Please find attached the response from the European and External Relations Committee to your inquiry into EU rules.

Please don’t hesitate to contact the clerks to the Committee if you have any questions concerning the submission.

The European and External Relations Committee has responded to each of the questions posed by the SPPA Committee as set out below.

CHRISTINA MCKELVIE MSP
CONVENER
EUROPEAN AND EXTERNAL RELATIONS COMMITTEE
SCOTTISH PARLIAMENT
6 DECEMBER 2013
Rule 10A.2 – Referral to lead committee

1. How often has this rule been used and what have the outcomes been?

The European and External Relations Committee (EERC) has considered one EU legislative proposal this session (Proposed Directive of the European Parliament and of the Council on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement of workers). Although the UK Government had stated that it was “not convinced that the proposal is consistent with the principle of subsidiarity”, the Scottish Government stated that it was “not clear as to the precise nature of the subsidiarity concerns.” The Committee concluded that the proposal did not raise subsidiarity concerns.

In light of the limited time period that the EERC had for considering this EU legislative proposal (the EM was received over six weeks into the eight week process), the Committee agreed to write to the House of Commons, the House of Lords, the Scottish Government and the Presiding Officer and the SPPA Committee concerning the process for consideration of European Union documents and brought up its concerns with the Minister of State for Europe when he gave evidence to the Committee.

2. What the implications of the requirement to consider EU legislative proposals have been for parliamentary committees?

The EERC believes that the consideration of EU legislative proposals provides the Scottish Parliament with an important opportunity to assess whether the subsidiarity principle is respected. However, in practice, the late receipt of the Explanatory Memorandum creates challenges for committees in terms of scheduling and considering the EU legislative proposals.

3. How have committees influenced outcomes at a UK and EU level as a result of this rule?

European Chairs-UK meetings

The Convener of the EERC attends meetings of the European Chairs-UK meeting every six months and discusses the consideration of the subsidiarity principle at these meetings with the other chairs of European committees of both the devolved parliaments and the UK Parliament. Both the chairs of the House of Lords and the House of Commons committees regularly demonstrate a commitment to taking into account the views of the Scottish Parliament on subsidiarity concerns at these meetings.

Reasoned opinions issued by the UK Parliament

Under Protocol 2, Article 6 of the Lisbon Treaty, a chamber of a national parliament (Member State) may raise an objection, referred to as a "reasoned opinion" if it does not believe that the draft proposal is compliant with the principle of subsidiarity. Where time has permitted, both the House of Commons European Scrutiny Committee and the House of Lords European Union Committee have
considered correspondence from Scottish Parliament committees (or in the case of the Justice Committee, its report on an EU legislative proposal) as part of their consideration of an EU legislative proposal.

In the current UK parliamentary session, The House of Commons European Scrutiny Committee has issued 11 reasoned opinions. The House of Lords European Union Committee has issued five reasoned opinions. A list of these is contained in the appendix.

At the European level, 2012 saw the first ‘yellow card’ by national Parliaments in the context of the subsidiarity control mechanism, in response to the Commission’s proposal for a regulation on the exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide services (“Monti II”). National Parliaments issued 12 reasoned opinions on the Monti II proposal, representing 19 votes (18 being the threshold), and thus for the first time triggered the so-called yellow card indicating that the subsidiarity principle had been breached. The Commission considered the arguments put forward by the national Parliaments but concluded that the subsidiarity principle had not been breached. However, it recognised that its proposal was therefore unlikely to gather the necessary political support within the European Parliament and Council to enable adoption and withdrew the proposal.

The European Commission’s proposal for A European Public Prosecutors Office has also recently triggered a “yellow card”.

4. How practicable is Rule 10A.2.2 (designation of lead committee where the subject matter of an EU legislative proposal falls within the remit of more than one committee) given time constraints?

An EU legislative proposal might fall within the remit of two or more committees. Given the late receipt of Explanatory Memoranda, the requirement for the Bureau to designate a lead committee might mean that it is not possible to consider an EU legislative proposal within the designated eight-week period.

**Rule 10A.3 – Consideration of proposal for European Union legislation**

5. Under Rule 10.A.3.1 committees are obliged to consider an EU legislative proposal where it has been referred to the Committee in terms of Rule 10A.2. Is this rule sufficiently flexible to allow lead committees to decide which proposals they wish to consider? Specifically, is it necessary for committees to consider all proposals where the UK Government, UK Parliament or Scottish Government has brought to the attention of the Parliament a subsidiarity concern?

Rule 10.A.3.1 does not provide committees or EU reporters with any flexibility to consider whether the EU legislative proposal merits consideration by a parliamentary committee. The EERC considers that there may be value in changing the wording of Standing Orders to “may” instead of “shall” to provide committees with greater discretion in relation to the consideration of EU legislative proposals.

In addition, there is ambiguity about whether a Scottish Parliament should consider an EU legislative proposal when it relates to a reserved matter.
6. **Under Rule 10A.3.2, where the lead committee considers that an EU legislative proposal does not comply with the principle of subsidiarity, the Convener shall by motion propose that the Parliament agrees that the proposal does not comply with the principle of subsidiarity, and the Parliamentary Bureau shall allocate time for debate. How often has this rule been applied? Are there any issues around timing, given the constraints of the 8-week period and competing demands on parliamentary time?**

This has only happened once, in relation to the consideration of an EU legislative proposal by the Justice Committee. In all other cases, there has not been sufficient time to do anything other than a brief scrutiny at a committee meeting due to the factors noted in question 6 above.

7. **Under Rule 10A.3.3 where an EU legislative proposal is referred to a lead committee and the lead committee decides that there is an insufficient period remaining for report and debate, the Presiding Officer shall notify the UK Parliament of any concerns that the lead committee has that the proposal does not comply with the principle of subsidiarity. How often has this rule been invoked and how effective is this process?**

This rule has not applied in consideration of any EU legislative proposals by the EERC, but has habitually in relation to the consideration of the majority of the EU legislative proposals by other committees (the Justice Committee example above being the only exception). This rule has been effective in the sense that it is the process most commonly taken by committees.

8. **How often has Rule 10A.3.4 (making special arrangements for recess periods) been used?**

The EERC has not received an EU legislative proposal which raises a subsidiarity concern in recess.

**Rule 12.6.2 – EU Reporters**

On how many occasions have EU Reporters brought to the committee’s attention any EU issue, proposal for EU legislation, or implementation of European Communities or EU legislation, as provided for in this rule?

As the EERC has an overarching role in the context of the European Strategy, it does not have an EU Reporter.
Appendix – List of reasoned opinions issued by House of Parliament in the current UK parliamentary session

The House of Commons European Scrutiny Committee has issues the following 11 reasoned opinions¹—

1. Investor-Compensation Schemes, 25 October 2010
2. CCCTB, 11 May 2011
3. Prudential Requirements for Credit Institutions, 9 November 2011
4. Common European Sales Law, 23 November 2011
5. Public Procurement and Procurement by Public Entities, 6 March 2012
6. The posting of workers and the right to take collective action, 22 May 2012
7. Fund for European Aid to the Most Deprived, 18 December 2012
8. Gender balance on corporate boards, 7 January 2013
9. Reducing the cost of deploying high-speed electronic communications networks, 21 May 2013
10. Establishment of the European Public Prosecutor's Office, 22 October 2013
11. Regulation of new psychoactive substances, 11 November 2013

The House of Lords European Union Committee has issued the following five reasoned opinions²—


¹ http://www.parliament.uk/business/committees/committees-a-z/commons-select/european-scrutiny-committee/scrutiny-reserve-overrides/
² http://www.parliament.uk/business/committees/committees-a-z/lords-select/eu-select-committee-committee-work/parliament-2010/subsidiarity/
4. Proposal for a Regulation of the European Parliament and of the Council on the Fund for European Aid to the Most Deprived