

# European Scrutiny Committee

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From: Michael Connarty MP

28 January 2010

Sen. Miguel Arias Cañete,  
Chair, Joint Committee for the European Union  
Congreso de los Diputados  
Floridablanca s/n  
28071 Madrid

Dear Colleague

**COSAC's Chairpersons' Meeting — 4-5 February 2010, Senate, Madrid**

**COSAC Procedural questions and miscellaneous matters — Outline of the Thirteenth Biannual Report**

**Chapter 1 — Implementation of the new powers of national parliaments after the entry into force of the Treaty of Lisbon**

I am writing to bring to your attention a matter of concern to the European Scrutiny Committee, in the hope that I can raise it briefly at the COSAC Chairpersons' Meeting on 4-5 February. It concerns inconsistencies in the drafting of the Treaty on the Functioning of the European Union (TFEU) that may limit the new powers given to national parliaments under Protocols 1 (role of national parliaments) and 2 (subsidiarity and proportionality) to the TFEU.

The problem lies in the definition of “legislative act” and “a special legislative procedure” under Article 289 TFEU. Attached to this letter is a note that sets out the Committee's concerns more fully, but I outline them in short below.

There are certain provisions in the TFEU which require the Council to adopt Regulations, Directives and Decisions with the participation of the European Parliament which the UK Government has advised the Committee do not amount to legislative acts. These provisions cover significant EU policies including (under “Freedom, Security and Justice”) administrative and judicial

cooperation, criminal procedure and emergency asylum procedures; competition and state aid; and employment, transport and economic policies.

If the UK Government's interpretation is right, EU legislation in these areas will constitute "non-legislative acts", and as such will not be subject either to the eight week period for parliamentary scrutiny under the national parliament protocol, or to the reasoned opinion mechanism under the subsidiarity protocol.

In the European Scrutiny Committee's view this interpretation is incorrect; but if it is correct, the outcome will significantly undermine the powers of national parliaments under the new Treaty of Lisbon architecture.

The UK Government has said that the final interpretation of these provisions rests with the European institutions, but has intimated that their interpretation is unlikely to differ. They have been consulted, and the Committee awaits a reply.

In the meantime, I thought it worth bringing this issue to your attention. As I mentioned, I will seek an opportunity to raise it at the Chairperson's Meeting. Meanwhile, I would be grateful if you could bring this letter and the attached note to the attention of participating committee chairs and their advisers. The European Scrutiny Committee alone is not able to change the interpretation of these provisions by the EU institutions; but a significant proportion of national parliaments may have greater impact, and you may feel this would be a useful matter on which national parliaments could effectively cooperate in the post-Lisbon framework.

A handwritten signature in black ink, reading "Michael Connolly". The signature is written in a cursive, flowing style.

**Chairman, European Scrutiny Committee  
United Kingdom, House of Commons**