

Report issued by the European Affairs Committee
10 December 2004

Report on reforming the Folketing's treatment of EU issues

- the inclusion of the sector committees
- controlling the principle of subsidiarity
- a better basis for decisions
- openness

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1. Introduction

This report follows up the latest report from the European Affairs Committee of 10 May 2001. Since then a need has arisen to tighten up the existing working methods and to carry out a series of new initiatives.

First, there is a need to follow up on measures that have already been adopted. The political influence and Parliamentary control of the European Affairs Committee must be exercised on the soundest possible decision-making basis. In this connection there is a need for certain improvements in relation to the interplay between the Ministry of Foreign Affairs, the Folketing's sector committees, and the Danish Members of the European Parliament.

Second, the development of European co-operation constantly makes new demands on the organisation of the Parliamentary control function. Since the Amsterdam Treaty came into force, the fact that it has been possible to adopt EU legislative acts immediately after their first reading in the European Parliament, if there is agreement between the Council and the European Parliament, has been very important for the EU's legislative process. This has increasingly been the case in recent years, where up to somewhere in the region of 30-40 per cent of all legislative proposals are now passed immediately after the Parliament's first reading. Naturally, it cannot be excluded that part of this increase has been due to a strong political desire to conclude the reading of as many legislative proposals as possible before the EU enlargement on 1 May 2004. However, this circumstance alone can hardly explain the marked increase in the rapid adoption of EU legislative acts.

Moreover, the EU's coming Constitutional Treaty for Europe will create a new framework for the inclusion of national Parliaments in EU policies. In future, the national Parliaments will play a more central role in controlling the EU's principle of subsidiarity. Similarly to a number of other national Parliaments' European affairs committees, the Danish European Affairs Committee wishes to make full use of the new opportunities now. This report therefore introduces a special procedure for the Folketing's treatment of the Commission's proposals where there is a particular need to control the degree to which the principle of subsidiarity has been complied with.

Finally, the report takes new steps in the direction of strengthening the democratic decision-making process by, among other things, increasing openness in connection with meetings of the European Affairs Committee.

Those parts of the report that place the Government under an obligation are underlined.

The most important new elements in the report in summary comprise the following:

- The involvement of the sector committees must be systematised. As a consequence, the Folketing's standing orders will be changed as of 1 January 2005, so that it becomes quite clear that the sector committees will consider EU issues within their respective areas.
- The Government will prepare preliminary notes on subsidiarity on important new legislative proposals from the Commission no later than two weeks after their introduction (in Danish translation).
- The European Affairs Committee's basis for making decisions must be strengthened. Among other things, this will be brought about with the help of improved basic memorandums. Basic memorandums must be available no later than four weeks after a proposal has been published in a Danish version and will in future contain information on the Government's general, provisional attitude to a Commission proposal, and on the general expectations regarding the attitudes of other Member States to the extent that this is possible and that such attitudes are known.
- Control of the principle of subsidiarity must be made more effective and be better organised in order to make use of the opportunities contained in the Constitutional Treaty. This must be brought about in close, well-organised co-operation between the European Affairs Committee, the sector committees, and the Danish Members of the European Parliament.
- Co-operation between Danish MEPs must be intensified. In future, regular monthly meetings will be arranged between the European Affairs Committee and Danish MEPs.
- Openness regarding the meetings of the European Affairs Committee must be enhanced. Meetings of the European Affairs Committee will be introduced with an open consultation in which a selected minister will present current issues within his/her field. In addition, the EU Secretariat will prepare brief agendas with comments prior to meetings, and brief press releases immediately after meetings.

2. Background

Previous reports

Since the first report from the European Affairs Committee (the then Market Committee) in 1973, this special type of report has been used in connection with adopting new procedures for the Folketing's treatment of EU issues. This type of report provides an opportunity for a flexible adaptation to developments in the EU and in relation to the heightened demand for openness, transparency, and strengthened Parliamentary control in the Danish EU decision-making process. This and previous reports were issued after a close interplay between the European Affairs Committee, the sector committees, and the Government.

The development of co-operation in the EU has made it necessary to carry out a series of reforms of the Danish EU decision-making process on an ongoing basis. Among other things, this has led to heightened demands on the Government in connection with providing the European Affairs Committee with information so that the committee has the best possible basis for making decisions. There have also been changes in the treatment of EU issues in the Folketing itself. In this connection, initiatives have been taken to involve the sector committees in EU issues at an early stage of the decision-making process. These measures should be seen in the light of the fact that EU policy has to an increasing extent had consequences for domestic policy and has thereby naturally become an integral part of Danish politics.

Over the years, the European Affairs Committee's reports have been of a varying character. While some of the reports – what are known as the procedure reports – have contained a general, comprehensive description of the working procedures and tasks of the European Affairs Committee, others have had a more limited focus, such as in relation to certain political events or other fields of responsibility.

The underlying ambition of this report is to create a new framework for the Folketing's overall treatment of EU policies, which will first ensure general coherence and co-ordination, and second, establish a clear division of work between the European Affairs Committee and the sector committees. This means that the report will harmonise with the existing tradition regarding procedure reports from the European Affairs Committee.

Several of the new initiatives introduced with this report were inspired by similar schemes from the national Parliaments of other EU Member States, including in particular Sweden, Finland, and Great Britain. This applies, for

instance, to the important role played by the Finnish sector committees in treating EU issues, Sweden's experience with a high degree of openness, and the practice in both countries of providing a very early written orientation on the Governments' provisional attitude to new proposals from the Commission.

The reports of the European Affairs Committee have gradually reached a length that makes them unsuitable for providing Members with a rapid overview of the current procedures for the work of the European Affairs Committee. After the approval of this report the Folketing's EU Secretariat will prepare a brief summary of the existing procedures for the Folketing's treatment of EU issues.

The reform

The European Affairs Committee decided to carry out a reform of the Folketing's treatment of EU issues in connection with the adoption of the committee's working programme for 2003. The general goal of the reform was to strengthen the Folketing's overall influence on European policy and to integrate EU policy into the political work of the Folketing to a greater degree.

The Folketing has gradually established a long-standing tradition of exercising control with the Government's participation in European co-operation. The motive force of this control function lies with the European Affairs Committee, which considers the Government's negotiating draft and provides ministers with mandates before they go to Council meetings in order to take part in the legislative process.

It is absolutely decisive that the Folketing's treatment of EU issues is carried out at as early a stage as possible in order to ensure the maximum influence on the decisions made in the EU. The first reading of EU legislative proposals is carried out in the sector committees, where the necessary expertise is greatest. The European Affairs Committee is provided with ongoing information on the new proposals and makes a final decision on the Government's negotiating position. It is the task of the European Affairs Committees to ensure unity and coherence in the Folketing's treatment of EU issues. This requires continuous co-operation between the European Affairs Committee and the sector committees.

The sub-committee of the European Affairs Committee have considered a large number of issues in connection with the reform of the Folketing's handling of European policy. This report contains major and minor changes in the following areas:

- the sector committees' treatment of EU issues
- improving co-operation with the Danish MEPs
- monitoring the principle of subsidiarity
- improving the basis for making decisions
- committee issues
- openness in the Folketing's treatment of EU issues
- improving the agenda of the European Affairs Committee
- hearings on the Commission's hearing documents
- new types of debate

Some of the areas mentioned above have already been adopted and put into practice. A improvement of the agendas of meetings of the European Affairs Committee was introduced at the beginning of the 2003-04 sessional year. The printed agenda has been simplified and supplemented with an electronic agenda with copious references to all relevant background material.

Furthermore, a regular practice has been adopted for the European Affairs Committee's treatment of the Commission's hearing documents. The scheme came into effect as of 1 January 2004 and is described in greater detail below in connection with the other areas included in this new reform.

3. Early involvement of the sector committees

Involvement of the sector committees at an early stage

By far the majority of the sector committees today are involved with EU issues. Today, the sector committees receive the same documents and memorandums within their respective areas as does the European Affairs Committee. Several sector committees are also actively involved in the performance of the Folketing's hearings in connection with the Commission's green and white papers, for example.

Most sector committees have also incorporated a tradition for calling in relevant ministers for consultations during the week preceding Council meetings. In some cases the sector committees also prepare written recommendations for the European Affairs Committee. However, the problem is that treating issues at this late stage does not provide an opportunity to exercise any great influence on proposals from the Commission. There is therefore a need for the sector committees to systematically carry out an independent treatment of new proposals from the Commission.

Two more circumstances make an early involvement of the sector committees necessary. First, a growing number of EU proposals are already passed after the European Parliament's first reading. It is estimated that up to 30-40 per cent

of all proposals are passed at this early stage. The Folketing and the other national Parliaments are hereby placed under considerable pressure if the opportunity to exercise influence on EU issues is to be made use of. It is absolutely clear that the Folketing's European Affairs Committee, together with the sector committees, are fully prepared to commit themselves in order to achieve the greatest possible political influence at an early stage of the decision-making process.

Second, the EU's new Constitutional Treaty introduces a procedure for the national Parliament's control of the principle of subsidiarity. This procedure and its consequences for the national Parliaments is described in greater detail elsewhere in this report. The central aspect, however, is that the national Parliaments are given six weeks' respite from the date a proposal is introduced to consider whether it complies with the principle of subsidiarity.

An early treatment of substance in the sector committees, and subsequent mandate giving in the European Affairs Committee, are designed to ensure that the Folketing has the greatest possible influence on EU issues. The Folketing's EU Secretariat will help to point out the most important proposals from the Commission.

This report also introduces a series of new initiatives in order to further strengthen the role of the sector committees.

Changes in the Folketing's standing orders

It is now quite clear from the Folketing's revised standing orders, which will come into effect on 1 January 2005, that EU issues are a natural part of the sector committees' area of responsibility. There is an addition to the first sentence of Section 7, Subsection 2 of the standing orders which states that the committees' areas of responsibility also include EU issues within their respective areas. It therefore appears from the revised standing orders that: *The Standing Orders Committee shall make decisions on the committees' areas of responsibility, including EU issues.*

An excerpt from the draft to the remarks in connection with revising the Folketing's standing orders Section 7, Subsection 2, is enclosed as appendix 2.

4. The sector committees' control of the principle of subsidiarity must be strengthened

While the European Affairs Committee co-ordinates the monitoring of the principle of subsidiarity, it will be the task of the sector committees to make the first evaluation of whether a proposal conflicts with the principle of subsidiarity.

All important matters are immediately sent to the relevant sector committee by the European Affairs Committee. Within four weeks of the introduction of the proposal, the sector committee issues a statement to the European Affairs Committee in those cases where the sector committee considers that the principle of subsidiarity has not been respected. After the European Affairs Committee's treatment of the matter a collective recommendation is sent to the Commission, the Council, and the European Parliament, if the proposal in question is felt to conflict with the principle of subsidiarity. This procedure, which must be completed within six weeks, is described in chapter 8 of this report, as well as a more detailed description enclosed as appendix 5 on "The treatment of the principle of subsidiarity in the sector committees and the European Affairs Committee".

Elucidation of the open co-ordination method

What is known as the **open co-ordination method** is elucidated in connection with the new Constitutional Treaty. This applies to four concrete policy areas, notably to social and labour market policy, research, public health, and industry. On the basis of this, the stage is set for the Commission's action plans to be treated in the sector committees, while the adoption of objectives and guidelines should also be treated in the European Affairs Committee in advance of giving any mandate.

5. Strengthened co-operation with MEPs

Fixed structure of meeting with Danish MEPs

The co-operation between the Folketing's European Affairs Committee and the Danish MEPs must be strengthened with the help of concrete measures. Hitherto, co-operation has not been systematised, but has been limited to individual joint meetings and other ad hoc activities. Co-operation will in future be organised in a more systematic framework.

This means that in future there will be a meeting once a month between member of the Folketing's European Affairs Committee and Danish MEPs. These meetings will take place an hour before ordinary meetings of the European Affairs Committee. The meetings and agenda items will be arranged jointly by the European Affairs Committee and Danish MEPs.

The agendas will be forwarded by the European Affairs Committee's secretariat 14 days before each meeting is held and be based on proposals received from the members of the European Affairs Committee and MEPs. If no proposals

with a certain political interest have been received before a planned meeting, the chairperson of the European Affairs Committees can decide to cancel the meeting in question.

The European Affairs Committee's Secretariat will also prepare a list of coming meetings every six months with their dates and times. These meetings will not be open to the press or the public in general.

Invitation of spokespersons from the European Parliament

The European Affairs Committee will in future consider the possibility of inviting relevant spokespersons from sector committees, and possibly also spokespersons from other party groups (what are known as shadow spokespersons) from the European Parliament to meet the European Affairs Committee with the aim of discussing current issues within the spokespersons' areas of responsibility. It might be possible to combine such meetings with the regular monthly meetings with the Danish MEPs.

The sector committees and the European Parliament

The need to enhance co-operation between the sector committees and MEPs will not decrease as a consequence of the above-mentioned establishment of a structure for meetings. Closer contacts with MEPs will mean that the sector committees will be better equipped to take a stance on new EU initiatives, both politically and from a technical point of view. At the same time, the Danish MEPs will be able to obtain valuable knowledge of the special problems that may be connected with the individual EU initiative seen from a Danish point of view. Both formal meetings and informal contacts would enhance the Parliamentary treatment of issues. It will be up to the individual sector committees to find the form of co-operation that is most suitable.

6. The Folketing's monitoring of the principle of subsidiarity

It appears from the new Constitutional Treaty that the national Parliaments must help to ensure that the principle of subsidiarity is complied with, cf. Article 6 of the Protocol on the principle of proximity and the principle of proportionality.

The Constitutional Treaty will come into force on 1 November 2006 at the earliest, on the condition that the ratification process meets no obstacles in any of the Member States. However, the European Affairs Committee will implement a procedure based on the provisions of the Constitutional Treaty now.

7. The provisions of the Constitutional Treaty regarding the principle of subsidiarity

The Protocol of the Constitutional Treaty regarding the application of the principle of subsidiarity assigns a special role to the national Parliaments in connection with evaluating the degree to which the principle of subsidiarity is complied with.

No later than six weeks after the Commission has made a legislative proposal, all national Parliaments can therefore send a reasoned statement to the Commission, the Council, and the European Parliament explaining why the Parliament in question believes that the proposal is at variance with the principle of subsidiarity.

If such a statement receives the support of at least one third of the national Parliaments, the Commission will be obliged to reconsider its proposal¹. Subsequently, the Commission has three options. It can decide either to *amend* the proposal, to *withdraw it* or to *maintain* the proposal unchanged.

8. Applying the provisions of the Constitutional Treaty

The Folketing's European Affairs Committee has already decided to apply the provisions in the Constitutional Treaty's Protocol on the principle of subsidiarity and the principle of proportionality. This is in order to be ready to make use of the new opportunities that the protocol assigns to the national Parliaments.

Appendix 5 of this report contains a detailed description of the way in which the European Affairs Committee and the sector committees can carry out a qualified evaluation of compliance with the principle of subsidiarity. The COSAC Secretariat in Brussels will play a central role in connection with administering the results of this.

The model contains a special procedure for the Folketing's ongoing monitoring of compliance with the principle of subsidiarity. The model is based on the basic principle that the Folketing's sector committees will be responsible for the first treatment of the relevant Commission proposal. The sector committees will make a preliminary recommendation to the European Affairs Committee in those cases where they consider that the principle of subsidiarity has not been respected, within four weeks of the introduction of the proposal. The European Affairs Committee will then make a final recommendation to the

Commission. A joint meeting will be convened if there are any disagreements between the recommendations of the sector committees and the opinion of the European Affairs Committee.

It is the task of the EU Secretariat to carry out an administrative sorting of proposals for legislative acts so that only important proposals are subjected to a control of subsidiarity in the sector committees and in the European Affairs Committee.

- With the aim of supporting the Folketing's control of the principle of subsidiarity, the Government will send a preliminary subsidiarity memorandum on important new legislative proposals from the Commission to the European Affairs Committee and the relevant sector committee(s) no later than two weeks after a proposal has been sent to the Council in a Danish version, cf. below. Among other things, the memorandum must contain a statement of the purpose of the Commission's proposal and provide an account of the Commission's own evaluation of why the principle of subsidiarity has been complied with. There must then be a statement of whether the Government finds, on the preliminary basis, that the principle of subsidiarity has been complied with or not complied with. The practical details regarding the wording and forwarding of the memorandum will be agreed at administrative level.

It must be made absolutely clear that the six weeks' respite mentioned in the Protocol provides very little time to carry out a qualified Parliamentary control and will in fact lead to extreme pressure on the treatment of the matter. It is therefore of decisive importance that close, ongoing co-operation is established between the Folketing's European Affairs Committee, the sector committees, and the Government.

9. A better basis for decisions

A qualitatively improved basis for decisions

The Government's provision of information to the Folketing on EU policy is absolutely decisive for the ability of the European Affairs Committee to exercise qualified Parliamentary control of the Government's EU policy. The information must be of high quality in order to equip the European Affairs Committee with the best possible basis for making decisions.

The central intention is to enhance the quality of the memorandums provided rather than simply to increase the quantity of paper involved. But in step with

the development of co-operation in the EU and the steadily increasing number of issues, a certain need for new types of information has arisen.

Early orientation on the Government's attitude

One of the most important innovations is that in future, the Government must indicate its general attitude to the proposal(s) in question in the basic memorandums it forwards. It is already the case today that a large number of interest groups, NGOs, and municipal organisations are informed of the Government's attitude through their membership of the Government's many special EU committees. The Government must also include information on the attitudes of other Member States to the extent that these are public knowledge.

The summary memorandums constitute versions of basic memorandums that are updated in all respects. Among other things, this means that the summary memorandums must contain a brief resume if they are more than two pages in length. Furthermore, the summary memorandums must contain updated information on the Government's attitude and the attitudes of other Member States. The latter information, however, must be worded in general terms and cannot replace the oral negotiating draft that the minister presents at meetings of the European Affairs Committee.

Presentation of revised negotiating drafts

In an increasing number of cases, the European Affairs Committee has experienced that the Government presents issues in connection with negotiating drafts before the issue in question has been given a first reading in the European Parliament. This circumstance should be seen in the light of the fact that an increasing number of proposals are passed after their first reading in the European Parliament.

As a point of departure, it is an advantage that the European Affairs Committee becomes involved at this early stage of the decision-making process as it is the point in time where the opportunity to exercise influence is greatest. However, the disadvantage is that the lack of knowledge of the views of the European Parliament weakens the European Affairs Committee's basis for making decisions. The Government is therefore requested to make every effort to ensure that the European Affairs Committee is provided with information on the provisional views of the European Parliament in these cases – to the extent that this is possible. The information should be provided in summary memorandums and the minister should also be able to provide an account of this during committee meetings.

In cases where it is not possible for the Council and the European Parliament to reach agreement after the first reading, it is particularly important that the

summary memorandum indicates the degree to which fundamental amendments have been made to the proposal.

The Government agrees that in those cases where fundamental amendments have been made to a proposal, it may be necessary to present in the European Affairs Committee a new proposal for a negotiating position.

New outline memorandums

In step with the considerable growth of EU issues a need has arisen for Members to be able to gain a more comprehensive view of them within the various areas of responsibility. This applies to both current issues and coming issues.

It has been agreed on the basis of this that every six months the Government will prepare an outline memorandum with information on important issues that will be taken up in each ministerial area.

The Commission has also increasingly begun to make use of hearings as part of the preparation of legislation. It is important that the European Affairs Committee can rapidly obtain information on the Commission's hearing documents so that there is a real opportunity to exercise influence on the subsequent proposals for legislative acts. It has been agreed that the Government will send this information to the European Affairs Committee when it issues statements on issues submitted for consultation as part of the preparation of legislation.

Weekly lists

The existing scheme, under which the Government sends weekly lists of EU documents received, will be discontinued.

Better EU papers – basic memorandums

Deadlines must be complied with

The members of the European Affairs Committee need precise, concise information on the proposals that are being treated in the EU system at an early stage. Basic memorandums are important tools in this connection.

Today the Government issues basic memorandums on all draft directives and other important proposals for legislative acts and decisions made by the Commission. According to the current rules, a basic memorandum must as far as possible be issued within four weeks of the introduction of a proposal. In special circumstances a summary of outstanding statements on issues submitted for consultation can be issued at a later date, but no later than eight weeks after the introduction of a proposal by the Commission. The main

purpose of basic memorandums is to rapidly provide Members with information on new initiatives taken by the Commission.

It is decisive for the prompt Parliamentary treatment of issues that the deadline for issuing basic memorandums is complied with. This is not least necessary in connection with the sector committees' treatment of EU issues within their respective areas.

The Government's attitude must be stated

It is of decisive importance for the opportunity of Members to consider issues in a qualified, goal-oriented manner that the Government's attitude is stated in the basic memorandums. Knowledge of the Government's attitude at an early stage offers an opportunity for a more qualified debate in the sector committees and in the European Affairs Committee. It has therefore been agreed with the Government that basic memorandums will in future contain the Government's provisional, general attitude to a proposal from the Commission.

Information on the position of other Member States

Another shortcoming in relation to basic memorandums is a lack of information on the attitudes of other Member States. There is a need for the attitudes of other Member States to be included in basic memorandums when these are known. It has been agreed that the Government will add a section to basic memorandums on the general expectations regarding the attitudes of other Member States to the extent that this is possible and that the attitudes are known.

Finally, it is important that the purpose of a proposal is clearly described, that there is an account of the problems and/or questions that could arise in a Danish context, and that other relevant social consequences a proposal will have for Denmark are mentioned. Furthermore, there should be reference to general decisions in Danish European policy, such as the adoption of resolutions in the Chamber of the Folketing. The precise requirements on the form and content of Government memorandums are described in appendix 1.

New guidelines for basic memorandums

Where the deadline for forwarding basic memorandums is concerned, it has been agreed that they will be forwarded as soon as the Danish Government begins to commit itself to attitudes in the Council's working groups, but never more than four weeks after the proposal has been sent to the Council in a Danish version. Statements in connection with issues submitted for consultation from interest groups and other hearing partners will be forwarded

as soon as they become available. In future, basic memorandums will be improved by the addition of three new elements:

- 1) A section on the Government's provisional, general attitude to a Commission proposal.
- 2) A section on the general expectations regarding the attitude of other Member States to the extent that this is possible and that the attitudes are known.
- 3) A section that provides an independent, exhaustive evaluation of the degree to which the proposal complies with the principle of subsidiarity. (This element is an update of and, in the given case, an extension of the preliminary subsidiarity memorandum that the Government must forward no later than two weeks after a proposal has been sent to the Council in a Danish version).

Hearing documents

Where hearing documents from the Commission are concerned, these increasingly have the character of reports and not, as formerly, exclusively green and white papers. In future, the Government will therefore forward basic memorandums on other important hearing documents.

Special treatment of the Commission's hearing documents – including green papers, white papers, reports, etc. – has already been adopted and carried out. The procedure involves placing a hearing document on the agenda of the coming meeting of the European Affairs Committee as soon as possible after it becomes available. At the meeting, committee members discuss whether the document should be handled by the European Affairs Committee, or whether it should be sent to the relevant sector committee with a request that it should be handled there. When the answer from the sector committee becomes available, the matter is again placed on the agenda of the European Affairs Committee for the purpose of making a final decision as to whether a statement on the issues submitted for consultation should be issued, and how the matter should be treated in advance of this – e.g. sent for a hearing, a consultation with the minister responsible, a debate with questions, or other treatment.

The same deadline applies to hearing documents – and the same conditions otherwise – as to basic memorandums on proposals for legislative acts.

Better EU papers – summary memorandums

The summary memorandums that the members of the European Affairs Committee receives from the Government today, in advance of committee meetings, differ greatly and are of varying quality. A partial explanation for this is naturally the varying character of the issues that depends on the Council

composition. But widely differing practices have been developed at the various ministries.

Where summary memorandums are concerned, where a basic memorandum was formerly prepared, it should be made clear that summary memorandums must be of such a character that members need only need read these as part of their preparations for meetings. This requires summary memorandums to be updated versions of basic memorandums, which means that they must contain the same type of information as basic memorandums, simply with updated information. Where sections on the Government's attitude and the attitudes of other Member States are concerned, it is clear that these must be worded in general terms and cannot replace the oral presentations made by ministers at meetings of the European Affairs Committee, nor the negotiating proposal that may also be presented in this connection. Changes in relation to basic memorandums must be clearly marked – in bold type, for example, or with a line in the left-hand margin.

Where summary memorandums for which no basic memorandum exists are concerned, i.e. matters that do not have the character of legislation or that are not considered to be important, it has been agreed that the summary memorandum should in principle contain the same information as a basic memorandum, but only to the extent that the information is of relevance.

It should be clear from a summary memorandum – in connection with those matters that are decided by a qualified majority – whether the matter in question is expected to be voted on, whether it appears that Denmark will be in a minority, or whether Denmark can form part of an obstructing minority.

It should be emphasised that summary memorandums must be sent to the European Affairs Committee and the relevant sector committee(s) no later than eight days before meetings are held in the European Affairs Committee.

Better EU papers – committee issues

The number of committee issues has grown considerably in recent years. It is therefore necessary to improve and facilitate the accessibility of the forwarded documents and appendices. On the basis of this it has been agreed that the Government must clearly state its evaluation of the consequences of the committee proposal for the level of protection in Denmark and the Government's attitude to the proposal on the first page.

This means that the statement must indicate whether the level of protection has been improved, is unchanged, or has deteriorated in the areas of health, safety,

the protection of the environment and the working environment, and consumer protection.

In the few committee issues that are not connected with the level of protection, there must similarly be a statement on the first page to the effect that the issue is not connected with the level of protection in Denmark.

Better EU papers – accounts from Council meetings

It is important for the Folketing's treatment of EU issues that the Folketing also receives precise information on what occurs at Council meetings. Among other things, the accounts help Members to evaluate whether the minister has loyally administered a mandate given by the European Affairs Committee.

It has therefore been decided that the Folketing must receive a written report from the Government as soon as possible, and no later than five working days, after each Council meeting, which briefly and precisely describes what has happened in connection with issues of political interest and what any voting resulted in.

Furthermore, it must still be possible in connection with presentations to ask the minister in question to provide an oral orientation on the Council meeting at the first subsequent meeting of the European Affairs Committee.

Improved agendas

The European Affairs Committee's agendas will contain additional information on which responsible Danish minister the individual agenda items belong under.

Informal Council meetings

It has proved to be the case in connection with holding informal Council meetings during the latest EU Presidencies that on several occasions there have been discussions of considerable political importance. The European Affairs Committee has not been adequately informed of these discussions in all cases.

It is already the case today that the Government is obliged to inform the European Affairs Committee on important matters that are expected to be discussed at informal Council meetings before these are held. In these cases, the Government will subsequently provide a written account of the course of the informal meeting, possibly together with a press release. Such a written account of the course of an informal meeting can also be issued in cases where the matters discussed at the meeting have not been submitted to the European

Affairs Committee in advance, cf. the European Affairs Committee's report of 27 September 1996.

The formulations above will be retained unchanged. At the same time, it must be emphasised that the procedures must be complied with to the letter so that the European Affairs Committee will in future be fully informed of important political discussions at informal Council meetings.

10. Openness in the European Affairs Committee

Openness is decisive for democratic legitimacy

The question of the Folketing's treatment of EU issues has received a great deal of attention from the European Affairs Committee over the years. In this connection, the European Affairs Committee's report from 19 February 1999 took up the question of openness as a central issue. This was an important step towards a heightened inclusion of EU policy in the daily Parliamentary work of creating greater transparency and openness in the domestic EU decision-making process.

However, efforts to enhance openness and transparency in the Danish EU decision-making process cannot depend on procedures and working methods adopted once and for all. The need for openness must be assessed on an ongoing basis, not least in the light of the dynamism of European developments, which have to a great degree erased the distinction between foreign and domestic policy. In line with the fact that EU policy has to a considerable extent had consequences for domestic policy, the need for more openness regarding the Folketing's treatment of EU issues has also increased. It is absolutely decisive in this connection that improved rules regarding openness and transparency in the decision-making process are brought about in connection with a more frequent involvement of the Folketing's sector committees in the treatment of EU issues.

It is, and always has been, the wish of the European Affairs Committee to ensure the greatest possible degree of openness regarding its work. In general, a high degree of openness helps to improve the opportunities for control on the part of the public and the press, at the same time as it increases the public's general insight into EU issues. Openness is also a decisive precondition for a broader democratic debate, which will give EU issues a more prominent place on the political agenda in the social debate in Denmark.

The European Affairs Committee is also aware that the special nature of EU issues necessitates a certain degree of confidence in relation to the Government. It is not in the interests of the European Affairs Committee to

limit the Government's opportunities to achieve the best results for Denmark in connection with negotiations in the EU's Council of Ministers. In this sense, the formulation from the European Affairs Committee's first report in 1973 to the effect that the Government must consult the European Affairs Committee "... so that deference to the influence of the Folketing and to the Government's freedom to negotiate are respected", is still applicable.

However, the above-mentioned considerations present no obstacle to introducing a series of new initiatives designed to enhance openness in the Folketing's overall treatment of EU issues, cf. next section.

The sector committees' involvement will enhance openness and transparency

It is already the case today that the Folketing's sector committees have to a great extent decided to include relevant EU issues on the agendas of committee meetings. Over and above this, depending on the area of responsibility in question, the sector committees have in various ways gone into greater depth in more delimited areas. The sector committees' treatment of issues will now be further strengthened and systematised. This will be brought about by, among other things, the addition to the Folketing's standing orders as of 1 January 2005 to the effect that the committees' areas of responsibility also include EU issues within the various areas. However, it will still be up to each sector committee to independently organise work on EU issues in the most appropriate way.

The greater involvement of the sector committees will lead to a more open political debate and heightened attention to EU issues at an early stage of the decision-making process. This applies not least in connection with the sector committees' future control of compliance with the principle of subsidiarity, cf. chapter 8 and appendix 5 of this report. In accordance with the Constitutional Treaty, controlling the principle of subsidiarity is subject to a brief deadline of six weeks, which makes it necessary for the sector committees to rapidly place new EU proposals on the agenda with the aim of evaluating their compliance with the principle of subsidiarity. Any recommendations from the sector committees to the European Affairs Committee will be made available to the public. This also applies to the final recommendations, which will be sent to the EU's institutions after Parliamentary co-ordination in the European Affairs Committee.

Openness regarding preparing, holding and following up meetings

There is a need for more openness with regard to meetings of the European Affairs Committee. A distinction can be made in this connection between the time immediately preceding a meeting, the time during which the meeting is

held, and the time immediately after the meeting. Openness will be enhanced in all three phases.

The first phase comprises preparation for committee meetings, where it is already the case today that by far the majority of all relevant documents and memorandums are accessible to the public on the EU information website. The improved agendas have also made the meetings of the European Affairs Committee more transparent. However, further improvements could be still made during this phase, cf. below.

The second phase comprises holding meetings of the European Affairs Committees. A certain need for confidentiality is unavoidable in connection with presenting the Government's negotiating proposal and the discussion on Danish negotiating strategy connected with this. However, this does not alter the fact that by far the majority of the discussions at the meetings are not of a confidential nature. For this reason, every ordinary meeting of the European Affairs Committee will in future, as a point of departure, begin with an open session of up to an hour in length, cf. the model below.

It must be made clear that ministers' presentation of matters from Council meetings in the European Affairs Committee must in general be brief and of a more political character. Comprehensive technical presentations should therefore be avoided or limited as much as possible.

The third and final phase comprises an orientation of the press and public after meetings. This is also an area where improvements could be made with the aim of enhancing openness and transparency, cf. below.

The monthly meetings with members of the European Parliament, cf. chapter 5, will also help to draw more attention to and more openness around the treatment of EU issues, both in the Folketing and the European Parliament.

Annotated agendas and resumes of meetings

As part of the efforts to create more openness, the Folketing's EU Secretariat will prepare annotated agendas in advance of all meetings of the European Affairs Committee and resumes of meetings immediately after they have been held, as is the practice in Sweden, for example. Both the annotated agendas and the resumes must be brief, precise, and focus on the most central issues on the agenda.

Annotated agendas and resumes of meetings are particularly suitable for providing journalists, representatives of organisations, and other interested parties with comprehensible, topical information on the current activities of the

European Affairs Committee. The Swedish Riksdag (Parliament) has found this a successful type of information service, cf. appendix 4.

Model for open meetings of the European Affairs Committee

This introduces an open session at meetings of the European Affairs Committee, which will normally be placed as the first item on the agenda of the committee meeting. The open session of the meeting will last for a maximum of one hour. During the open session, the minister will present topical, important issues and subsequently answer questions from members of the European Affairs Committee and from the parties' spokespersons in the sector committees, who will also be able to attend these sessions. Matters taken up during the open sessions of meetings of the European Affairs Committee will be established by agreement between the Government and the European Affairs Committee.

More EU debates in the Chamber of the Folketing

Finally, more EU debates will be arranged in the Chamber of the Folketing. This will further enhance openness on EU policy. Every six months there will be a debate with questions on the current Presidency programme. Once a year there will be a debate with questions on the Commission's legislative and working programme, and the Council's multi-annual strategic programme.

11. Conclusion

With this report, a framework has been created that will enable the European Affairs Committee and the sector committees jointly to strengthen and qualify the Parliamentary control of EU issues. The new measures reflect the fact that EU policy has increasingly led to consequences for domestic policy and therefore in many areas constitutes an integral aspect of Danish politics.

Furthermore, this report takes account of the fact that the new Constitutional Treaty offers the national Parliaments new opportunities to exercise influence in connection with controlling the principle of subsidiarity.

However, the report cannot stand alone, and benefits will not come about as a matter of course. The framework must now be filled in and, in this connection, a continuation of the constructive co-operation between the Folketing's European Affairs Committee, the sector committees, the Government, and Danish MEPs is decisive.

Appendix 1:
Minimum requirements on the Government's basic memorandums and supplementary memorandums regarding EU initiatives

Subject	Requirement
Type of document	The type of document in question must be clearly stated, e.g. basic memorandum, supplementary basic memorandum, or topical memorandum.
Title of initiative	The correct title must be given plus any "nickname", e.g. "food cosmetics directive".
Parallel distribution to sector committees	The basic memorandum must contain information on whether it has also been forwarded to one or more sector committees.
Identification	The COM no. and procedure no. must be stated. There must also be information on whether this is an amended proposal. If this is the case, there must be a reference to the previous COM no.
Dates	Relevant dates must be clearly stated, including the date of the Commission's adoption/introduction of the proposal.
Legal base	Relevant treaty provisions and a statement regarding which decision-making procedure applies to the proposal, the joint decision-making process, for example. There must be a reference to the enabling directive or regulation in connection with committee matters.
Wording	Wording must be brief, precise, and easily understandable (e.g. carry out instead of implement, start up instead of initiate).
Previous presentation to the European Affairs Committee	Dates of previous presentations and a statement regarding whether these were for the purpose of orientation or if a negotiating mandate has been given.
Resume	Memorandums must always contain a brief resume of their contents and expected consequences.
Contents	The contents of a proposal – but only its most important elements. If there is a question of an amended proposal, the amendments must be clearly stated.
Current Danish law and the consequences of the proposal for this	Brief description of the current state of the law in Denmark, which amendments the proposal will lead to, and whether the expected amendments will be introduced by law or on the minister's authority.
Principles of subsidiarity and proportionality ²	The Government's independent assessment – not simply a repetition of the Commission's attitude.
Consequences of the proposal	Distributed between the following points: • State finances

	• Socio-economic • Environmental • Level of protection Legal consequences are stated in the section on current Danish law and the consequences of the proposal for this.
Hearings	Statement of who has been heard. Brief presentation of the central elements of statements on issues submitted for consultation, preferably with a schematic summary, also including statements made at meetings in the Section 2 (agriculture) and Section 5 (fishery) committees. If the statements are not to hand before the expiry of the four-week deadline the time allowed by the Government for statements to be made must be indicated, as well as the hearing parties the document has been forwarded to.
Danish attitude	<u>Memorandums must contains a statement of the Government's provisional, general attitude to a proposal from the Commission.</u> If the Folketing, including the sector committees, are aware of the Government's attitude at an early stage, this will provide a better opportunity to carry out a more qualified, goal-oriented treatment of EU issues.
Possible negotiating situation	In connection with issues decided by a qualified majority, the summary memorandum must contain a statement regarding whether the issue in question will be voted on, whether it appears that Denmark will be in a minority, or whether Denmark can form part of an obstructing minority. <u>General expectations regarding the attitudes of other Member States must be stated in the basic memorandum and the summary memorandum, if this is possible and if the attitudes are known.</u>
Danish European policy decisions	There must be a reference to relevant European policy decisions passed in the Folketing, e.g. adoption of resolutions.

Appendix 2:

Excerpt of remarks on a revision of the Folketing's standing orders

Remarks on the proposal
(to amend Section 7, Subsection 2)

By far the majority of the sector committees today treat EU issues. The sector committees receive the same documents and memorandums as does the European Affairs Committee. Several sector committees are also actively involved in the performance of the Folketing's hearings in connection with the Commission's green and white papers.

Most sector committees also have a tradition for calling in relevant ministers for consultations during the week preceding meetings of the Council of Ministers in question. In some cases the sector committees also prepare written recommendations for the European Affairs Committee. However, treating issues at this late stage makes it difficult to exercise any great influence on the final wording of a proposal from the Commission.

Furthermore, a growing number of EU proposals are already passed after the European Parliament's first reading, which also increases the urgency of an early involvement of the European Affairs Committee and the sector committees.

An early treatment of substance in the sector committees will help to ensure that the Folketing has the greatest possible influence on EU issues.

In order to increase the awareness of EU issues, it is therefore proposed that it must appear from the standing orders that the sector committees should also take up EU issues as a natural part of their areas of responsibility, and that this treatment should take place at an early stage in order to gain the greatest possible influence on the decision-making process.

Appendix 3:

Agreed administrative improvements in connection with the report

Improving agendas

- agendas must contain information on which minister will present which items, and which ministers are responsible for the individual items
- agendas must contain information on which items are A items, which items will be decided by written procedure, and which items are expected to be treated at a coming Council meeting. Statement of COM numbers (alternatively procedure numbers) in agendas and summary memorandums

Formal requirements on existing memorandums

- a fixed, defined electronic format for various types of memorandum. The European Affairs Committee will forward a template for this, which the Ministry of Foreign Affairs will send to all ministries.

Tightening up deadlines for forwarding memorandums

- concurrent forwarding of appendices to the European Affairs Committee and sector committees
- electronic transmission of appendices concurrently with forwarding printed appendices

Appendix 4: **Experience from other EU Member States**

Orientation on the Government's attitude could be carried out along the lines of Swedish and Finnish practice

Since Finland and Sweden became members of the EU, it has been a requirement that, to the extent possible, the Government provides an account in basic memorandums of which political attitude it has to the EU proposal in question.

According to the Finnish Constitution the Government must inform Parliament on relevant EU issues "without delay". This is interpreted in practice to mean that the Government's attitude to a concrete issue must be received by the Finnish Parliament no later than the date on which the Finnish Government begins to bind itself to attitudes in the Council's working group. On average, three to four weeks elapse from the time a proposal is introduced by the Commission until the Government sends Parliament a public basic memorandum containing the Government's attitude to the issue.

In Sweden, the Parliament receives a public basic memorandum within five weeks of the introduction of a proposal in which the Government states its provisional attitude to the proposal. The Swedish basic memorandums also contain a short section that refers to the attitudes of other Member States to the proposal.

English practice in connection with "basic memorandums" after no more than 12 working days

It is an established practice in the English House of Commons for the Government to send a proposal for a legislative act from the Commission to the Parliament within two working days of the Government (Ministry of Foreign Affairs) receiving it in English. The Government then sends a memorandum – what is known as an "explanatory memorandum" – to Parliament on the proposal no later than ten working days after the proposal has been forwarded. Sometimes, there is a need for more time, but in this case it must be accepted by the Parliament and the European Affairs Committee.

This means that no more than 12 working days must elapse from the time the Commission introduces a proposal until the memorandum is received by Parliament.

All proposals sent to the Parliament are accompanied by a memorandum. Sometimes the committee will receive a memorandum in connection with a preliminary proposal which has not yet been introduced if there would

otherwise not be time to treat it in the committee. Where proposals of less political importance are concerned, the committee receives a brief memorandum that does not contain all categories of information, and has not been signed by the minister.

Swedish experience with press releases

In Sweden, information officers prepare brief press releases, both before and after committee meetings, for the Riksdag's European Affairs Committee (EU-nämnden). The press releases are accessible on the Swedish EU information website and contain all electronic references to the relevant meeting appendices.

Experience with the use of press releases has largely been positive. There is great interest in the press releases among journalists, who use them as a background for the meeting activities of the EU-nämnd and in connection with current EU issues. However, it is only rarely that these press releases are quoted in the press.

Appendix 5:

The involvement of the Folketing and sector committees in controlling the principle of subsidiarity

The following is an attempt to briefly set out a possible approach to controlling the principle of subsidiarity.

This has been done in the form of a proposal regarding how **the procedure** for control could be organised under the given preconditions (I), and in the form of a proposal regarding which **concrete criteria**, it should be based on in the given case (II).

I Procedure

The table below shows how the sector committees and the European Affairs Committee control of the principle of subsidiarity could be organised if it were based on the six-week respite in the new Constitutional Treaty. It should be emphasised that this is a preliminary model for control.

It can be remarked in this connection that six weeks is not a long time in consideration of the many parties that should be involved in the procedure in the given case.

Model for treating the principle of subsidiarity in the sector committees and in the European Affairs Committee

Step	Procedure	
(1)	The Commission introduces a proposal for a legislative act.	
(2)	No later than two weeks after the proposal has been forwarded	The Government prepares and forwards a preliminary subsidiarity memorandum within two weeks to the European Affairs Committee and the relevant sector committee(s). The EU Secretariat sends the subsidiarity memorandum and the accompanying proposal for an electronic hearing on the EU information website. The European Affairs Committee considers the proposal and sends relevant suggestions for a hearing in the sector committee(s) in question. The relevant sector committee(s) are informed of any issues submitted for consultation electronically.
(3)	No later than four weeks after the introduction of the proposal	The Government has forwarded a basic memorandum to the sector committees and to the European Affairs Committee. The Government's assessment of the degree to which the principle of subsidiarity has been complied with is incorporated into the basic memorandum. The sector committees have considered the proposal and possibly prepared and forwarded a statement to the European Affairs Committee. COSAC is informed if the sector committees feel that there are problems in relation to the principle of subsidiarity.
(4)	No later than six weeks after the introduction of the proposal	The European Affairs Committee assesses the compliance of the proposal with the principle of subsidiarity on the basis of the statement from the sector committees, the Government's basic memorandum, including the subsidiarity memorandum, any statements on issues submitted for consultation electronically, and any remarks from other Parliaments and /or COSAC. A joint meeting will be convened in cases of discrepancies between the statement from the sector committees and the attitude of the European Affairs Committee. The European Affairs Committee's recommendation is signed by the chairperson of the European Affairs Committees and/or countersigned by the Speaker of the Folketing. The recommendation is sent to the Government, the Commission, the Council, and the European Parliament, as well as to the other national parliaments in the EU (COSAC).

II – Concrete criteria for scrutinising the principle of subsidiarity

The principle of subsidiarity implies that decisions must be made as close to citizens as possible. The principle of subsidiarity is defined in article I-11, 3 of the Constitutional Treaty for Europe as follows:

"Under the principle of subsidiarity in areas that do not fall within its exclusive competence the Union shall act only if and insofar as the objectives of the intended action cannot be sufficiently achieved by Member States, either at central level, or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level."

In other words the principle of subsidiarity shall apply after an evaluation of **whether** a given circumstance should be regulated at EU level.

By its nature the principle of subsidiarity is highly political and not very easy to put into **operation**. This can also be seen from the practice of the European Court of Justice, for example, as up to the present it has not set aside a legislative proposal on the grounds that it failed to respect the principle of subsidiarity³. In a sense, the same could be said of the principle of proportionality, which has not, however, prevented the European Court of Justice from establishing a comprehensive practice for interpreting this principle. In other words, the fact that a principle may be difficult to handle does not necessarily mean that it cannot have considerable practical relevance⁴.

The principle of subsidiarity as opposed to the principle of proportionality

The principle of subsidiarity is referred to in a number of different places, both in the existing Treaty⁵ and in the politically adopted Constitutional Treaty for Europe⁶, often together with the principle of proportionality.

It could perhaps be said that the two principles overlap each other to a certain extent – however, the basis of the following is that there is a question of two separate principles that are independent of each other:

The principle of subsidiarity implies that the EU will only act insofar as the intended action cannot be sufficiently achieved at national level. In other words, the principle of subsidiarity is a kind of **supplementary principle for conferring competence**. If the principle of subsidiarity has not been respected the EU has no competence to act within the area in question.

The principle of proportionality, on the other hand, is not a principle for conferring competence. The application of the principle of proportionality is only relevant when a decision **has** been made to act at EU level –it is the **principle of proportionality** that is subsequently used to establish which measures can be applied, and how radical these measures will be.

In other words, and in a slightly simplified form, it could be said that the **principle of subsidiarity** can be applied after an evaluation of **whether** there is a problem that can and should be solved at EU level, whereas the **principle of proportionality** is applicable when evaluating **how** the problem should be solved. It could also be said that the **principle of proportionality** regulates the type of tool that should be used – should the nail be hammered in with a carpenter's hammer or a sledgehammer? – while the **principle of subsidiarity** is applied in connection with an evaluation of whether there is a nail at all.

The Convention's working group 1 stated the following on the principle of subsidiarity: As *"the principle of subsidiarity is a principle whose chief concern is of a political character, and whose performance implies a broad margin of assessment for institutions, the control of compliance with this principle should mainly be political"*.

The following proposals for criteria for assessing the principle of subsidiarity are based on Protocol 30, Subsection 5 and Subsection 6 of the EEC Treaty.

Guidelines for assessing the principle of subsidiarity:

General objective: Community objectives can better be achieved at Community level than at national level	
1. Does the matter that is regulated by a proposal for a legislative act have cross-national aspects that cannot be satisfactorily regulated through action on the part of the Member States?	
2. Would a lack of action on the part of the Community or action solely on the part of the Member States be at variance with the requirements of the Treaty?	
3. Would action at Community level clearly be advantageous due to the scale or effects of this by comparison with action on the part of the Member States?	

For the sake of form it should be noted that it expressly appears from the Constitutional Treaty for Europe that the European Court of Justice has the competence to make statements regarding violations of the principle of subsidiarity. Given the sharpened focus on violations of the principle of subsidiarity it might be expected that more cases on the principle would be brought before the Court.

At some time or another it will therefore probably be possible to derive guidelines for the more detailed contents of the principle for the practice of the European Court of Justice.

¹ The threshold is lower – one quarter – regarding proposals that lie within the provisions of the Constitutional Treaty in PART III, Paragraph III, Chapter IV: The area of freedom, safety, and justice.

² This refers to the special procedure that has been adopted in connection with controlling the principle of subsidiarity.

³ EU-Karnov p. 55. The European Court is generally reluctant to scrutinise politico-economic assessments.

⁴ The principle of subsidiarity could perhaps also be said to constitute a kind of principle of presumption or rule regarding the burden of proof: Presumption runs contrary to an area being regulated at EU level – if regulation at EU level is nevertheless required there must be a convincing argument for this. In other words, the Commission has a burden of proof that it must discharge. This burden of proof can be discharged through a proper justification in the proposal for an EU legislative act..

⁵ Such as in TEU's preamble, TEU article 1, TEF article 5, and TEF Protocol 30.

⁶ Articles 1-11, and the Protocol on the application of the principles of subsidiarity and proportionality.