

BRIEFING SERIES ON THE EUROPEAN UNION

SUPPLEMENTAL BRIEFING NOTE: KEY ASPECTS OF LEGISLATIVE SCRUTINY ARRANGEMENTS FOR EUROPEAN UNION MATTERS IN THE REPUBLIC OF IRELAND

15 November 2007

Introduction

This briefing note supplements Briefing 3 (dated 27 June 2007) of the three-part European Union briefing series prepared by the Research and Library Service for the Members of the Committee of the Office of the First Minister and Deputy First Minister (the Committee). It outlines key aspects of the legislative scrutiny arrangements for European Union (EU) matters in the Republic of Ireland (ROI).

This supplemental briefing is divided into the following sections:

- 1.0 Key legislative provisions
- 2.0 Key players' roles and responsibilities

1.0 Key Legislative Provisions

In ROI prevailing legislative arrangements for scrutinising EU matters are defined by the *European Union (Scrutiny) Act 2002*.

Section 2(1) of the 2002 Act states that:¹

As soon as practicable after a proposed measure is presented by the Commission of the European Communities or initiated by a Member State, as the case may be, the Minister shall cause a copy of the text concerned to be laid before each House of the Oireachtas together with a statement to the Minister outlining the content, purpose and likely implications for Ireland of the proposed measure and including such information as he or she considers appropriate.

Section 2(2) further establishes that the Minister shall have regard to any recommendations made by either or both Houses or by a committee of either in relation to a proposed measure.

However, Section 2(3) states that the above Sections 2(1)-(2) do not apply if there is insufficient time – in the opinion of the Minister – to comply with given procedures and the Houses' performance of their functions. Where this occurs, and the measure

¹ <http://www.oir.ie/viewdoc.asp?fn=/documents/bills28/acts/2002/a2502.pdf>

concerned is adopted by a European institution, Section 2(4) requires the Minister to communicate this to the Oireachtas, along with a statement outlining the measure's implications for ROI and the circumstances of its adoption, as well as any other information that the Minister considers appropriate.

Section 2(5) of the 2002 Act further requires every Minister of the Government to report to the Oireachtas at least twice a year about measures, proposed measures and other developments relating to Europe and his or her area.

Section 3(1) exempts from Section 2 those proposed measures that the Minister considers confidential. Although Section 3(2) qualifies this exemption, stating that the Minister may make a report to the Oireachtas about such a measure if he or she considers it appropriate in the circumstances.

2.0 Key Players' Roles and Responsibilities

In ROI, key players in the legislative scrutiny arrangements for EU matters are:

- (i) the "Joint Committee on European Affairs" in the Oireachtas (that is the Dail Eireann and the Seanad Eireann), which has a sub-committee officially known as the "Sub-Committee on EU Scrutiny"
- (ii) the "Select Committee on European Affairs" in the Dail
- (iii) the Sectoral Committees of the Oireachtas
- (iv) Oireachtas Plenary Sessions

The following paragraphs outline the roles and responsibilities of each of the above.

2.1 Joint Committee on European Affairs²

The Joint Committee on European Affairs was established under the Standing Orders of the Dail and of the Seanad and is required to:³

As soon as may be following its appointment and thereafter at annual interval, each Select Committee shall prepare a work programme and shall lay such programme before [Dáil] [Seanad] Éireann.

The Joint Committee is empowered to:⁴

² The source relied on: <http://euaffairs.ie/>; <http://euaffairs.ie/overview/> .

³ <http://www.oireachtas.ie/documents/committees29thdail/work%20programme/EA2007.doc>
See also Standing Orders 84(4) of the Dail and 69(4) of the Seanad.

⁴ <http://www.oireachtas.ie/documents/committees29thdail/work%20programme/EA2007.doc>
See also Paragraph 2(a) of the Order of the Dail (16 October 2002) and Paragraph 1(a) of the Order of the Seanad (17 November 2002).

- (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;*
 - (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; 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;*
- (ii) *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;*
- (iii) *consider such—*
- (I) *acts of the institutions of the European Communities,*
 - (II) *regulations under the European Communities Acts, 1972 to 1998,*

(III) *other instruments made under statute and necessitated by the obligations of membership of the European Communities,*

as it may select;

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

(v) *represent both Houses of the Oireachtas at the Conference of European Affairs Committees (COSAC);*

and shall report thereon to both Houses of the Oireachtas.

Hence, the main task of the Joint Committee is to monitor and debate activities of the EU and their impact on Ireland. Following its consideration of the issues, it may make a report, including recommendations, to both Houses of the Oireachtas. In addition, the Committee may send contributions to the European Commission on the Commission's legislative and policy initiatives.

To do so, the Joint Committee does the following, which are listed in no particular order of significance:⁵

- (i) promptly examines any EU legislative proposal referred to it by the Sub-Committee on EU Scrutiny (see below).
- (ii) endeavours to have on-going meetings with the Minister for Foreign Affairs in advance of meetings of the General Affairs and External Relations Council (GAERC) meetings. (This enables the Joint Committee to continue effective oversight of the Government policy approach and to have an input into, and an exchange of views on, topics arising on the agendas of those Council meetings.)
- (iii) endeavours to monitor statutory instruments (SIs) arising from the *European Communities Act 1972* (as amended), which are laid before both Houses of the Oireachtas and, where it considers it necessary, and discusses particular SIs and matters arising with the Minister at an appropriate time.
- (iv) considers matters referred to it jointly by Dáil Éireann and Seanad Éireann (for example, Motions regarding International Agreements, Conventions, draft SIs, etc).

⁵ Source relied on: <http://euaffairs.ie/overview/> .

- (v) makes its views known on proposals in advance of the Minister's participation in meetings of the Council of Ministers of the EU. (Prior to meetings of the Council, in particular meetings of the General Affairs and External Relations Council (GAERC),⁶ the Minister for Foreign Affairs briefs the Joint Committee on the proposals for discussion and decision on the agenda of the Council meetings and the Government's approach in relation to these matters. These pre-GAERC briefings ensure greater Oireachtas oversight of EU decisions.)
- (vi) maintains close links and exchanges strategic information with its counterpart committees in the other 26 EU national parliaments and with the European Parliament.
- (vii) holds discussions and exchanges views with invited speakers on a wide range of subjects, including for example EU institutional reform, agriculture and trade policy, enlargement and the EU's relations with its immediate neighbours.
- (viii) holds a monthly meeting with the Minister of Foreign Affairs or the Minister of State for European Affairs prior to each meeting of the General Affairs and External Relations Council in Brussels.
- (ix) directly inputs into the European decision-making process in a timely and on-going basis by sending contributions to the European Commission on proposed EU legislation and policy formulation. (This initiative has facilitated the Houses of the Oireachtas in contributing to European policy in the upstream stage of the Commission's legislative programme.)
- (x) presents reports, including recommendations, to the Houses of the Oireachtas. In drawing up these reports the Committee considers a wide range of views and information so that through the Committee's reports the Houses of the Oireachtas are better informed of the issues involved.
- (xi) forwards contributions to the European Commission on the Commission's policy and legislative proposals. (In undertaking this work, the Committee consults key stakeholders in order to fully consider the potential impact of the

⁶ The Council of Ministers of the EU is the EU's main decision-making body. It consists of Government Ministers from each of the Member States. The Foreign Ministers Council meet in the General Affairs and External Relations Council, which deals with general EU policy matters, such as EU enlargement issues, and the EU's common foreign and security policy, for example the EU's relations with the Middle East and Africa. See <http://euaffairs.ie/work/>.

Commission proposals. In the past 12 months the Committee has forwarded contributions to the European Commission on Better Regulation, Veterinary Medicines, Maritime Affairs and Communications Policy.)

2.2 Sub-Committee on EU Scrutiny⁷

While the Joint Committee concentrates largely on general EU policy issues during its weekly meetings, it has created a Sub-Committee on EU Scrutiny which examines each EU proposal (including legislation and other pre-legislative EU documents) in detail and makes recommendations to the Houses of the Oireachtas.

Following its examination, the Sub-Committee may decide to refer a particular proposal to a Sectoral Committee within whose competence the matter lies for further detailed examination, or alternatively it can carry out its own detailed examination and make a recommendation to the Joint Committee.

2.3 Select Committee on European Affairs⁸

Those members of Dáil Éireann who are members of the Joint Committee on European Affairs also constitute the membership of the Select Committee on European Affairs.

In accordance with paragraph 1(a) of the Standing Orders of the Dáil Éireann, the Select Committee is appointed to consider:

- (i) such Bills the statute law in respect of which is dealt with by the Department of Foreign Affairs; and
- (ii) such proposals contained in any motion, including any motion within the meaning of Standing Order 157 concerning the approval by the Dáil of international agreements involving a charge on public funds,

As shall be referred to it by Dáil Éireann from time to time.

The matters referred to the Select Committee are considered in tandem with the on-going work of the Joint Committee. Such consideration may have a practical effect on the Joint Committee's capacity to complete its consideration of the items identified in the Joint Committee's Work Programme.

2.4 Sectoral Committees⁹

The Sectoral Committees in both Houses of the Oireachtas play a central role in the scrutiny of EU matters. They include the following:

- (i) Joint Committee on Agriculture and Food
- (ii) Joint Committee on Arts, Sports, Tourism, Community, Rural and Gaeltacht Affairs
- (iii) Joint Committee on Communications, Marine and Natural Resources
- (iv) Joint Committee on Education and Science

⁷ Source relied on: <http://euaffairs.ie/work/>

⁸ <http://www.oireachtas.ie/documents/committees29thdail/work%20programme/EA2007.doc>

⁹ <http://euaffairs.ie/work/>

- (v) Joint Committee on Enterprise and Small Business
- (vi) Joint Committee on Environment and Local Government
- (vii) Joint Committee on European Affairs
- (viii) Joint Committee on Finance and Public Service
- (ix) Joint Committee on Foreign Affairs
- (x) Joint Committee on Health and Children
- (xi) Joint Committee on Justice, Equality, Defence and Women's Rights
- (xii) Joint Committee on Social and Family Affairs
- (xiii) Joint Committee on Transport

Their task is to carry out the detailed scrutiny of legislative proposals referred to them by the Sub-Committee on EU Scrutiny, which the Scrutiny Sub-Committee believes will have a potential significant impact on Ireland. In undertaking this scrutiny work, Sectoral Committees may arrange meetings with the relevant Minister, civil servants, key stakeholders and experts in the respective fields to obtain further detailed information and to contribute their views on the proposals under consideration.

Reports on scrutiny meetings, setting out conclusions and recommendations, are prepared by the Sectoral Committees and addressed to the Sub-Committee on EU Scrutiny and to the government department with responsibility for the policy area concerned. In this way, the views of the legislature are communicated to the Minister in advance of participation in Council negotiations.

Draft reports of the Sub-Committee on EU Scrutiny, setting out conclusions and recommendations, are addressed to the Joint Committee and, when approved by the Joint Committee, are presented to both Houses of the Oireachtas.

These scrutiny reports also may be debated in plenary session in both Houses.

2.5 Oireachtas Plenary Sessions

During plenary sessions, both Houses may debate the following:

- (i) scrutiny reports, including recommendations, produced by the Joint Committee or the Sub-Committee on EU Scrutiny, as approved by the Joint Committee; and
- (ii) agreements arising out of the EU – (see Standing Order 157 international agreements involving public money).

Finally, individual Members may choose to use oral and written questions, motions and debates to hold Ministers to account for EU matters.