House of Commons

European Scrutiny Committee

The UK renegotiation package

Thirty-first Report of Session 2015–16

Documents considered by the Committee on Wednesday 27 April 2016

HC 342-xxx

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Report, together with formal minutes, relating to the report

Ordered by the House of Commons to be printed 27 April 2016

HC 342-xxx
Published on 3 May 2016
by authority of the House of Commons

Notes

Numbering of documents

Three separate numbering systems are used in this Report for European Union documents:

> Numbers in brackets are the Committee's own reference numbers.
>
> Numbers in the form "5467/05" are Council of Ministers reference numbers. This system is also used by UK Government Departments, by the House of Commons Vote Office and for proceedings in the House.
>
> Numbers preceded by the letters COM or SEC or JOIN are Commission reference numbers.

Where only a Committee number is given, this usually indicates that no official text is available and the Government has submitted an "unnumbered Explanatory Memorandum" discussing what is likely to be included in the document or covering an unofficial text.

Abbreviations used in the headnotes and footnotes

AFSJ	Area of Freedom Security and Justice
CFSP	Common Foreign and Security Policy
CSDP	Common Security and Defence Policy
ECA	European Court of Auditors
ECB	European Central Bank
EEAS	European External Action Service
EM	Explanatory Memorandum (submitted by the Government to the Committee)*
EP	European Parliament
EU	Treaty on European Union
JHA	Justice and Home Affairs
OJ	Official Journal of the European Communities
QMV	Qualified majority voting
SEM	Supplementary Explanatory Memorandum
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union

Euros

Where figures in euros have been converted to pounds sterling, this is normally at the market rate for the last working day of the previous month.

Further information

Documents recommended by the Committee for debate, together with the times of forthcoming debates (where known), are listed in the European Union Documents list, which is published in the House of Commons Vote Bundle each Monday, and is also available on the

parliamentary website. Documents awaiting consideration by the Committee are listed in "Remaining Business": www.parliament.uk/escom. The website also contains the Committee's Reports.

*Explanatory Memoranda (EMs) and letters issued by the Ministers can be downloaded from the Cabinet Office website: http://europeanmemoranda.cabinetoffice.gov.uk/.

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Documents cleared

1 The UK renegotiation package

Committee's assessment	Legally and politically important
Committee's decision	Cleared from scrutiny; drawn to the attention of the Business, Innovation and Skills Committee, Foreign Affairs Committee, the Northern Ireland Affairs Committee, the Public Administration and Constitutional Affairs Committee and the Treasury Committee.
Document details	(a) Draft Decision of the Heads of State or Government, meeting within the European Council, concerning a new Settlement for the United Kingdom within the European Union; (b) Draft Statement on Section A of the Decision of the Heads of State or Government, meeting within the European Council, concerning a new Settlement for the United Kingdom within the European Union ; (c) Draft European Council Declaration on Competitiveness; (d) Draft declaration of the European Commission on a subsidiarity implementation mechanism and a burden reduction implementation mechanism; (e) Draft declaration of the European Commission on issues related to the abuse of the right of free movement of persons; (f) Draft declaration of the European Commission on the Safeguard Mechanism referred to in paragraph 2(b) of Section D of the Decision of the Heads of State or Government, meeting within the European Council, concerning a new Settlement for the United Kingdom within the European Union. (g) Decision of the Heads of State or Government, meeting within the European Council, concerning a New Settlement for the United Kingdom within the European Union
Legal base	—
Department	Foreign and Commonwealth Office
Document Numbers	(a) (37488), EUCO 4/16; (b) (37489), EUCO 5/15; (c) (37490), EUCO 6/16; (d) (37491), EUCO 7/16; (e) (37492), EUCO 8/16; (f) (37493), EUCO 9/16; (g) (37582), —

Introduction

1.1 The Government has deposited with Parliament the draft documents produced by the Council Secretariat and the Commission for discussion at the European Council of 18/19 February and the documents comprising the agreed package.

1.2 At the beginning of the negotiation process we published our Report on *UK Government's renegotiation of EU membership: Parliamentary Sovereignty and Scrutiny*. This recalls that the renegotiation process started with the general aim to "reform the EU and fundamentally change Britain's relationship with it" by a "binding and irreversible agreement" and involve "full-on Treaty change". We noted that actual Treaty change or

even EU secondary legislation would not take place before any UK referendum could take place and examined the possibility of the renegotiation package being embodied in an international agreement in the form of a "Decision of the Heads of State and Government". We highlighted that this form of legal instrument could not make an unequivocal commitment to Treaty change and must be compatible with the existing Treaties, albeit it could provide clarification and supplementation.

1.3 Since that Report was published and before the renegotiation was completed on 18 February 2016 there were further relevant documents:

- The Government's response to the Committee's Report.[1] Delivered less than a month before the renegotiation package was finalised, this re-iterated the Prime Minister's demands that the changes being sought must be legally binding and irreversible and stated that some of the reforms being sought would require Treaty change.

- Further evidence from the legal experts we had consulted for our original inquiry, Professor Sir Francis Jacobs, Professor Sir Alan Dashwood and Professor Damian Chalmers.[2]

- The Government's Explanatory Memorandum of 9 February 2016 covering the draft renegotiation package deposited with Parliament on 2 February 2016, and that for the final settlement dated 9 March 2016.[3] Details of the documents deposited are given at the end of this Report.

- The evidence of the Foreign Secretary of 10 February 2016.[4]

- The Opinion of the Council Legal Service of 8 February 2016.[5]

1.4 Since 18 February the Government have published and laid before Parliament the following documents:

- *The best of both worlds: the United Kingdom's special status in a reformed European Union* (the White Paper).[6] This is in response to the requirement imposed by section 6 of the European Union Referendum Act 2015 for the Government to publish a report setting out what has been agreed by Member States and its opinion on it.

- *Alternatives to membership: possible models for the United Kingdom outside the European Union.*[7] This is in response to the requirement imposed by section 7 of the European Union Referendum Act 2015 for the Government to publish a report giving examples of countries that do not have membership of the EU but arrangements with it.

- *The process for withdrawing from the European Union.*[8]

1 Fourteenth Report of Session 2015-16, HC 458.
2 Professor Chalmers (plus supplemental evidence), Professor Sir Alan Dashwood and Professor Sir Francis Jacobs;
3 Explanatory Memorandum of 9 February and Explanatory Memorandum of 9 March.
4 Transcript of evidence of Foreign Secretary.
5 Opinion.
6 The best of both worlds: the United Kingdom's special status in a reformed European Union.
7 Alternatives to membership: possible models for the United Kingdom outside the European Union.
8 The process for withdrawing from the European Union.

- *Rights and obligations of European Union membership.*[9]
- *HM Treasury analysis: the long-term economic impact of EU membership and the alternatives.*[10]

1.5 In addition to the documents required under the European Union Referendum Act the Government has prepared a leaflet for distribution to all households, setting out why the Government believes the best course is to remain in the EU.[11] As these documents go beyond the remit of the Committee, we do not deal with them in any depth here. We note that the content may be contested.

1.6 We draw particular attention to the House of Commons Library Briefing on the *EU Referendum: summary and analysis of the new Settlement for the UK in the EU*, which provides valuable analysis, especially of the legal effect of the package, and a wealth of background material. [12]

1.7 We also note the report from the House of Lords European Union Committee, *The EU referendum and EU reform,* published on 30 March 2016.[13]

1.8 This Report is intended for the information of the House and for the information of Departmental Select Committees, a number of which have initiated their own inquiries into specific aspects of the relationship between the United Kingdom and the European Union.

1.9 **Whilst the documents deposited and the outcome of the renegotiation are undoubtedly of legal and political importance, they have already been the subject of both a statement and a debate on the floor of the House.**[14] **The White Papers and associated documents set out the Government's case as to why the renegotiation outcome means it will recommend a vote to remain. They will be the subject of further intense scrutiny and political debate in the run up to the referendum, both in the House and outside it. There is no need for the Committee to recommend a further debate on these documents. Accordingly, we clear them from scrutiny, while drawing this Report to the attention of the various Departmental Select Committees which are considering specific aspects of the relationship between the United Kingdom and the European Union.**

1.10 Our specific conclusions are set out in the body of this Report.

9 Rights and obligations of European Union membership.
10 Cm 9250.
11 https://www.gov.uk/government/publications/why-the-government-believes-that-voting-to-remain-in-the-european-union-is-the-best-decision-for-the-uk/why-the-government-believes-that-voting-to-remain-in-the-european-union-is-the-best-decision-for-the-uk.
12 http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7524.
13 Ninth Report of Session 2015–2016, HL Paper 122
14 Hansard 22 February 2016 cols 21 to 67; 25 February 2016 col 489 to 566.

The Renegotiation Package: legal and political aspects

The final package

1.11 The final outcome comprises seven documents: [15]

a) A *Decision of the Heads of State or Government, meeting within the European Council, concerning a New Settlement for the United Kingdom within the European Union* ("the Decision"). This is the overarching document and the basis for the international agreement which would follow a vote to remain.

b) A *Statement on Section A of the Decision of the Heads of State or Government, meeting within the European Council, concerning a New Settlement for the United Kingdom within the European Union*. This sets out a draft Decision to be taken by the Council which will constitute the "safeguard mechanism" for non-Eurozone Member States.

c) A *European Council Declaration on Competitiveness*. This supplements Section B of the Decision.

d) A *Declaration of the European Commission on a subsidiarity implementation mechanism and a burden reduction implementation mechanism*. This also supplements section B of the Decision. The Commission promises (a) to establish and implement a programme to review the existing body of EU law for compliance with subsidiarity, and (b) to work with Member States and stakeholders to establish and implement specific targets for reducing the burden on business.

e) A *Declaration of the European Commission on child benefit exported to a Member State other than that where the worker resides*. This supplements Section D of the Decision on Social Benefits and Free Movement by providing a promise from the Commission to bring forward a proposal on the rate of exported child benefit and provides greater detail as to the possible rates that can be chosen.

f) A *Declaration of the European Commission on the Safeguard Mechanism referred to in paragraph 2(b) of Section D of the Decision of the Heads of State or Government, meeting within the European Council, concerning a New Settlement for the United Kingdom within the European Union*. This expresses the view of the Commission that the conditions for triggering the social benefits emergency brake is fulfilled in respect of the United Kingdom.

g) A *Declaration of the European Commission on issues related to the abuse of the right of free movement of persons*. This contains (a) a promise to adopt a proposal to complement the existing Free Movement Directive in order to address existing abuse of free movement rights by third country nationals and (b) a promise to clarify the scope for Member States to deport undesirable EU citizens in guidelines and to examine future related amendment to the Free Movement Directive.

15 They are annexed to the Conclusions of the European council of 18/19 February 2016.

The legal form of the package

1.12 The Decision is the key document in the renegotiation package. As an international agreement it cannot itself amend the EU Treaties. It does not purport to do so.[16] In fact it does four things:

- It provides interpretations and clarifications of the Treaties. [17] Such interpretations and clarifications are subject to the view of the CJEU which is the ultimate arbiter of the meaning of the Treaties;
- It supplements the Treaties by establishing rules governing how Member States will conduct themselves as Members of the Council. Any binding agreement which supplements the EU Treaties must continue to conform to the existing Treaties, and the CJEU will be able to enforce this.[18]
- It promises Treaty change on the "substance" of the principles of economic governance and the clarification of 'ever closer union', in accordance with the relevant provisions of the Treaties and the respective constitutional requirements of the member States" i.e. subject to further detailed negotiation and ratification/ approval by the Member States; and
- It envisages EU secondary legislation. Where this must be adopted by both the Council and the European Parliament there is no binding obligation to adopt any specific text.

1.13 As an international agreement, the Decision can be regarded as binding the Member States who are parties to it (in international law), including on the occasions when they form the European Council or the Council. However, any interpretation or clarification it provides, being of general application, would apply to other EU institutions where that is relevant.

1.14 The Council Conclusions declare that the content of the Decision is fully compatible with the Treaties. The Opinion of the Council Legal Service is that the draft Decision (as deposited with Parliament, and substantially similar to the final agreement) does not amend the EU Treaties, does not contradict them and respects the institutional autonomy of the EU institutions.

1.15 Neither these Conclusions nor this Opinion assert that the Decision, or the package as a whole, is "irreversible". The White Paper clarifies that the Decision is "irreversible" in the limited sense that it was agreed by all of the Member States, and cannot be amended or revoked unless all Member States, including the UK agree.[19] This, of course, is different to it being "irreversible" in the sense that there is a legal commitment that the entire package, can be delivered precisely as the participating institutions currently envisage.

16 The third recital makes it clear that the Decision is intended to clarify certain questions.

17 Article 31(3) of the Vienna convention on the Law of Treaties.

18 Professor Sir Alan Dashwood indicates that failure of the Council to follow the course of action set out in the Decision, by not operating the red card or by not splitting off Title V content from a larger measure, would provide grounds for annulment of the relevant measure under Article 263 TFEU. This is highly questionable as it relies on treating the obligations set out in the Decision as if they were obligations imposed by or under the Treaties whereas in the case of non-compliance with any supplemental obligations the CJEU would be concerned with compliance (or not) with the Treaties).

19 Paragraph 2.130.

Interpretation and clarification of the Treaties

1.16 The interpretations and clarifications found in the package comprise:

a) a set of 7 "principles" set out in Section A of the Decision intended to ensure "Mutual respect and sincere cooperation between Member States participating or not in the operation or the euro area". These are partly clarification of the Treaties and partly supplementary to the Treaties, in particular as to some additional commitments as to the future conduct of Member States (see below). The principles are intended to be upgraded into Treaty change;

b) a statement in Section B on competitiveness that the internal market is "an essential objective of the Union";

c) an interpretation of the meaning of "ever closer union" and its application to the United Kingdom in Section C of the Decision on sovereignty; this is also intended to be upgraded into Treaty change;

d) an interpretation of subsidiarity to reinforce the importance of a transnational justification for EU legislation in the same section;

e) the interpretation of Article 4(2) TEU in the same section, confirming that national security remains the sole responsibility of each Member State which, not being a derogation, should not be interpreted restrictively;

f) interpretations in Section D of, in particular, Article 45 TFEU (free movement of workers) in respect of the application of the derogations from free movement and Article 21 TFEU (free movement of EU citizens) covering access to social assistance and benefits; the abuse of free movement rules by non-EU nationals marrying EU citizens; and the deportation of undesirables.

1.17 The Commission Declaration on issues related to the abuse of the right of free movement of persons is intended to reinforce some of the free movement interpretations by promising to complement Directive 2004/38 on the free movement of EU citizens in respect of the rights of family members; and undertaking on the occasion of the revision of this Directive to examine the thresholds for the deportation of undesirables. Its clarifications will in the meantime be incorporated into guidelines.

Supplementing the Treaties

1.18 The relevant elements of the Decision are:

a) some of the economic governance principles (see above);

b) the requirement in respect of competitiveness that "the relevant EU institutions and the Member States will make all efforts to fully implement and strengthen the internal market, as well as keep pace with the changing environment" and "take concrete steps towards better regulation"; "The European Union will also pursue an active and ambitious trade policy"; and a monitoring requirement. [20]
This is supplemented by Declarations from the Council and the Commission which include undertaking as to how some of the aspirations in the Decision will be achieved

20 The Council Declaration on competitiveness provides additional political undertakings from the Council.

i.e. though a proposed Interinstitutional Agreement on Better Law-making, the Regulatory Fitness programme (REFIT), the new trade strategy "Trade for all: Towards a more responsible trade and investment policy", a review of existing legislation for its compliance with subsidiarity and proportionality, specific burden reducing targets, and annual reviews.

c) implementing a red card for national parliaments; and

d) ensuring that the UK opt-in provided by Protocol 21[21] applies to measures which fall within its scope, including when that entails splitting the measure (as explained in more detail below).

Treaty change

1.19 The two elements of Treaty change envisaged on "ever closer union" and on the relationship between eurozone and non-eurozone countries would effectively upgrade interpretations provided by the Decision to Treaty level. If the interpretations were made explicit in the Treaties the CJEU would not be able to question them, rather than simply being required to take them into account, as it is obliged to do at present. If these Treaty provisions have sufficient clarity the CJEU would have little scope for further interpretation. In both cases the commitment is to upgrade the substance of the Decision. The Council Legal Service Opinion confirms that this means that the Decision does not "pre-negotiate" any future drafting.[22]

EU secondary legislation

1.20 EU secondary legislation envisaged by the Decision is as follows:

a) Safeguards for non-eurozone Member States which will be achieved by EU secondary legislation adopted by the Council alone.

b) Legislation in respect of social benefits and free movement which must be proposed by the Commission and agreed to by the European Parliament. The Commission has made declarations as to its intentions to introduce such legislation, including to clarify how it intends to index exported child benefit; in addition it promises to make a proposal for legislation concerning non-EU nationals married to EU nationals exercising free movement rights, and to examine amendment of the Directive on the free movement of EU citizens in relation to the thresholds set for the deportation of undesirables.

1.21 **We commend the analysis of the renegotiation package provided by the House of Commons Library.**

21 Protocol 21 gives the UK an opt-in to measures concerning the area of freedom, security and justice (AFSJ) i.e. third country immigration, police and judicial cooperation in civil and criminal matters. This interpretation is designed to ensure that where a measure has AFSJ content, albeit that it has no AFSJ legal base, the Protocol will apply or the measure will be split so that the AFSJ element is contained in a separate measure with an AFSJ legal base.

22 Paragraph 7

1.22 **We largely concur with the analysis of the House of Lords European Union Committee that:**

> **the international law decision is an intergovernmental agreement which is binding under international law.**
>
> **106. We also agree that an international law decision agreed by all the EU's Member States, such as this, can serve as an aid to the interpretation of the EU Treaties. [...]**
>
> **107. An international law decision cannot amend or override the EU Treaties: the only way to do so is through the procedures provided for in the EU Treaties. Thus Mr Legal's advice confirms that "The Decision does not amend the EU Treaties, nor does it contradict them. The recitals confirm the intention for the Decision to be 'in conformity' with the EU Treaties."**
>
> **108. In our view, therefore, the principal value of the international law decision lies in the extent to which it clarifies aspects of EU law for the benefit of the UK.**
>
> **109. The international law decision contains a commitment to amend the EU Treaties to incorporate the protections for the UK as an economy outside the Eurozone, and to exclude the UK from ever closer union, "at the time of their next revision". These commitments are contingent on when the Treaties will be opened for revision, a date for which is currently unknown.**
>
> **110. The international law decision records the declared commitment by the Commission to submit proposals for secondary legislation. Although the ordinary legislative procedure means that there can be no guarantee that the proposals will be agreed in exactly the form proposed, the Minister for Europe was clear that the good faith of all the institutions in implementing the new settlement should not be doubted. We consider this to be a reasonable view.**[23]

1.23 **We note that consensus about the legal status of the agreement does not preclude significant differences of opinion as to whether Treaty change or secondary legislation will be delivered in the form envisaged, including the extent to which EU secondary legislation envisaged would be compatible with the treaties (see paras 1.81–1.89 below). Where delivery of the substance of the package depends on the future attitude of Member States, the European Parliament, the Council or the Commission, it will inevitably be subject to political imperatives prevailing at the relevant time. These are not possible to predict.**

1.24 We consider the risk of non-delivery in more detail in relation to each Section of the Decision below.

Section A: Economic Governance

1.25 The introductory paragraphs of Section A make the following declaratory points:

23 *The EU referendum and EU reform* 9th Report of Session 2015–16, HL Paper 122

- "further deepening" is needed in connection with establishing economic and monetary union (EMU);
- measures required will be compulsory for eurozone Member States and voluntary, where feasible, for those outside the eurozone;
- this does not affect the commitment of those outside the eurozone, other than Denmark and the UK, eventually to adopt the euro;
- Member States not participating in further deepening will facilitate rather than obstruct the process, which conversely will protect their rights and competences; and
- EU institutions and Member States will facilitate coexistence of two different perspectives[24] underlying these points, so as to ensure consistency, effective operability of EU mechanisms, equality of Member States before the Treaties, and the level playing field and integrity of the single market.

1.26 The content of this declaration is not of itself new, albeit explicit expression of it may be. However the final passage of the introduction asserts that respect and cooperation between Member States participating, or not, in the eurozone will be ensured by seven "principles" set out in the Section, which are to be safeguarded primarily through an annexed draft Council Decision.

The First Principle

1.27 This:

- prohibits discrimination between persons, based on the currency of the Member State where they are established;
- requires eurozone related legislation to respect the single market, economic, social and territorial cohesion and competences, rights and obligations of non-eurozone Member States;
- requires that such legislation does not constitute a barrier to or discrimination in trade between Member States; and
- requires non-eurozone Member States not to impede implementation of eurozone related legislation and to refrain from measures which could jeopardise attainment of the objectives of EMU.

1.28 The principle of non-discrimination based on currency of the Member State of establishment is consonant with the wider EU approach to non-discrimination on other specified grounds In accordance with general principles of non-discrimination the prohibition of discrimination between persons based on their currency is qualified by the sentence "Any difference of treatment must be based on objective reasons." It remains to be seen what different treatment or objective reasons might be regarded as justified. Whilst

24 On the one hand the eurozone's desire for "deepening" of EMU and on the other the UK's wish to retain a degree of independence for formulating and implementing economic policy.

paragraph 2.17 of the Government's White Paper stresses the importance of eurozone legislation respecting the single market it does not mention the balancing obligation on non-eurozone Member States.

1.29 Equally the CJEU is unlikely to object to the identification of the objective of the establishment of the internal market as an "essential objective of the Union"

The second principle

1.30 The second principle, noting that Banking Union law about supervisory and resolution powers applies only to credit institutions of eurozone Member States and of those non-eurozone ones which choose to participate, concerns the Single Rulebook[25] and, by implication, implementation of Basel III.[26] It reiterates that the Single Rulebook covers all EU financial institutions. But it says that Banking Union law may need specific provisions within the Single Rulebook and other relevant instruments, "while preserving the level-playing field and contributing to financial stability".

The third principle

1.31 The third principle is that non-eurozone Member States, unless participating in the Banking Union, would not be liable for budgetary costs, other than administrative costs, of emergency and crisis measures designed to safeguard the financial stability of the eurozone.

The fourth principle

1.32 The fourth principle recognises the independence of non-eurozone Member States for financial services matters "to be taken in view of preserving the financial stability of member States whose currency is not the euro". But it says that this is without prejudice to development of the Single Rulebook and to other EU mechanisms for prevention and mitigation of systemic financial risks and to the existing powers of the EU "to take action that is necessary to respond to threats to financial stability." The Government's White paper does not mention this condition.[27]

The fifth principle

1.33 The fifth principle establishes that:

- non-eurozone ministers may attend, but not vote at, informal meetings of eurozone Member States, such as the Eurogroup; and

25 The Single Rulebook aims to provide a single set of harmonised prudential rules which institutions throughout the EU must respect. The aim is a unified regulatory framework for the EU financial sector that would complete the single market in financial services, ensuring uniform application of Basel III in all Member States, closing regulatory loopholes and so contributing to more effective functioning of the single market: see http://www.eba.europa.eu/regulation-and-policy/single-rulebook.

26 Basel III is a comprehensive set of reform measures, developed by the Basel Committee on Banking Supervision and endorsed by the G20, to strengthen the regulation, supervision and risk of the banking sector. The Basel Committee provides a forum for cooperation on banking supervisory matters. Its mandate is to strengthen the regulation, supervision and practices of banks worldwide with the purpose of enhancing financial stability: see http://www.basel-iii-accord.com/.

27 The best of both worlds Paragraph 2.7.

- such informal discussions should "respect the powers of the Council, as well as the prerogatives of the other EU institutions".

The sixth principle

1.34 The sixth principle states that in discussion of an issue covered by this Section "due account will be taken of the possible urgency of the matter".

The seventh principle

1.35 The seventh principle is that the substance of this Section will be incorporated into the Treaties, when next revised, "in accordance with the relevant provisions of the Treaties and the respective constitutional requirements of the Member States".

The safeguard mechanism

1.36 The draft Decision annexed to Section A is "on specific provisions relating to the effective management of the banking union and of the consequences of further integration of the euro area". It would supplement the 2007 Council Decision which concerns implementation of the qualified majority voting (QMV) provisions of the Treaties. That Council Decision provides for a blocking minority of Member States, whether as defined between 1 November 2014 and 31 March 2017 or from 1 April 2017, to oppose QMV on a particular issue, so triggering Council efforts to find a solution to those Member States' problem.

1.37 The effect of the draft Council Decision would be, in relation to the adoption of legislation covered by Section A, to allow a Member State not participating in the Banking Union to oppose that adoption by QMV. That opposition would be justified by an indication of "how the draft act does not respect the principles laid down in Section A". The Council must then "do all in its power to reach, within a reasonable time and without prejudice to time limits laid down in Union law, a satisfactory solution to address the concerns raised by the member of the Council" raising objections. The President of the Council would also be required to take "any initiative necessary to facilitate a wider basis of agreement in the Council" which may include discussion of the matter in the European Council.

1.38 In addition to being caveated by reference to "taking due account of the possible urgency of the matter" the procedure would be "without prejudice to the normal operation of the legislative procedure of the Union" and could not "result in a situation which would amount to allowing a Member State a veto".

1.39 **The clarifications on economic governance are based on the principle of non-discrimination which is consonant with existing EU law on non-discrimination and therefore are unlikely to be overturned by the CJEU. Equally the CJEU is unlikely to object to the identification of the objective of the establishment of the internal market as an "essential objective of the Union".**

1.40 **The safeguard mechanism proposed in the draft Council Decision merely allows the UK to escalate discussion of an issue to the European Council: it does not allow the UK to block a measure that it fears would adversely affect its legitimate interests or delay matters regarded as urgent**.

1.41 **Some matters set out in the principles which are beneficial to non-eurozone Member States are conditioned by words protecting eurozone Member States. This detracts from their value as interpretations or clarifications of the Treaty to the UK's benefit and, by increasing the room for argument, potentially reduces the chances of the Council reaching a "satisfactory solution" in the event that the UK were to invoke the safeguard mechanism**.

Section B: Competitiveness

1.42 Section B of the Decision sets out commitments to promote competitiveness in three areas: internal market; trade policy; and better regulation. Detail is set out in the European Council Declaration on competitiveness and in the Commission Declaration on a subsidiarity implementation mechanism and burden reduction mechanism.

1.43 The Declaration on competitiveness confirms the commitment to competitiveness, to the internal market and to ambitious trade and investment agreements with third countries, in line with the new trade strategy. Its provisions on better regulations are, though, the most substantive:

- All EU institutions and Member States are urged to strive for better regulation and to repeal unnecessary legislation in order to enhance EU competitiveness. It is notable that this is conditioned by the words "while having due regard to the need to maintain high standards of consumer, employee, health and environmental protection". [28]
- To contribute to this objective, the EU institutions are close to finalising the Interinstitutional Agreement on Better Law Making, for which a "provisional final text" has been adopted by the European Parliament and is awaiting formal signature.
- Regulatory simplification and burden reduction are key to delivering the objective, including through withdrawing or repealing legislation where appropriate, and a better use of impact assessment and ex-post evaluation. This should build on the progress already made with the Regulatory Fitness Programme (REFIT).[29]
- Burden reduction targets in key sectors should be established.
- The Council should examine the annual reviews undertaken by the Commission under its Declaration on subsidiarity and burden reduction (see below) with a view to ensuring that these are given appropriate follow up.

1.44 The Commission's Declaration on subsidiarity and burden reduction includes the following commitments:

- Establishing a mechanism to review the body of existing EU legislation for its compliance with the principle of subsidiarity and proportionality, building on existing processes and with a view to ensuring the principle of subsidiarity;

28 This condition is not mentioned in paragraphs 1.6 and 2.40 of the White Paper.

29 Regulatory Fitness and Performance Programme.

- Adopting a work programme by the end of 2016, with subsequent annual reports to the European Parliament and Council;
- Continuing efforts to simplify EU law and reduce regulatory burdens;
- Establishing specific targets at both EU and national levels for reducing burdens on business. Once established, the Commission will monitor progress on those targets and report to the European Council annually.

1.45 **The competitiveness element of the package largely represents a commitment to intensify work that is already underway. It makes several references to current work, such as the trade strategy, the REFIT initiative and the interinstitutional agreement. There are some elements that go further than previously set out — notably in establishing specific targets for burden reduction and repealing unnecessary legislation.**

1.46 **Some of the detail remains imprecise, in particular as to what constitutes "unnecessary legislation". In any event, the counter requirement to "maintain high standards of consumer, employee, health and environmental protection" gives rise to a further risk of compromise and uncertainty as to where the balance lies between competitiveness and this requirement.**

1.47 **We note the House of Lords conclusion that "Taken as a whole […] the competitiveness element of the new settlement is a significant achievement, which could have far-reaching effects for the EU as a whole. At this stage, however, it is unclear what would happen if progress were not made or if targets were not met. Further work is therefore needed to translate the terms of the agreement into action."**[30]

Section C: Sovereignty

Ever Closer Union

1.48 Chapter 6 of the Committee's previous Report examined the significance of the concept of ever closer union and in particular the implications of a UK carve out. It concluded that some expert evidence indicated that the concept of ever closer union is of "limited legal importance, is largely symbolic and that UK disengagement would fall short" of fundamental change in UK's existing relationship with the EU.

1.49 Section C of the Decision, on sovereignty, is introduced by the words "It is recognised that the United Kingdom, in the light of the specific situation it has under the Treaties, is not committed to further political integration into the European Union." This wording denotes the current position. The next sentence follows, "The substance of this will be incorporated into the Treaties at the time of their next revision …so as to make it clear that the references to ever closer union do not apply to the United Kingdom."

1.50 The Decision does not, therefore, purport to change the law. However, the existing wording of the Treaties, and the Council Conclusions of June 2014 which are elaborated in the Decision, do not contain an express carve out for the UK from ever closer union. By

30 Ninth Report of Session 2015–2016, HL Paper 122, para 146

contrast, the Decision uses two separate notions, the absence of a commitment to further political integration on the part of the UK (the present position) which then flows into a concept of a UK carve out from ever closer union (as envisaged by future Treaty change).

1.51 The White Paper, at paragraphs 2.68 and 2.69 implies that the UK carve out from ever closer union is a change for the future rather than a clarification of existing Treaty provisions. Paragraph 2.72 describes the agreement as "clear legal recognition of the UK's status as an independent sovereign country".[31] Yet, as we have seen, the Decision, the document with current legal status, can only interpret and clarify the existing Treaties; Treaty change is vulnerable to political uncertainty.

1.52 The fact that the references in the Treaty to an ever closer union do not commit the United Kingdom to deeper political integration is in line with the (already existing) Council Conclusions of June 2014 and is unlikely to be overturned by the CJEU. Perhaps more surprising is that an explicit carve out for the United Kingdom from ever closer union can be described as a "clarification". In our December Report we indicated that Treaty change would be required for UK disengagement from the concept to be legally robust.

1.53 There is further clarification that references to ever closer union in the Treaties do not alter the limits of competence or use of the competence; or imply that competence must be exercised or that competence cannot be reduced.

1.54 Some helpful introductory wording in the initial Tusk draft Decision as deposited served to distinguish beneficial aspects of the wider concept of "the ever closer union of the peoples of Europe" from a narrower focus on further political integration: "References in the Treaties and their preambles to the process of creating ever closer union among the Peoples of Europe are primarily intended to signal that the Union's aim is to promote trust and understanding among peoples living in open and democratic societies sharing a common heritage of universal values. They are not the equivalent of political integration". This has been lost.

1.55 **There are differing views as to the significance of the references in the Treaties to ever closer union and its relationship to political integration. Some consider them to be largely symbolic and of limited legal importance. To the extent that these Treaty references are significant the Decision does make it clear that the UK is not committed to further political integration. While it is surprising that a proposed Treaty amendment to give the UK an express carve out from ever closer union should be described as a clarification, we think it unlikely that this will give rise to difficulties in practice, given the uncertainty over the legal effect of the concept. The Treaty change envisaged, if and when it is achieved, could remove any uncertainty. What is, however, certain is that the Decision itself does not and cannot change the Treaty.**

1.56 **The other clarifications concerning the effect of the concept of ever closer union on EU competence and the interpretation of EU law could have a beneficial preventative effect if, as the Government asserts, there are risks in these areas.**

31 Paragraph 2.68 says "Our new settlement has secured … confirmation that the concept of "ever closer union" will not apply to the UK in future." Paragraph 2.69 quotes the Prime Minister's speech of November 2015 in which he said that "ever closer union is not a commitment that should apply any longer to the UK".

Subsidiarity and the Red Card

1.57 Section C of the Decision provides some guidance on the interpretation of the principle of subsidiarity, redolent of paragraph (5) of a Protocol on the Application of the Principles of Subsidiarity and Proportionality introduced by the Amsterdam Treaty and dropped by the Lisbon Treaty without being contradicted. It also enjoins all EU institutions to duly take account of subsidiarity concerns raised by national parliaments.

1.58 **The Decision's interpretation of subsidiarity is not new. An interpretation of the concept of subsidiarity giving greater importance to transnational boundaries is unlikely to be overturned by the CJEU, particularly given that its current approach is to defer to the legislator when dealing with challenges on the ground of subsidiarity.**

1.59 **We note that the call for all of the EU institutions to take account of the concerns expressed by national parliaments does not bind the European Parliament, which may be less sympathetic to subsidiarity objections.**

1.60 More substantively, a 'red card' is introduced by the settlement, whereby subsidiarity reasoned opinions representing more than 55% of the votes allocated to national parliaments (31 votes) would require the Council to discuss the concerns raised and to discontinue the proposal in question unless it was amended to accommodate those concerns.

1.61 This threshold of 31 compares to the 19 votes required for an existing "yellow card"[32] (14 for proposals in respect of some proposals relating to the area of freedom security and justice); and the 28 votes required for an "orange card".[33] National parliaments have only reached the existing yellow card threshold on two occasions since the reasoned opinion procedure was introduced by the Lisbon Treaty; on one occasion the Commission withdrew the proposal for reasons other than subsidiarity and on the other it maintained its proposal. The orange card threshold has never been reached.

1.62 Under the red card procedure, reasoned opinions may be submitted within 12 weeks from transmission of the draft legislation, rather than the current eight weeks applicable under the Protocol.

1.63 The Government's White Paper asserts that "This new red card strengthens the role for the UK Parliament in a very practical way."[34] However, in its December 2015 Report on the renegotiation, the Committee concluded that the proposed red card "represents a practical threat to the exercise of UK parliamentary sovereignty as it makes the will of the UK parliament in a particular case subordinate to the differing collective view of a group of parliaments." The Committee emphasised that "any red card procedure must not be limited in its scope to subsidiarity alone and must have thresholds and deadlines that would enable it to become an effective tool."[35]

1.64 **It remains to be seen whether the "red card" will have an impact in practice. The longer deadline of 12 weeks for national parliaments to produce reasoned opinions is helpful, but:**

32 If a yellow card is achieved the Commission must review its proposal and justify its consequent decision to withdraw, amend or maintain the proposal.

33 An orange card, in addition to the review required under a yellow card, gives the Council and the European Parliament an opportunity to drop a proposal before its first reading.

34 The best of both worlds, Paragraph 2.77.

35 See Fourteenth Report HC 458 (2015/16), para 133.

- **the threshold of 55 per cent of Chambers' votes is higher than that for existing "yellow" and "orange" cards;**
- **the basis for objections remains limited to subsidiarity concerns; and**
- **the minimum number of Member State parliaments required to reach the threshold for a red card is 16.[36] This contrasts with the minimum number of Member States (four) that constitute a blocking minority in the Council of Ministers. It is therefore likely that where the threshold is achieved there would in any event be a blocking minority in the Council.**

National Security

1.65 The third strand of the Sovereignty Section of the Decision addresses national security.

1.66 Unexceptionally it restates Article 4(2) TEU confirming that national security remains the sole responsibility of each Member State. It adds that as this is not a derogation from the Treaty rules, it should not be interpreted restrictively.

1.67 Paragraph 4 concerns the Protocols relating to measures in the field of the Title V Part Three TFEU concerning the area of freedom, security and justice.[37] It states:

> "The rights and obligations of Member States provided for under the Protocols annexed to the Treaties must be fully recognised and given no lesser status than the other provisions of the Treaties of which such Protocols form an integral part.
>
> "In particular, a measure adopted pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union (TFEU) on the area of freedom, security and justice does not bind the Member States covered by Protocols No 21 and No 22, unless the Member State concerned, where the relevant Protocol so allows, has notified its wish to be bound by the measure.
>
> "The representatives of the Member States acting in their capacity as members of the Council will ensure that, where a Union measure, in the light of its aim and content, falls within the scope of Title V of Part Three of the TFEU, Protocols No 21 and No 22 will apply to it, including when this entails the splitting of the measure into two acts."

1.68 Protocol 21 concerns the UK and provides that Title V measures do not apply to the UK unless it opts in. This is an issue addressed in the Report of the House of Lords European Union Select Committee: *The UK's opt-in Protocol: implications of the Government's approach*.[38]

1.69 This paragraph is intended to address a long standing dispute between the UK and the EU institutions. The UK government asserts that the Protocol is engaged if a proposal

36 This is on the basis that 31 votes are required for a red card. The minimum of 16 parliaments could be constituted from 15 unicameral or bicameral parliaments (with both chambers opposing the proposal) and at least one chamber of a bicameral parliament. There are 13 bicameral and 15 unicameral national parliaments among the 28 EU Member States.

37 Formally known as "Justice and Home Affairs" this covers immigration from third countries, judicial cooperation in civil and criminal matters and police cooperation.

38 Ninth Report of Session 2014-15, HL Paper 136

or measure has content falling within the subject matter of Title V, whereas all the EU institutions (and this Committee) consider that the measure must have a Title V legal base for the Protocol to be engaged. The wording of the paragraph is contrary to the tenor of case law which supports the EU institutions' position.

1.70 It is also questionable how effective the paragraph will be in cases where proposals or measures do not hive off Title V content. This is because the Decision requires the engagement of the Protocol to be considered in the light of the aim and content of the measure, which are the same criteria currently used by the CJEU to determine the legal base of a measure.[39]

1.71 Nonetheless the encouragement of the Council to split measures into separate ones dealing with Title V issues and non-Title V issues would benefit the Government, as Title V content would then be contained in a measure with a Title V legal basis to which the opt-in undoubtedly applies.

1.72 **The Government's objective, as stated in the White Paper is "that whenever the EU agrees new legislation which contains JHA provisions, the UK will continue to be able to choose whether we wish to take part or not in JHA matters".[40] The significant benefit of the package for national security is the encouragement it contains to split proposals which include some Title V content to make sure that the parts of those measures which include Title V content clearly merit a Title V legal basis. Provided the Government is successful in ensuring that JHA content in a proposal is always split into a separate measure, it will be successful in achieving this, just as it would be at present, if measures were split in this way. If it does not succeed in ensuring measures with JHA content always receive a Title V legal base it is questionable whether its objective will be achieved. We note the House of Lords Committee considers no legal consequences arise from these measures, and that their value is "symbolic".[41]**

Section D: Social Benefits and Free Movement

1.73 Section D of the Decision is split into "Interpretation of current EU rules" and "Changes to EU secondary legislation".

1.74 Both elements are premised on the recognition that EU law co-ordinates the social security laws of the Member States but does not harmonise them; and that the diversity of structure may in itself attract workers to certain Member States — a fact which it is legitimate to take into account and to provide for measures (without creating unjustified direct or indirect discrimination) limiting flows of workers of such scale that they have negative effects for the Member State of origin and for the Member States of destination.

Interpretations

1.75 The interpretations are:

39 For example in Case C-377/12 at paragraph 34 "According to the settled case-law, the choice of legal basis for a European Union measure ...must rest on objective factors amenable to judicial review, which include the aim and content of the measure."

40 The best of both worlds, Paragraph 2.95.

41 Ninth Report of Session 2015–2016, HL Paper 122, paragraph 193.

a) A re-statement of the grounds recognised by Article 45 TFEU and the jurisprudence of the Court of Justice for limiting free movement, together with the statement that "Based on objective considerations independent of the nationality of the person concerned and proportionate to the legitimate aim pursued, conditions may be imposed in relation to certain benefits to ensure that there is a real and effective degree of connection between the person concerned and the labour market of the host Member State." The Commission Declaration on issues related to the abuse of the right of free movement of persons promises to examine the thresholds for departing undesirables "on the occasion of a future revision of Directive 2004/38 on free movement of Union citizens".[42]

b) A statement of the limited rights of non-economically active persons to social assistance in another Member State and the right to refuse social assistance to those who exercise free movement solely in order to obtain social assistance; and the right to reject claims for social assistance by EU migrants who are only entitled to reside in the host Member State because of their job-search.

c) A statement that Member States can take action to prevent the abuse of rights by fraud or forged documents and to address "marriages of convenience" between EU nationals and third country nationals whereby the third country national can acquire rights of a family member of the EU national and thereby bypass national immigration rules which would otherwise apply.

1.76 Interpretation c) does not take away the EU rights of third country nationals married to EU nationals exercising free movement rights, but is limited to seeking to address abuse. However the Commission Declaration indicates that it proposes to bring forward a proposal to complement Directive 2004/38 on free movement of EU citizens in order to exclude from the scope of free movement rights third country nationals who had no prior lawful residence in a Member State before marrying a Union citizen or who marry a Union citizen only after the Union citizen has established residence in the host Member State. The effect of this would be that full immigration law will apply to such persons. This would seemingly apply even in the absence of abuse and would therefore reverse the Court of Justice's case law based on the case of *Surinder Singh*.[43]

1.77 Although it forms part of the Commission Declaration, there is no obligation on the Member States represented in the Council to adopt any such legislation nor, as for the other legislation envisaged by the Commission, any obligation on the European Parliament to agree it. Furthermore, as the case of *Surinder Singh* is based as much on the Treaties as on EU secondary legislation there can be no assumption that the CJEU would regard any such legislation as compatible with the Treaties.[44]

1.78 This Declaration also provides further clarification (and promises guidelines) on situations of abuse, namely that (a) Member States can address situations where an EU national abuses free movement rights by returning to their Member State of nationality with a non-EU family member where residence in the host Member State had not been

42 Para 2.4 of the Government's White Paper indicates that "The European Commission has committed to bring forward new legislation where it is needed to implement the UK's new settlement." In this particular case the commitment is only to examine the position.

43 C-370/90.

44 In his supplementary evidence Professor Damian Chalmers identifies this an area requiring Treaty change. It follows that secondary legislation to achieve this objective would be vulnerable to being annulled as incompatible with the (unamended) Treaty.

sufficiently genuine to create or strengthen family life and had the purpose of evading the application of national immigration rules; and (b) the concept of a marriage of convenience covers a marriage which is maintained for the purpose of enjoying a right of residence accruing to a family member of an EU national.

1.79 These interpretations are predominantly either a restatement of the EU Treaties, secondary legislation or case law of the Court of Justice; or a necessary implication of these. To the extent that they are not based on existing provisions they may be regarded as interpretation or clarification, in particular by reinforcing the principle that EU rules cannot be applied where to do so would be an abuse.

1.80 The possible exception is that Article 27 of Directive 2004/38 says that deportation must be justified by an individual's personal conduct which "must represent a genuine, *present* and sufficiently serious threat" (emphasis added) whereas the Decision suggests that restrictive measures can be taken by Member States "to protect themselves against individuals whose personal conduct is likely to represent a genuine and serious threat to public policy or security" and that the "threat may not always need to be imminent". It is however possible to argue that a threat is present even if it is not imminent.

EU secondary legislation

1.81 The first piece of EU secondary legislation envisaged in the Decision is an amendment to Regulation 883/2004 on the co-ordination of social security systems in order to give Member States the option of indexing child benefit for children living in another Member State to the conditions of that Member State. This would only apply, at first, to new claims, but from 1 January 2020 the option may be extended to existing payments of exported child benefit.

1.82 This is supported by a Commission Declaration on the indexation of child benefit exported to a Member State other than that where the worker resides making it clear that the option to index includes "the standard of living and the level of child benefits applicable" in the Member State where the child resides.

1.83 The second piece of EU legislation envisaged by the Decision amendment to Regulation 492/2011 on the Free Movement of Workers within the Union to provide an emergency brake on in-work benefits. It would be available to respond "to situations of inflow of workers from other Member States of an exceptional magnitude over an extended period of time, including as a result of past policies regarding previous EU enlargements." For the mechanism to be triggered the Commission must make a proposal to the Council to authorise the use of the emergency brake by qualified majority. It would apply only in respect of EU citizens newly arriving over a seven year period, and the limitation on in-work benefits for any individual would last a maximum of four years, during which period the limitation would be gradually removed.

1.84 This second piece of legislation would be reinforced by a Commission Declaration on the Safeguard Mechanism referred to in paragraph 2(b) of Section D of the Decision of the Heads of State or Government, meeting within the European Council, concerning a new settlement for the United Kingdom within the European Union. This confirms its intention to adopt the proposal to amend Regulation 492/2011 and indicates that it

considers that the United Kingdom would be justified in triggering the mechanism, "in particular as it has not made full use of the transitional periods on free movement of works which were provided in the recent Accession Acts".

1.85 It is therefore clear that the emergency brake is limited to in-work benefits, and its operation relies on the agreement of the Commission and the Council, albeit that agreement can be assumed for the first use by the United Kingdom. The references to recent accessions is an indicator that subsequent invocation of the safeguard mechanism will be examined afresh and cannot be guaranteed. In a blog of 20 February Professor Steve Peers of Essex University stated that the CJEU might accept that this planned EU secondary legislation would be valid, but, as EU law currently stands, this was a long shot. He has also assessed it as high risk and identified issues of detail that need to be fleshed out.[45] In his supplementary evidence to us Professor Chalmers expressed the view that it was highly likely that a number of individuals or organisations would wish to test the validity of such legislation.[46] There would clearly be opportunity for a challenge in the domestic court for refusal to pay in-work benefit on the basis of such legislation and it could well lead to a reference to the CJEU where its validity could be put in issue.

1.86 Two other pieces of EU secondary legislation are envisaged in the Commission Declaration, as indicated above; to complement Directive 2004/38 to address the free movement rights of non-EU nationals married to EU nationals and to examine Directive 2004/38 in respect of the thresholds for deporting undesirables.

1.87 We note the House of Lords European Union Committee's conclusion:

> The interpretations of EU law in the international law decision highlight important limitations to the free movement of EU workers and citizens, which largely reflect existing EU law. Their inclusion in the new settlement for the UK will provide helpful support for the Government's preferred approach, in the event that the electorate votes to remain in the EU.
>
> The proposals for secondary legislation, implementing the international law decision, are significant in that they propose new restrictions on current rules on free movement. They will have to be consistent with EU Treaty rules on the scope for derogating from non-discrimination and free movement principles, as interpreted by the CJEU.[47]

1.88 **The interpretations and clarifications offered by the Decision in respect of Social Benefits and Free Movement appear to be, for the most part, within the bounds of what is likely to be acceptable to the CJEU. However the proposed secondary EU legislation relating to in-work benefits has been identified as highly vulnerable to challenge.**

1.89 **Whether the proposed EU secondary legislation to reverse the Surinder Singh case would be compatible with the Treaties can be legitimately questioned, as this case was based on an interpretation of the Treaties as well as EU secondary legislation.**

45 The final UK renegotiation: immigration issues.
46 The final UK renegotiation: immigration issues. Para 10.
47 Ninth Report of Session 2015–2016, HL Paper 122, Paragraphs 217– 218.

Full details of the documents

(a) Draft Decision of the Heads of State or Government, meeting within the European Council, concerning a new Settlement for the United Kingdom within the European Union: (34788), EUCO 4/16; (b) Draft Statement on Section A of the Decision of the Heads of State or Government, meeting within the European Council, concerning a new Settlement for the United Kingdom within the European Union : (37489), EUCO 5/15; (c) Draft European Council Declaration on Competitiveness: (37490), EUCO 6/16; (d) Draft declaration of the European Commission on a subsidiarity implementation mechanism and a burden reduction implementation mechanism: (37491), EUCO 7/16; (e) Draft declaration of the European Commission on issues related to the abuse of the right of free movement of persons: (37492), EUCO 8/16; (f) Draft declaration of the European Commission on the Safeguard Mechanism referred to in paragraph 2(b) of Section D of the Decision of the Heads of State or Government, meeting within the European Council, concerning a new Settlement for the United Kingdom within the European Union: (37493), EUCO 9/16. (g) Decision of the Heads of State or Government, meeting within the European Council, concerning a New Settlement for the United Kingdom within the European Union.

Formal Minutes

Wednesday 27 April 2016

Members present:

Sir William Cash, in the Chair

Geraint Davies	Craig Mackinlay
Richard Drax	Mr Jacob Rees-Mogg
Peter Grant	Graham Stringer
Kate Hoey	Mr Andrew Turner
Kelvin Hopkins	Heather Wheeler
Calum Kerr	

Draft Report (*The UK renegotiation package*), proposed by the Chair, brought up and read.

Motion made, and Question put, That the draft Report be read a second time, paragraph by paragraph.

The Committee divided.

Ayes, 7	Noes, 3
Richard Drax	Geraint Davies
Kate Hoey	Peter Grant
Kelvin Hopkins	Calum Kerr
Craig Mackinlay	
Mr Jacob Rees-Mogg	
Mr Andrew Turner	
Heather Wheeler	

Question accordingly agreed to.

Headnote, paragraphs 1.1 to 1.89 and document details read and agreed to.

Resolved, That the Report be the Thirty-first Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

[Adjourned till Wednesday 4 May at 1.45pm.

Standing orders and membership

The European Scrutiny Committee is appointed under Standing Order No.143 to examine European Union documents and—

a) to report its opinion on the legal and political importance of each such document and, where it considers appropriate, to report also on the reasons for its opinion and on any matters of principle, policy or law which may be affected;

b) to make recommendations for the further consideration of any such document pursuant to Standing Order No. 119 (European Committees); and

c) to consider any issue arising upon any such document or group of documents, or related matters.

The expression "European Union document" covers —

i) any proposal 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;

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 consideration of any proposal for legislation;

vi) any other document relating to European Union matters deposited in the House by a Minister of the Crown.

The Committee's powers are set out in Standing Order No. 143.

The scrutiny reserve resolution, passed by the House, provides that Ministers should not give agreement to EU proposals which have not been cleared by the European Scrutiny Committee, or on which, when they have been recommended by the Committee for debate, the House has not yet agreed a resolution. The scrutiny reserve resolution is printed with the House's Standing Orders, which are available at www.parliament.uk.

Current membership

Sir William Cash MP (*Conservative, Stone*) (Chair)

Geraint Davies MP (*Labour (Co-op), Swansea West*)

Richard Drax MP (*Conservative, South Dorset*)

Peter Grant MP (*Scottish National Party, Glenrothes*)

Rt Hon Damian Green MP (*Conservative, Ashford*)

Kate Hoey MP (*Labour, Vauxhall*)

Kelvin Hopkins MP (*Labour, Luton North*)

Calum Kerr MP (*Scottish National Party, Berwickshire, Roxburgh and Selkirk*)

Stephen Kinnock MP (*Labour, Aberavon*)

Craig Mackinlay MP (*Conservative, South Thanet*)

Mr Jacob Rees-Mogg MP (*Conservative, North East Somerset*)

Alec Shelbrooke MP (*Conservative, Elmet and Rothwell*)

Graham Stringer MP (*Labour, Blackley and Broughton*)

Kelly Tolhurst MP (*Conservative, Rochester and Strood*)

Mr Andrew Turner MP (*Conservative, Isle of Wight*)

Heather Wheeler MP (*Conservative, South Derbyshire*)

The following member was also member of the Committee during the parliament:

Nia Griffith MP (*Labour, Llanelli*)