oireachtas in monitoring Subsidiarity in accordance with the Protocol on the application of the principles of subsidiarity and proportionality.	
	<p><i>Resolutions of 10 December 2009 provide that</i></p> <p><i>the Joint Committee on European Scrutiny has responsibility for the day-to-day operation of the “Yellow and Orange Card and</i></p> <p><i>the Joint Committees on European Scrutiny and European Affairs will each have responsibility for identifying acts of the EU institutions which may infringe the principle of subsidiarity</i></p>	<p style="text-align: center;"><i>Issues to be included</i></p> <ul style="list-style-type: none"> → Review of interim arrangements put in place by Resolution of 10 December 2009 to monitor subsidiarity by Dáil and Seanad Éireann → Experience of new role in exercising the right of submitting a reasoned opinion under the protocol; if this occurs in the timeframe of this consideration → Benchmarking with other Member States → Experience of reporting to the Dáil for the purposes of requesting the Minister for Foreign Affairs to bring proceedings before the European Court of Justice in relation to an EU Act’s compliance with the principle of subsidiarity (if this occurs within the timeframe of this consideration).
1.2	Role of the Oireachtas with regard to the “Red Card” procedure applicable to the use of the General passerelle and the Specific passerelle	
	<p><i>Resolutions of 10 December 2009 provide that on referral by Dáil/Seanad</i></p> <p><i>the Joint Committee on European Affairs will consider notifications of decisions relating to the General passerelle (unanimity to QMV)</i></p> <p><i>the Joint Committee on Justice, Equality, Defence and Women’s Rights will consider notifications of decisions relating to the Specific passerelle, (family law issues with cross-border implications)</i></p>	<p style="text-align: center;"><i>Issues to be included</i></p> <ul style="list-style-type: none"> → Review interim arrangements put in place by Resolution of 10 December 2009 → Experience of receipt and consideration of notifications of decisions under the general or specific passerelle clause, “Red card procedure” (6 month deadline under the Treaty) <u>if</u> this occurs in the timeframe of this consideration.
1.3	Other roles of the Oireachtas conferred by the Lisbon Treaty not	

	contemplated by the European Union Act 2009
	<p style="text-align: center;"><i>Issues to be included</i></p> <ul style="list-style-type: none"> → Consider how best the Oireachtas might monitor the activities of Eurojust and Europol [Articles 85, 88 TFEU] – Role of national Parliaments will be defined in Regulations <u>yet to be agreed</u> by the Council and the European Parliament → Consider how best the Oireachtas might monitor the evaluation of the implementation of union Policies in the area of Freedom Security and Justice (Art 70 TFEU provides that National Parliaments will be informed of the content and results of evaluations) → Consider arrangements for receipt and consideration of notifications sent to national parliaments pursuant to Articles 48 (Treaty revision procedures), 49 (Applications for Accession) and 71 (Proceedings of the Standing Committee on Operational Cooperation on Internal security)
1.4	Transmission of Documents
<p><i>Mechanisms for effective receipt and onward transmission of documents by the Houses of the Oireachtas</i></p>	<p style="text-align: center;"><i>Issues to be included</i></p> <ul style="list-style-type: none"> → Review administrative arrangements put in place to notify and make documents (transmitted to national parliaments from the European Commission and the Council) available to all Members (eg Clerks of both Houses weekly report of all documents received by the Houses of the Oireachtas) → Consider revision to current legislation to permit electronic receipt of documents laid by the Oireachtas Library and Research Service → Consider incorporation of documents transmitted to National Parliaments pursuant to Treaty Articles not included in the European Union Act 2009.
MODULE 2:	Recommendations made by the Sub-Committee on Ireland's Future in the European Union

2.1	Scrutiny reserve mechanism
	<p style="text-align: center;"><i>Issues to be included</i></p> <p>→ The SCIFE recommendation that a formal scrutiny reserve mechanism introduced, in line with the model used in the British Houses of Parliament</p>
2.2	Consultation in advance of publication of the Annual Policy Strategy (APS) and Commission Legislative Work Programme (CLWP)
	<p style="text-align: center;"><i>Issues to be included</i></p> <p>→ Consider the establishment of a mechanism for Committees of the Houses of the Oireachtas to set out the areas which they believe the European Commission should prioritise in a coming year</p> <p>→ Consider annual briefing by a Representative of the European Commission</p>
2.3	Structured arrangements for Pre Council meetings with Committees across all sectors
	<p style="text-align: center;"><i>Issues to be included</i></p> <p>→ Line Ministers to meet with corresponding Oireachtas Committee in advance of Council meetings.</p> <p>→ Propose Ministers report back in writing on outcome of Council Meetings</p>
2.4	Other recommendations made by the Sub-Committee on Ireland’s future in the European Union, (SCIFE)
	<p style="text-align: center;"><i>Issues to be included</i></p> <p>→ New Seanad Panel for EU affairs: SCIFE proposed minimum 5 Senators to be nominated on the basis of experience in EU Affairs and these Senators participate in Oireachtas EU Committees</p> <p>Triple Lock Requirement for a “super majority” for sending Irish troops overseas on EU-lead peacekeeping missions. (SCIFE recommended strengthening the approval required from Dáil Eireann from simple majority to a ‘super majority’ of two thirds.)</p>

MODULE 3:	Interparliamentary Co-operation	
3.1	Enhancement of inter-parliamentary cooperation to ensure that it is capable of rapid reaction and is properly resourced	
	<p style="text-align: center;"><i>Issues to be included</i></p> <ul style="list-style-type: none"> → Review respective roles of COSAC, IPEX, Speakers Conference and National Parliament EU Liaison Officers → Consider the outcome of the discussions at COSAC and the Speakers Conference → Consider the use of video-conferencing to enable EU Committees to exchange information and views on legislative proposals or other issues more regularly → Monthly meetings between the Irish MEPs and the European (or Sectoral) Committees in the Oireachtas and consider means to enhance interaction with MEP's via video-conferencing where formal meeting not possible 	
MODULE 4 :	Optimisation of the consideration of EU Affairs by the Houses of the Oireachtas	
4.1	Role of Oireachtas Stakeholders	
	<p style="text-align: center;"><i>Issues to be included</i></p> <ul style="list-style-type: none"> → Consider the interaction between Committees and plenary and the delimitation of competences as regards the exercise of the new powers of national Parliaments → Identify options for optimal Committee configuration in the context of the review of the Committee system of the 30th Dáil (in preparation for 31st Dáil) 	
4.2	Mainstreaming	
<p><i>Ways to enhance the profile of EU issues on the floor of both Houses and the mainstreaming of EU matters across Committees and into the business of Dáil Éireann and Seanad Éireann</i></p>	<p style="text-align: center;"><i>Issues to be included</i></p> <ul style="list-style-type: none"> → Consider interim arrangements in place as regards plenary engagement with the new powers conferred by the Lisbon Treaty to include the experience of other Parliaments in the Post Lisbon period 	

	<ul style="list-style-type: none"> → Seek a WGCC report on how EU Business can be mainstreamed across committees as recommended by SCIFE → Order Paper to include a specific category of EU Affairs issues in each House → Amendment of Standing Orders and procedures of Dáil and Seanad Éireann to ensure that regular debates are held in plenary on EU matters and that Irish MEPs could participate in such debates; → Regular “Europe Day” centred around Statements by the Taoiseach on the European Council → Priority given to discussion of major reports from Committees dealing with EU Affairs and EU Scrutiny (in particular reports under the European Union Act) → Consider regular webcasting of European committee proceedings
MODULE 5:	Transposition of EU Law and Regulatory Impact Assessment
5.1	Oireachtas oversight of the Transposition of EU Law
	<p style="text-align: center;"><i>Issues to be included</i></p> <ul style="list-style-type: none"> → Consider how best the Oireachtas can engage in the transposition of EU Law → Measures to enhance oversight of Statutory Instruments (SI’s) → Consider circulation of Heads of SI’s to all Oireachtas members → Consider circulation of all SI’s to all Oireachtas members → Consider means to review implementation of EU Directives in Ireland and the appropriate Committee to undertake the activity
5.2	Regulatory Impact Assessments
	<p style="text-align: center;"><i>Issues to be included</i></p> <p>Consider a requirement that Regulatory Impact Assessments, which should be prepared for all EU Directives and significant regulations in accordance with existing government guidelines,</p>

		be forwarded to Oireachtas Committees for consideration (SCIFE Recommendation)
MODULE 6 :	Resources and Training <i>An administrative review of implications for resources and training to be produced by the Houses of the Oireachtas Service for Committee consideration</i>	
6.1	Resources and Training supports required in light of new demands	
	<i>Any decisions on additional resources will be a matter for the Houses of the Oireachtas Commission</i>	<p style="text-align: center;"><i>Issues to be included</i></p> <ul style="list-style-type: none"> → Current level of resources and future requirements including benchmarking against other EU Member States → Level of Policy Advice and Legal Advice currently available and future requirements → Consider possible support available from the Library and Research Service → Training requirements arising for the Library and Research Service, the Houses of the Oireachtas Service and Members.
6.2	EU Information office	
		<p style="text-align: center;"><i>Issues to be included</i></p> <ul style="list-style-type: none"> → Identify options with regard to the Development of an Oireachtas EU Information Office → Consider resource requirements

SUBMISSIONS RECEIVED:

Submissions were received from the following:

- Fianna Fáil Party
- Fine Gael Party
- Labour Party
- Green Party
- Mr. Bernard J. Durkan, TD, Chairman of the Joint Committee on European Affairs
- Senator Joe O'Toole
- Fianna Fáil MEPs (Mr. Pat the Cope Gallagher MEP, Mr. Brian Crowley MEP and Mr. Liam Aylward MEP)
- Mr. Francis Jacobs, Head of the European Parliament Office in Ireland

Copies of these submissions can be accessed at:

<http://www.oireachtas.ie/viewdoc.asp?fn=/documents/Committees30thDail/J-EuropeanAffairs/SubCtteeRoleofOireachtas/homepage.htm>

MEMBERS OF THE 30TH DÁIL JOINT COMMITTEE ON EUROPEAN AFFAIRS



Thomas Byrne
(Fianna Fáil)



Pat Breen
(Fine Gael)



Lucinda Creighton
(Fine Gael)



Timmy Dooley
Vice-Chairman
(Fianna Fáil)



Michael Mulcahy
(Fianna Fáil)



Mary O'Rourke
(Fianna Fáil)



Sean Power
(Fianna Fáil)



Bernard Durkan
Chairman
(Fine Gael)



Billy Timmins
(Fine Gael)



Noel Treacy
(Fianna Fáil)



Joe Costello
(Labour Party)



Beverly Flynn
(Fianna Fáil)



Joanna Tuffy
(Labour)

SENATORS



Paschal Donohoe
(Fine Gael)



John Hanafin
(Fianna Fáil)



Terry Leyden
(Fianna Fáil)



Phil Prendergast
(Labour Party)



Feargal Quinn
(Independent)



Pearse Doherty
(Sinn Féin)



Rónán Mullen
(Independent)



Maurice Cummins
(Fine Gael)

MEMBERS OF THE 30TH DÁIL JOINT COMMITTEE ON EUROPEAN SCRUTINY



John Perry T.D.
(FG) (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.
(Other)



Michael Kitt T.D.
(FF)



Michael Mulcahy T.D.
(FF)



Noel O'Flynn T.D.
(FF)



Aengus Ó Snodaigh T.D.
(SF)



Senator Eugene Regan
(FG)



Senator Alex White
(Lab)



Senator Paddy Burke
(FG)



Senator Terry Leyden
(FF)



Senator Paschal Mooney
(FF)

JOINT COMMITTEE ON EUROPEAN AFFAIRS

Dáil Éireann on 23 October 2007 ordered:

- “(1) (a) That a Select Committee, which shall be called the Select Committee on European Affairs, consisting of 11 Members of Dáil Éireann (of whom four shall constitute a quorum), be appointed to consider—
- (i) such Bills the statute law in respect of which is dealt with by the Department of Foreign Affairs;
 - (ii) such proposals contained in any motion, including any motion within the meaning of Standing Order 159 concerning the approval by the Dáil of international agreements involving a charge on public funds; and
 - (iii) such other matters
- as shall be referred to it by Dáil Éireann from time to time.
- (b) For the purpose of its consideration of matters under paragraphs (1)(a)(i), (ii) and (iii), the Select Committee shall have the powers defined in Standing Order 83(1), (2) and (3).
- (c) For the avoidance of doubt, by virtue of his or her *ex officio* membership of the Select Committee in accordance with Standing Order 92(1), the Minister for Foreign Affairs (or a Minister or Minister of State nominated in his or her stead) shall be entitled to vote.
- (2) (a) The Select Committee shall be joined with a Select Committee to be appointed by Seanad Éireann to form the Joint Committee on European Affairs to—
- (i) consider such matters arising from Ireland’s membership of the European Communities and its adherence to the Treaty on European Union, as it may select;
 - (ii) consider such—
 - (I) programmes and guidelines prepared by the Commission of the European Communities as a basis for possible legislative action,
 - (II) non legislative documents published by any Union Institution in relation to EU policy matters,
 - (III) acts of the institutions of the European Communities,
 - (IV) regulations under the European Communities Acts 1972 to 2007,
 - (V) other instruments made under statute and necessitated by

the obligations of membership of the European Communities, and

(VI) any other document relating to European Union matters deposited in both Houses of the Oireachtas by a Member of the Government or Minister of State,

as it may select;

(iii) consider such other matters as may be referred to it from time to time by both Houses of the Oireachtas; and

(iv) 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 Scrutiny;

and shall report thereon to both Houses of the Oireachtas in consultation with the Joint Committee on European Scrutiny.

(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) (or, in the case of the European Council, the Taoiseach or Minister for Foreign Affairs) before the Joint Committee and provide, in private session if so desired by the Member of the Government or Minister of State, oral briefings in advance of Council meetings to enable the Joint Committee to make known its views; and

(iv) the power to make recommendations to the Minister for Foreign Affairs (or Minister of State) on European Union matters.

(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);

(ii) members of the Irish delegation to the Parliamentary Assembly of the Council of Europe; and

(iii) 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.”.

Dáil Éireann on 2 October 2008 ordered:

That the Orders of Reference of the Select Committee on European Affairs be amended in paragraph (1)(a) by the deletion of ‘11 members’ and the substitution therefor of ‘13 members’.

Seanad Éireann on 24 October 2007 ordered:

- “(1) (a) That a Select Committee consisting of 6 members of Seanad Éireann shall be appointed to be joined with a Select Committee of Dáil Éireann to form the Joint Committee on European Affairs to—
- (i) consider such matters arising from Ireland’s membership of the European Communities and its adherence to the Treaty on European Union, as it may select;
 - (ii) consider such—
 - (I) programmes and guidelines prepared by the Commission of the European Communities as a basis for possible legislative action,
 - (II) non legislative documents published by any Union Institution in relation to EU policy matters,
 - (III) acts of the institutions of the European Communities,
 - (IV) regulations under the European Communities Acts 1972 to 2007,
 - (V) other instruments made under statute and necessitated by the obligations of membership of the European Communities,and
 - (VI) any other document relating to European Union matters deposited in both Houses of the Oireachtas by a Member of the Government or Minister of State,as it may select;
 - (iii) consider such other matters as may be referred to it from time to time by both Houses of the Oireachtas; and
 - (iv) 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 Scrutiny;

and shall report thereon to both Houses of the Oireachtas in consultation with the Joint Committee on European Scrutiny.

- (b) The Joint Committee shall have:
- (i) the powers defined in Standing Order 70(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 70(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) (or, in the case of the European Council, the Taoiseach or Minister for Foreign Affairs) before the Joint Committee and provide, in private session if so desired by the Member of the Government or Minister of State, oral briefings in advance of Council meetings to enable the Joint Committee to make known its views; and
 - (iv) the power to make recommendations to the Minister for Foreign Affairs (or Minister of State) on European Union matters.
- (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);
 - (ii) members of the Irish delegation to the Parliamentary Assembly of the Council of Europe; and
 - (iii) 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.
- (2) The Chairman of the Joint Committee, shall be a Member of Dáil Éireann.”.

Seanad Éireann on 7 October 2008 ordered:

That the Orders of Reference of the Select Committee on European Affairs be amended in paragraph (1)(a) by the deletion of ‘6 members’ and the substitution therefor of ‘9 members’.

JOINT COMMITTEE ON EUROPEAN SCRUTINY

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

Seanad Éireann on 24 October 2007 ordered:

- “(1) (a) That a Select Committee, consisting of 4 Members of Seanad Éireann, be appointed to be joined with a Select Committee to be appointed by Dáil 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 70(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 70(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 75, 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.
- (2) The Chairman of the Joint Committee shall be a Member of Dáil Éireann.”

Dáil Éireann agreed the following temporary order on 10 December 2009:

That Dáil Éireann

—having regard to—

(a) the Resolution of Dáil Éireann of 8th October 2009, approving the terms of the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community,

(b) the provisions of the European Union Act, 2009 (‘the Act’), and

(c) the Joint Report of the Joint Committees on European Affairs and European Scrutiny on *Implementation of the Lisbon Treaty: Interim arrangements on the enhanced role of the Houses of the Oireachtas*,

—pending the outcome of the review referred to in paragraph (f) of this Resolution, and

—notwithstanding anything contained in the Orders of the Dáil of 23rd October, 2007, establishing the Joint Committees on European Affairs,

European Scrutiny and Justice, Equality, Defence and Women's Rights,

hereby resolves that the following arrangements shall apply until the adjournment of the Dáil for the summer recess 2010:

(a) the detailed work to support the role of Dáil Éireann under section 7 of the Act shall be undertaken by the appropriate Select Committees appointed by Dáil Éireann, as outlined in paragraphs (b) to (e) of this Resolution, which shall, in the interests of efficiency, work jointly with their Seanad counterparts in carrying out their responsibilities under this Resolution, subject to the sole discretion of the Select Committees appointed by each House to resolve to act independently;

(b) all draft legislative acts transmitted to the Dáil shall stand referred to the Select Committee on European Scrutiny, which shall have responsibility for considering whether draft legislative acts are in compliance with the principle of subsidiarity under section 7(3) of the Act, subject to the following:

(i) in forming a reasoned opinion on whether a draft legislative act complies with the principle of subsidiarity, the Committee shall consult with the Joint Committee on European Affairs, and such other Committee(s) and stakeholders as the Committee sees fit;

(ii) where the Committee is of the opinion that a draft legislative act is in breach of the principle of subsidiarity, it shall submit a reasoned opinion to this effect by way of report which shall be laid before the Dáil;

(iii) where a report has been laid by the Committee under paragraph (b)(ii), the Chairman shall forthwith table a motion thereon under section 7(3) of the Act, which shall be given priority on the Order Paper;

(iv) where the Dáil approves the motion referred to in paragraph (b)(iii), the Ceann Comhairle shall send a copy of the Resolution, together with a copy of the report referred to in paragraph (b)(ii), to the Presidents of the European Parliament, the Council and the Commission; and

(v) four members of the Select Committee shall constitute a quorum for the purpose of considering business comprehended by this paragraph;

(c) the Select Committee on European Affairs shall have responsibility for considering such notifications as may be referred to it by Dáil Éireann under section 7(1) of the Act, subject to the following:

(i) in considering such notifications, the Committee shall consult with such other Committee(s) and stakeholders as the Committee sees fit;

(ii) where the Committee is opposed to the decision to which the notification refers, the Committee shall lay a report to this effect before the Dáil;

(iii) where a report has been laid by the Committee under paragraph (c)(ii), the Chairman shall forthwith table a motion thereon under section 7(1) of the Act, which shall be given priority on the Order Paper;

(iv) where the Dáil approves the motion referred to in paragraph (c)(iii), the Ceann Comhairle shall send a copy of the Resolution, together with a copy of the report referred to in paragraph (c)(ii), to the President of the European Council; and

(v) where the Committee is not opposed to the decision to which the notification refers, the Committee shall send a Message to this effect to the Dáil;

(d) the Select Committee on Justice, Equality, Defence and Women's Rights shall have responsibility for considering such notifications as may be referred to it by Dáil Éireann under section 7(2) of the Act, subject to the following:

(i) in considering such notifications, the Committee shall consult with the Joint Committees on European Affairs and European Scrutiny, such other Committee(s) and stakeholders as the Committee sees fit;

(ii) where the Committee is opposed to the decision to which the notification refers, the Committee shall lay a report to this effect before the Dáil;

(iii) where a report has been laid by the Committee under paragraph (d)(ii), the Chairman shall forthwith table a motion thereon under section 7(2) of the Act, which shall be given priority on the Order Paper;

(iv) where the Dáil approves the motion referred to in paragraph (d)(iii), the Ceann Comhairle shall send a copy of the Resolution, together with a copy of the report referred to in paragraph (d)(ii), to the Council; and

(v) where the Committee is not opposed to the decision to which the notification refers, the Committee shall send a Message to this effect to the Dáil;

(e) the Select Committees on European Affairs and European Scrutiny shall each have power to consider whether an act of an institution of the European Union infringes the principle of subsidiarity under section 7(4) of the Act, subject to the following:

(i) in considering whether an act of an institution of the European Union infringes the principle of subsidiarity, the Committee shall consult with such other Committee(s) and stakeholders as the Committee sees fit;

(ii) where either Committee is of the opinion that an act of an institution of the European Union infringes the principle of subsidiarity and wishes that proceedings seeking a review of the act concerned be brought to the Court of Justice of the European Union, the Committee shall lay a report to this effect before the Dáil;

(iii) where a report has been laid by the Committee under paragraph (e)(ii), the Chairman shall forthwith table a motion thereon under section 7(4) of the Act, which shall be given priority on the Order Paper;

(iv) where the Dáil approves the motion referred to in paragraph (e)(iii), the Ceann Comhairle shall send a copy of the Resolution, together with a copy of the report referred to in paragraph (e)(ii), to the Minister for Foreign Affairs; and

(f) the Joint Committee on European Affairs and the Joint Committee on European Scrutiny shall review the operation of the interim arrangements at paragraphs (a) to (e) of this Resolution and shall jointly report thereon (and on such related matters as the Committees think fit) to Dáil Éireann within six months, whereupon the Committee on Procedure and Privileges shall recommend to the Dáil such amendments to the Standing Orders of Dáil Éireann and the Orders of Reference of Committees as may be required.”

Seanad Éireann agreed the following temporary order on 10 December 2009:

That Seanad Éireann

—having regard to—

(a) the provisions of the European Union Act, 2009 (“the Act”), and

(b) the Joint Report of the Joint Committees on European Affairs and European Scrutiny on *Implementation of the Lisbon Treaty: Interim arrangements on the enhanced role of the Houses of the Oireachtas*,

—pending the outcome of the review referred to in paragraph (f) of this Resolution, and

—notwithstanding anything contained in the Orders of the Seanad of 24th October, 2007, establishing the Joint Committees on European Affairs, European Scrutiny and Justice, Equality, Defence and Women’s Rights,

hereby resolves that the following arrangements shall apply until the adjournment of the Seanad for the summer recess 2010:

(a) the detailed work to support the role of Seanad Éireann under section 7 of the Act shall be undertaken by the appropriate Select Committees appointed by Seanad Éireann, as outlined in paragraphs (b) to (e) of this Resolution, which shall, in the interests of efficiency, work jointly with their Dáil counterparts in carrying out their responsibilities under this Resolution, subject to the sole discretion of the Select Committees appointed by each House to resolve to act independently;

(b) all draft legislative acts transmitted to the Seanad shall stand referred to the Select Committee on European Scrutiny, which shall have responsibility for considering whether draft legislative acts are in compliance with the principle of subsidiarity under section 7(3) of the Act, subject to the following:

(i) in forming a reasoned opinion on whether a draft legislative act complies with the principle of subsidiarity, the Committee shall consult with the Joint Committee on European Affairs, and such other Committee(s) and stakeholders as the Committee sees fit;

(ii) where the Committee is of the opinion that a draft legislative act is in breach of the principle of subsidiarity, it shall submit a reasoned opinion to this effect by way of report which shall be laid before the Seanad;

(iii) where a report has been laid by the Committee under paragraph (b)(ii), the Chairman shall forthwith table a motion thereon under section 7(3) of the Act, which shall be given priority on the Order Paper; and

(iv) where the Seanad approves the motion referred to in paragraph (b)(iii), the Cathaoirleach shall send a copy of the Resolution, together with a copy of the report referred to in paragraph (b)(ii), to the Presidents of the European Parliament, the Council and the Commission;

(c) the Select Committee on European Affairs shall have responsibility for considering such notifications as may be referred to it by Seanad Éireann under section 7(1) of the Act, subject to the following:

(i) in considering such notifications, the Committee shall consult with such other Committee(s) and stakeholders as the Committee sees fit;

(ii) where the Committee is opposed to the decision to which the notification refers, the Committee shall lay a report to this effect before the Seanad;

(iii) where a report has been laid by the Committee under paragraph (c)(ii), the Chairman shall forthwith table a motion thereon under

section 7(1) of the Act, which shall be given priority on the Order Paper;

(iv) where the Seanad approves the motion referred to in paragraph (c)(iii), the Cathaoirleach shall send a copy of the Resolution, together with a copy of the report referred to in paragraph (c)(ii), to the President of the European Council; and

(v) where the Committee is not opposed to the decision to which the notification refers, the Committee shall send a Message to this effect to the Seanad;

(d) the Select Committee on Justice, Equality, Defence and Women's Rights shall have responsibility for considering such notifications as may be referred to it by Seanad Éireann under section 7(2) of the Act, subject to the following:

(i) in considering such notifications, the Committee shall consult with the Joint Committees on European Affairs and European Scrutiny, such other Committee(s) and stakeholders as the Committee sees fit;

(ii) where the Committee is opposed to the decision to which the notification refers, the Committee shall lay a report to this effect before the Seanad;

(iii) where a report has been laid by the Committee under paragraph (d)(ii), the Chairman shall forthwith table a motion thereon under section 7(2) of the Act, which shall be given priority on the Order Paper;

(iv) where the Seanad approves the motion referred to in paragraph (d)(iii), the Cathaoirleach shall send a copy of the Resolution, together with a copy of the report referred to in paragraph (d)(ii), to the Council; and

(v) where the Committee is not opposed to the decision to which the notification refers, the Committee shall send a Message to this effect to the Seanad;

(e) the Select Committees on European Affairs and European Scrutiny shall each have power to consider whether an act of an institution of the European Union infringes the principle of subsidiarity under section 7(4) of the Act, subject to the following:

(i) in considering whether an act of an institution of the European Union infringes the principle of subsidiarity, the Committee shall consult with such other Committee(s) and stakeholders as the Committee sees fit;

(ii) where either Committee is of the opinion that an act of an institution of the European Union infringes the principle of subsidiarity

and wishes that proceedings seeking a review of the act concerned be brought to the Court of Justice of the European Union, the Committee shall lay a report to this effect before the Seanad;

(iii) where a report has been laid by the Committee under paragraph (e)(ii), the Chairman shall forthwith table a motion thereon under section 7(4) of the Act, which shall be given priority on the Order Paper;

(iv) where the Seanad approves the motion referred to in paragraph (e)(iii), the Cathaoirleach shall send a copy of the Resolution, together with a copy of the report referred to in paragraph (e)(ii), to the Minister for Foreign Affairs;

(f) the Joint Committee on European Affairs and the Joint Committee on European Scrutiny shall review the operation of the interim arrangements at paragraphs (a) to (e) of this Resolution and shall jointly report thereon (and on such related matters as the Committees think fit) to Seanad Éireann within six months, whereupon the Committee on Procedure and Privileges shall recommend to the Seanad such amendments to the Standing Orders of Seanad Éireann and the Orders of Reference of Committees as may be required;

(g) the Select Committees referred to in paragraphs (b) and (d) shall each consist of six members, and three shall constitute a quorum; and in accordance with Standing Order 78, each Select Committee shall previous to the commencement of its business, elect one of its members to be Chairman; and

(h) the Select Committee referred to in paragraph (c) shall consist of nine members, and four shall constitute a quorum; and in accordance with Standing Order 78, each Select Committee shall previous to the commencement of its business, elect one of its members to be Chairman.