



House of Commons  
European Scrutiny Committee

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# Scrutiny Reform follow-up and Legacy Report

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Thirty-eighth Report of  
Session 2014–15

*Report, together with formal minutes relating  
to the report*

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## The European Scrutiny Committee

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

### Current membership

[Sir William Cash MP](#) (Conservative, Stone) (Chair)  
[Andrew Bingham MP](#) (Conservative, High Peak)  
[Mr James Clappison MP](#) (Conservative, Hertsmere)  
[Michael Connarty MP](#) (Labour, Linlithgow and East Falkirk)  
[Geraint Davies MP](#) (Labour/Cooperative, Swansea West)  
[Julie Elliott MP](#) (Labour, Sunderland Central)  
[Stephen Gilbert MP](#) (Liberal Democrat, St Austell and Newquay)  
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[Chris Kelly MP](#) (Conservative, Dudley South)  
[Stephen Phillips MP](#) (Conservative, Sleaford and North Hykeham)  
[Jacob Rees-Mogg MP](#) (Conservative, North East Somerset)  
[Mrs Linda Riordan MP](#) (Labour/Cooperative, Halifax)  
[Henry Smith MP](#) (Conservative, Crawley)  
[Mr Mike Thornton MP](#) (Liberal Democrat, Eastleigh)

The following members were also members of the committee during the parliament:

Mr Joe Benton MP (Labour, Bootle), Jim Dobbin MP (Labour/Co-op, Heywood and Middleton), Tim Farron MP (Liberal Democrat, Westmorland and Lonsdale), Sandra Osborne MP (Labour, Ayr, Carrick and Cumnock), Penny Mordaunt MP (Conservative, Portsmouth North), Ian Swales MP (Liberal Democrat, Redcar)

### Powers

The Committee's powers are set out in House of Commons Standing Order No 143. The scrutiny reserve resolution, passed by the House, provides that Ministers should not give agreement to EU proposals which have not been cleared by the European Scrutiny Committee, or on which, when they have been recommended by the Committee for debate, the House has not yet agreed a resolution. The scrutiny reserve resolution is printed with the House's Standing Orders, which are available at [www.parliament.uk](http://www.parliament.uk).

### Publication

Committee reports are published on the Committee's website at [www.parliament.uk/escom](http://www.parliament.uk/escom) and by The Stationery Office by Order of the House.

Evidence relating to this report is published on the Committee's website at [www.parliament.uk/eu-scrutiny-inquiry-follow-up](http://www.parliament.uk/eu-scrutiny-inquiry-follow-up).

### Committee staff

The staff of the Committee are Sarah Davies (Clerk), David Griffiths (Clerk Adviser), Terry Byrne (Clerk Adviser), Leigh Gibson (Clerk Adviser), Peter Harborne (Clerk Adviser), Arnold Ridout (Legal Adviser) (Counsel for European Legislation), Joanne Dee (Assistant Legal Adviser) (Assistant Counsel for European Legislation), Joanna Welham (Second Clerk), Julie Evans (Senior Committee Assistant), Jane Bliss (Committee Assistant), Beatrice Woods (Committee Assistant), Paula Saunderson (Office Support Assistant) and Ravi Abhayaratne (Office Support Assistant).

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# 1 Background

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1. The House of Commons European Scrutiny Committee has a dual role under the House's Standing Orders: both to conduct detailed scrutiny of particular EU documents on behalf of the House, recommending the most important for debate; and also, as our Standing Orders put it, to “consider any issue arising upon any such document or group of documents, or related matters.”

2. During this Parliament we have published a series of significant thematic Reports alongside those arising from our weekly document scrutiny. These include: *the EU Bill and parliamentary sovereignty*;<sup>1</sup> *the Treaty on Stability, Co-ordination and Governance: impact on the Eurozone and the rule of law*;<sup>2</sup> and *the application of the EU Charter of Fundamental Rights in the UK: a state of confusion*.<sup>3</sup>

3. We published our Report *Reforming the European Scrutiny System in the House of Commons* on 28 November 2013.<sup>4</sup> In it we set out a comprehensive set of recommendations on: our role, the stages of scrutiny, the scrutiny reserve, EU Business on the floor of the House - including a national veto and the disapplication of EU law, the role of Departmental Select Committees, European Committees and the visibility of scrutiny and the media.

4. We stated that we would, with effect from the 2014–15 Session, publish an Annual Report on our work.<sup>5</sup> This Legacy Report is, therefore, the first in what we hope will be a series charting the progress made in reforming the House of Commons EU scrutiny system, and should be read alongside both our Scrutiny Reform Report and Annual Reports produced by our predecessor Committee in the previous Parliament.<sup>6</sup>

5. When we published the Scrutiny Reform Report 18 months ago we asked the Government “to ensure that it responds to our Report within the customary two-month deadline ... so that this matter is brought to the floor of the House no later than Easter 2014.”<sup>7</sup> This did not happen. The Government response was received on the day the House rose for the summer recess, 22 July 2014, eight months after the Report's publication.<sup>8</sup> Moreover, the tone of the Government's response to the key recommendations was overwhelmingly negative and did not sufficiently address our proposals, including those relating to the introduction of a form of national veto and the disapplication of EU law.

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1 [Tenth Report of Session 2010-12](#), HC 633-I

2 [Sixty-second Report of Session 2010-12](#), HC 1817-I

3 [Forty-third Report of Session 2013-14](#), HC 979-I

4 Twenty-fourth Report of Session 2013-14, HC-109-I (referred to in this Report as the '[Scrutiny Reform Report](#)').

5 [Scrutiny Reform Report](#), para 270

6 See, for example, the Sixth Report of the Committee, Session 2009-10, [The Work of the Committee in 2008-09](#), HC 267

7 [Scrutiny Reform Report](#), para 282

8 Foreign and Commonwealth Office, Government response to the House of Commons European Scrutiny Committee Report HC 109-I of Session 2013-14, Cm 8914 (referred to in this Report as the '[Scrutiny Reform Government Response](#)').

6. In the light of this, during the autumn of 2014 we sought to hold an oral evidence session with the Foreign Secretary, a request which was initially rejected in a letter of 8 December, in which the Foreign Secretary stated that “given his close involvement in your Committee’s inquiry and in-depth knowledge of the issues involved, the Minister for Europe would be best placed to represent the Government.” Following our strong representations the Foreign Secretary did appear before us, in January 2015, preceded by a session with the Minister for Europe, who was accompanied by the Head of UKRep, Ivan Rogers.

7. At the same time, throughout this last Session of the 2010–15 Parliament, the Government decided not to schedule most of the debates on EU documents which we had recommended. This culminated in an oral evidence session with the Leader of the House at the beginning of February 2015.

8. In this Report we first consider in more detail the background to, possible causes of and the implications of the Government’s failure to schedule EU document debates, before turning to some of the other outstanding issues covered in our Scrutiny Reform Report, in particular papers deposit,<sup>9</sup> limité documents,<sup>10</sup> and the coverage of EU scrutiny and wider EU issues by the BBC.<sup>11</sup> We also set out some outstanding scrutiny issues which our successor Committee may wish to consider, in particular scrutiny of the proposed EU-US Transatlantic Trade and Investment Partnership (TTIP).<sup>12</sup>

**9. We are disappointed to note at the outset that the Government, despite its offers of dialogue, has stalled meaningful engagement with our Scrutiny Reform Report recommendations over the last 18 months: by an inadequate response which was six months late and published on the afternoon the House rose for the summer recess, followed by the initial refusal of the Foreign Secretary to appear before us to give oral evidence, alongside EU document debates recommended but not scheduled for over a year. Whether this is coalition politics or not, the result has been that much-needed reforms lie unmade.**

**10. We note in particular that one effect of this is that both Standing Order No. 143 and the Scrutiny Reserve Resolution continue to use pre-Lisbon terminology, as they date from 1998—despite the fact that our Report included proposed new versions of both texts.**

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9 See Chapter 4

10 See Chapter 5

11 See Chapter 8

12 See Chapter 6

11. As we have noted in our evidence sessions, Reports and correspondence, the Government's policy on EU scrutiny reform is at odds with UK Ministers' claims in their speeches across the EU about the role of national parliaments—including the Prime Minister's Bloomberg speech. We can only assume that the importance attached by the Government to this fundamental principle does not extend to the scrutiny that takes place in this House.

*12. In the face of the Government's procrastination we have engaged with other Committees (particularly the Procedure and Liaison Committees) to make progress where we can. We set out in this Report what we have achieved and what more remains to be done, as a guide for our successors in the next Parliament. We hope that the new Government, whatever political party or parties it comprises, will have a more constructive and consistent approach to EU scrutiny reform and, furthermore, that that Government will recognise the need, in the UK's national interest, to comply with the principles of accountability to Parliament prescribed under the Standing Orders of the House of Commons.*

## 2 Delays in scheduling debates

13. Our Committee is empowered under the Standing Orders of the House of Commons to recommend debates on EU documents. Standing Order No. 143 states:

“(1) There shall be a select committee, to be called the European Scrutiny Committee, to examine European Union documents and

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

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

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

14. Standing Order No. 119, on European Committees, is similarly clear:

“(1) There shall be three general committees, called European Committees, to which shall stand referred for consideration on motion, unless the House otherwise orders, such European Union documents as defined in Standing Order No. 143 (European Scrutiny Committee) as may be recommended by the European Scrutiny Committee for further consideration.”

15. We recommend that the Government holds certain debates on the floor of the House if the document is of particular importance or wider interest.

16. Our Scrutiny Reform Report noted that during 2013 there had been problems with the Government’s scheduling of debates, commenting on “long delays” and noting “something of a war of attrition with HM Treasury in particular, which at one point had a series of floor debates outstanding.”<sup>13</sup>

### Activity levels between 2006–07 and 2013–14

Financial year	2006–07	2007–08	2008–09	2009–10	2010–11	2011–12	2012–13	2013–14
EU Documents scrutinised	1,045	1,044	941	915	1,013	1,138	980	1,136
Reported as legally/politically important	484	472	443	416	454	643	506	608
Debates in European Committee	42	34	32	33	40	35	38	39
Debates on the floor of the House	6	3	5	1	6	10	12	12

13 [Scrutiny Reform Report](#), para 152

17. We noted that there had been an increase in the number of debates on the floor of the House in the 2010–15 Parliament, compared with the 2005–2010 Parliament—as can be seen in the Table on the preceding page—but observed that this was due in considerable part to new debates on EU justice and home affairs opt-in motions (offered by the Government) and on Reasoned Opinions relating to subsidiarity (a new power for national Parliaments provided for under the Lisbon Treaty).<sup>14</sup> The Minister for Europe acknowledged this factor in January 2014, telling us that “I accept that Lisbon has made a difference, and the agreement the Government gave to enhanced scrutiny of Justice and Home Affairs accounts for a number of these debates.”<sup>15</sup>

18. In other words, as of November 2013 there was no cause for complacency that the Government was somehow being over-generous in its provision of time for EU document debates.

19. Given the delays we were experiencing at that time we recommended in the Scrutiny Reform Report that “the Government should undertake to make time available in the House within four sitting weeks of a Committee recommendation for a floor debate (unless the Committee has for any reason waived this requirement or has recommended a more urgent timescale).”<sup>16</sup> We made an equivalent recommendation for debates in European Committee.<sup>17</sup>

20. But instead of the situation improving after publication of our Report it got significantly worse. In the financial year 2014–15 up until the agreement of this Report (a week and a half before the dissolution of Parliament and some three weeks short of the end of the financial year):

- there were only three debates on the floor of the House, compared with 12 in the financial year 2013–14; and
- there were 20 European Committee debates, compared with 39 in 2013–14.

21. There were no floor debates at all between 9 June 2014 and 9 March 2015.

22. At the time we heard from the Leader of the House in February 2015 there were eight debates outstanding for the floor of the House, on such issues as the Free Movement of EU Citizens, the Rule of Law in EU Member States and the Ports Regulation, and nine debates outstanding for European Committee, on such subjects as the EU and the post-2015 Development Agenda and EU Merger Control. One delayed debate was on the Government’s Justice and Home Affairs opt-in decision on the European Police College, a particularly disappointing example given that the Government had specifically offered such debates to improve parliamentary scrutiny.<sup>18</sup>

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14 For background see the [Thirtieth Report of the Committee](#), HC 219-xxix, Chapter 1

15 Oral evidence taken on [7 January 2014](#), HC (2013-14) 975, Q 9

16 [Scrutiny Reform Report](#), para 159

17 [Scrutiny Reform Report](#), para 239

18 See Written Ministerial Statement, HC Deb, 20 January 2011, [col 52WS](#).

23. At the beginning of 2015 we asked a series of Ministers the reason for the apparent Government 'lockdown' of EU document debates. We set out some of the answers below and overleaf:

**Home and Justice Secretaries, 12 January 2015**

**“Q33 Jacob Rees-Mogg:** Will you raise them positively, rather than negatively? That is to say, to encourage him, rather than to discourage him?”

**Chair:** Say, “We really do want to discuss free movement of citizens, don’t we?”

**Mrs May:** Chairman, I, more than anybody probably, understand the importance of the issue of free movement and the impact that it has. There are a number of debates, obviously, that Nia Griffith referred to in relation to this. I am sure the Justice Secretary will be willing to join me in doing this, in speaking to the leader of the House, and indicating to him that this Committee is very concerned about the fact that it has not yet been able to debate a number of matters that it has requested debates on, and that time is running out.

**Q34 Jacob Rees-Mogg:** Do you, Home Secretary, think this is a good thing? Lord Chancellor, perhaps you would encourage this as well. Do you both think that it would be a good thing to have these debates?

**Mrs May:** As I have said, I am very happy to debate free movement. I absolutely understand the importance of free movement as an issue. I deal with it on a regular basis.

**Q35 Chair:** You are telling us that you would like to see that debated. Is that right?

**Jacob Rees-Mogg:** Yes, I think we have got that answer.

**Mrs May:** I think we are both indicating that we would be positive about this.”

**Minister for Europe, 14 January 2015**

**“Q8 Stephen Phillips:** Here is an issue which is of cardinal importance to the constituents of every single Member of Parliament, and a year after we recommended it for debate on the Floor of the House, that debate has not happened. What explanation can you possibly give, Minister?

**Mr Lidington:** This is ultimately a matter for the lead Department concerned. It is for the Department with responsibility for a particular area of policy, primarily, to engage in discussions with the business managers and others in government about the scheduling of debates when referred from this Committee ...

**Q9 Stephen Phillips:** You will remember that we asked you about this when you came to give evidence in January 2014 about the scheduling of debates. Just before that session took place, the staff of this Committee were told by a number of Government Departments that a new procedure, in which No. 10 had to approve the date of every debate in the European Committee, was causing delays. Is that procedure, perhaps

extending also to debates on the Floor of the House, the real explanation as to why these debates are not being scheduled in the way that Parliament is entitled to expect they should be and in accordance with the commitments that you made about the way in which the Government should be scheduling them?

**Mr Lidington:** As I said a few minutes ago, there is an internal process within Government to get collective agreement on the scheduling of debates. I do not think it would be right for me to go into detail about how that operates.”

**Foreign Secretary, 20 January 2015**

“I did read the transcript of the Minister for Europe’s fascinating session with the Committee. I can only repeat what he set out: there is a cross-Government process for the scheduling of debates. There is a lead Department and, in this case, it is the Home Office that is the lead Department. I know, however, that the Minister for Europe, with his extraordinarily sensitive antennae, picked up, during his session, that this was an issue that the Committee is exercised about, and I know that he has gone away to see what he can do about it. I believe you have called the Leader of the House and, of course, the Leader of the House will, hopefully, be able to say more about this.” (Q31)

24. Over the same period, when asked at Business Questions when these debates would take place, the Leader of the House would not give a firm commitment:

**Business Questions 8 January 2015**

**“Sir William Cash:** Yesterday, my Committee deeply deplored the fact that the Prime Minister, despite promises given, provided a mere written statement regarding the most recent European Council. That is greatly to be deplored, but another matter of grave concern to my Committee is the failure to schedule debates on the Floor of the House and to carry those through. I recently asked a similar question of the Leader of the House and he said that he would try to do something about this. We have only recommended 11 debates, including on matters as important as the free movement of persons—that has not been debated, despite the fact that we made the recommendation one whole year ago. It simply will not do. In the circumstances, will he agree to appear before my Committee to explain the situation, because, frankly, we have just about had enough?

**Mr Hague:** On the first point about a written statement, the Prime Minister has a very strong record in coming to the House to deliver statements, including after the great majority of European Councils. As my hon. Friend knows, this particular Council meeting took place after the end of Parliament’s sitting, so it would not have been possible to come straight to the House about it. I think there are some Councils and occasions when it is appropriate to give a written statement instead, but on the vast majority of occasions an oral statement is made. I understand the point my hon. Friend is making about the range of reports and requests from the European Scrutiny Committee. It has not been possible to

schedule those debates as things stand, but of course I am happy to discuss that further with him.”<sup>19</sup>

#### **Business Questions 22 January 2015**

**“Jacob Rees-Mogg:** In this year of anniversaries, may I draw to the Leader of the House’s attention the fact that today is the first anniversary of the European Scrutiny Committee’s request for a debate on European papers relating to the free movement of people? In the past couple of weeks, the Home Secretary, the Foreign Secretary and the Minister for Europe have all appeared before the Committee and told us that, although they have a particular love of parliamentary scrutiny, they cannot explain why the motion has not been brought forward. I wonder whether my right hon. Friend, as First Secretary of State and therefore senior in the hierarchy, might be able to bring this delay to an end, or are Her Majesty’s Government in fact celebrating this anniversary by a party enjoining upon itself the joys of evading parliamentary scrutiny?

**Mr Hague:** This was an anniversary that Mr Speaker unaccountably omitted to mention yesterday. My hon. Friend has an acute sense of the seniority within the Government, which I appreciate. As he well knows, the European Scrutiny Committee has submitted a number of requests for debates on the Floor of the House and in Committee, and we are working to ensure that some of those requests are dealt with. I have also agreed to come to the Committee to discuss these matters.”<sup>20</sup>

#### **Business Questions 5 February 2015**

**“Jacob Rees-Mogg:** I apologise for boring the Leader of the House on this subject, but I must bring him back to the debate requested by the European Scrutiny Committee one year and two weeks ago on the free movement of EU citizens. In answering my previous questions, my right hon. Friend has been immeasurably emollient and tactful, but nothing happens. It is a grave discourtesy to this House that the Government do not follow the proper scrutiny procedures. It is about time we had this debate, and it is a considerable disappointment that it was not in his announcement.

**Mr Hague:** My hon. Friend is never boring. [Hon. Members: “Oh yes he is!”] Well, only occasionally then, in the view of the House. In my view, he is never boring. I always try to be emollient and tactful. Indeed, I am going to the European Scrutiny Committee to discuss some of these things next week. I certainly intend that some of the debates that the European Scrutiny Committee is waiting for will take place on the Floor of the House or in Committee in the coming weeks.”<sup>21</sup>

19 HC Deb, 8 January 2015, [col 397](#)

20 HC Deb, 22 January 2015, [col 399](#)

21 HC Deb, 5 February 2015, [col 424](#)

25. We took the view that these unprecedented circumstances required the Leader of the House to appear before us, which he did on 11 February, and acknowledged:

“Certainly, there has been a difficulty in this Session, and as you have gathered from the Minister for Europe and the Foreign Secretary, there has not been collective agreement in the Government to proceed with debates that the Committee has recommended ... I can tell the Committee now that I have also secured agreement to break the logjam, as it were, and bring to the Floor of the House some of the recommended debates, as well as to deal with more of them in Committee, and that will happen over the short remainder of the Session. Some of those will be able to be considered.”<sup>22</sup>

26. In the event, only two further debates have been scheduled on the floor of the House<sup>23</sup> and only three in European Committee. Less than two weeks of this Parliament remain.

27. The Leader of the House made two comments in his oral evidence which we particularly contest. The first was that, he said, there was a “background” that when debates took place “they have not always been that well subscribed”;<sup>24</sup> the second was that there was not concern about the situation from other Members of the House: “there has been no [request] from outside this Committee at all, from the rest of the House, for these debates to be scheduled. The opposition has not asked for that. Other Members have not asked at Business questions. Other Members do not ask me in the Lobby or the Tea Room.”<sup>25</sup>

28. On the Leader’s first point, we note that if the Government chooses to schedule debates we have recommended only after several months, six months, or even over a year, by which time the proposal itself may well have been passed at EU level, it is not surprising that Members may not attend the debate. By devaluing the debate process the Government ensures that there are fewer reasons for Members to attend.

29. We also contest the Leader’s comment that other Members are not concerned about this. We note that, contrary to the Leader’s assertion, these delays have been raised at Business Questions by a Member not on the European Scrutiny Committee.<sup>26</sup> They are also a matter of concern to the Procedure Committee, which engaged with the Government on a more moderate set of proposals relating to EU scrutiny reform at the beginning of 2015, but was similarly rebuffed. Its frustration is clear from the letter sent to us, which we set out in full below:

“Following our meeting with you in December 2014 the Committee has been considering how best to proceed with changes to the House’s European scrutiny procedures. In January we held a discussion in private with the

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22 Oral evidence taken on 11 February 2015, HC 1061, Q 1

23 On the Commission Work Programme 2015, Monday 9 March 2015, HC Deb cols [76-99](#) and on Relations between the Commission and national parliaments and subsidiarity and proportionality, Tuesday 10 March 2015, HC Deb cols [231-251](#)

24 Oral evidence taken on 11 February 2015, HC 1061, Q 18

25 Oral evidence taken on 11 February 2015, HC 1061, Q 19

26 On 30 October 2014 by David Nuttall MP, HC Deb, [col 418](#)

Leader of the House to try to make progress on the matters we had discussed in December.

“As you will have seen from the copy of my letter of 11 February to the Leader of the House our proposals for change did not find favour with the Government. The Government is not supportive of the suggestion that there be six slots each Session on the floor of the House where the European Scrutiny Committee could recommend debates on an “expanded take-note” motion. As we pointed out to the Leader of the House this would remove a degree of pressure on the Government for finding time for such debates on the floor of the House and may even decrease the number of slots that were available to your Committee. However, the Leader of the House explained that a fixed number of debates each Session was not attractive to the Government and suggested that it might in fact place a burden on your Committee to fill the allotted time.

“The Government is also not supportive of the proposal that a proportion of Foreign and Commonwealth Office oral questions should be reserved for European matters. We explained that this would have been a sensible way to allow all Members of the House to hold Ministers to account and to scrutinise Government decisions on such matters. The Leader drew on his time as Foreign Secretary, noting that FCO questions were always very oversubscribed but that there was not great demand for questioning on European matters.

“The Committee has asked me to express its support in principle for improvements to the European scrutiny procedures, specifically the timetabling of European business in Committee and on the floor of the House. We too have experienced difficulty with getting the Government to timetable our Reports for debate on the floor of the House in a timely fashion. It will be necessary to develop a means of ensuring timely debate which attracts widespread support.

“The Committee and I are very disappointed at the lack of support from the Government, especially as this latest set of proposals represents a considerable compromise on the recommendations made by your Committee in its Report. We would expect our successor Committee in the new Parliament to wish to continue to work with your successor Committee to seek changes which can command broad support.”

*30. The Government's collective failure to schedule so many debates on EU documents over the past year is deplorable, and is a discourtesy to this Committee and to all Members of the House. We have not yet received an adequate explanation, and we doubt one will be forthcoming. Such a scenario must never be allowed to happen again. At the very least we expect a new Government to follow previous practice and ensure that all the outstanding debates are scheduled within a month of the debate recommendation being confirmed by the new Committee.*

*31. We welcome the letter from the Procedure Committee which shares our disappointment at the Government's approach. We look to our successor Committee to engage with the new Procedure Committee in the next Parliament to pursue reform.*

### 3 Select Committees and EU Reporters

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32. The Scrutiny Reform Report noted the importance of formal and informal liaison between our Committee and the House's Departmental Select Committees.<sup>27</sup> Since it was published we have taken a series of steps to develop this, particularly to enable better sharing of information. One area of particularly successful joint working was our liaison with the Home Affairs and Justice Committees on the scrutiny of the UK Government's 2014 block opt-out decision. The Committees published a series of Reports, both jointly and separately, and while there was widespread dissatisfaction with the UK Government's approach to scrutiny this was at least clearly highlighted by a common tone of criticism from across the House.<sup>28</sup>

33. Turning to the mechanics of scrutiny, the Scrutiny Reform Report recommended a new "requirement to appoint a European Reporter on each Departmental Select Committee".<sup>29</sup> We saw this as an important way of ensuring that EU scrutiny issues made their way onto all Committee agendas in the face of the many other demands on Select Committee time. The Liaison Committee<sup>30</sup> agreed that, while it recognised the potential advantages of an EU Reporter system, the decision of whether or not to appoint EU Reporters should lie with individual Select Committees.

34. Following these discussions in the Liaison Committee two Select Committees (the Justice Committee and the Business, Innovation and Skills Committee) appointed EU Reporters. The BIS Committee appointed two co-Reporters, Brian Binley and Paul Blomfield; the Justice Committee appointed a single Reporter, Elfyn Llwyd.

35. We are grateful to these Committees, the Members and the Committee staff involved for effectively trialling the EU Reporter system. The feedback received has been generally positive, and we are aware that in both Committees the work of the EU Reporters has led to the provision of more specific briefing on particular issues, discussions in Committee and, in the case of the Business, Innovation and Skills Committee, a new inquiry.

***36. The feedback we have received about the EU Reporter initiative has been generally positive. While we note that the Liaison Committee decided that Select Committees should have discretion over whether or not to appoint EU Reporters we would like to see as many Committees as possible in the new Parliament choose to do so. We recommend that all Departmental Select Committees (and cross-cutting Committees such as the Environmental Audit Committee) in the new Parliament specifically consider the appointment of an EU Reporter at their first meeting.***

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27 [Scrutiny Reform Report](#), Chapter 6

28 Our seventeenth Report of Session 2014-15, [The UK's block opt-out decision: summary and update Report](#), HC 762, sets out the history of this scrutiny.

29 [Scrutiny Reform Report](#), para 216

30 The Commons Committee of Select Committee Chairs

## 4 Papers deposit

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37. Our Scrutiny Reform Report made the point that our existing Standing Orders, and the associated Scrutiny Reserve Resolution are now out of date, originating from 1998 - well before the agreement of the Lisbon Treaty.<sup>31</sup> The Government rejected our proposed revisions and its subsequent correspondence has instead concentrated on the Government's desire to "streamline" the existing system of formal deposit of documents before Parliament. The effect of this would be to remove various categories of EU document from the requirement to deposit and therefore for the Government to prepare an Explanatory Memorandum.

38. There was liaison at official level in autumn and winter 2014–15 between our Committee, the House of Lords EU Committee and the FCO, in which the FCO provided more detail where its original proposals were ambiguous, following which officials of both Houses reported back to their respective Committees on the implications of this proposed "streamlining".

**39. We do not accept most of the Government's proposals for future non-deposit. At this stage of the Parliament, however, we consider that the best approach is to publish our recommendations for consideration by our successors.**

*40. We set out in the Annex to this Report our response to the Government's proposals on "streamlining" which documents are formally deposited in Parliament. While we accept some of its proposals, the cumulative effect of the others would considerably reduce the number of documents formally scrutinised by Parliament, which we think would be a retrograde step. We trust that once the debates issue is resolved our successor Committee will engage with the Government to resolve the future scope of document deposit, and the associated updates of the Scrutiny Reserve Resolution (including an opt-in version of the Scrutiny Reserve Resolution). We note that deposit is a bicameral process, so any such changes will also need to be agreed by the House of Lords EU Committee.*

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31 [Scrutiny Reform Report](#), para 8

## 5 Limité documents

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41. An associated issue arising out of the Scrutiny Reform Report has been the provision of limité papers for the Committee. The limité classification is not uncommon for EU documents, particularly for legislative proposals during the period when they are being discussed by the European Parliament and the Council, and so access to them can inform the scrutiny process. It is not a security classification, but prohibits the further release of the document to those not entitled to receive this class of papers.

42. EU documents deposited in Parliament are automatically made public, so those bearing the limité classification cannot be made available to us in this way. However, under certain circumstances they are provided to the Committee—at the Government’s discretion—sometimes with a letter from the Minister setting out a public summary of their contents.

43. The problem is, as we pointed out in our Scrutiny Reform Report, that we rely on the Government to make us aware of limité documents; and while we are told that we can ask to see them, we may not know that they exist. We noted that EU affairs committees in some other Member States receive limité documents as a matter of course.<sup>32</sup> The Report recommended that “the Government sends both Houses a weekly list of the limité documents which have been issued”, and that “the Government alerts the Committees whenever a limité document is produced on a document which is still under scrutiny, including a short summary of the limité text.”<sup>33</sup>

44. The Government rejected what we considered to be a modest recommendation, stating that it did “not think that providing a weekly list of limité documents would serve Parliament well.”<sup>34</sup>

45. We took this forward with the Minister for Europe when he appeared before us in January 2015. He told us that “as far as a list is concerned, I think I am right in saying—officials will correct me if I am wrong—that there is a list of all such documents that is published online by the European Union.”<sup>35</sup>

46. Following the session the Minister wrote to us noting that:

“the public register of Council documents ... can be accessed via the Council’s homepage at: <http://www.consilium.europa.eu/en/documents-publications> ... . This register provides access to official documents produced by the Council or submitted to it since 1999. Where these documents have been made publicly available, they can be accessed directly through the register. Where they have not been made public, as is the case with Limité documents, only the title and reference number are given. As well as a standard search tool, the register has a ‘latest documents page’ which lists the documents produced in the last fortnight.”

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32 [Scrutiny Reform Report](#), para 87

33 [Scrutiny Reform Report](#), para 91

34 [Scrutiny Reform Government Response](#), p 7

35 Oral evidence taken on 14 January 2015, HC 918, Q 40

47. While the public register of Council documents includes limité documents—with their name, title and a reference number, the search function does not permit the user to sort or filter the list by document type (e.g. public or limité). Therefore it is only possible to see all recent Council documents organised by date, which the user would have to then scroll through in its entirety to pick out the limité ones. To give an idea of the practicalities, on Monday 2 February 2015, 78 documents were added to the register, of which 34 were limité.

48. The Committee is asking the Government for clearer and more complete information on available limité documents. Directing Committee Members towards a public website to look at a long, generic document list is not a satisfactory solution. In contrast, the UK Government has access to the Extranet database (the Council’s internal documents database), as do all other Member State Governments. Using Extranet it is possible to use the search function so that the results list only displays limité documents, making it relatively simple for the Government to find out exactly which limité documents have been published recently.

49. At the same oral evidence session, the Minister undertook to “write shortly with the draft guidance for all Government Departments to follow in terms of sharing limité documents with the Committee.” Despite this undertaking being made on 14 January, the draft guidance was not received until 5 March. Despite this delay, we are grateful for sight of the guidance which we publish as an Appendix to this Report. We welcome the emphasis placed by the Government on Departments pressing for the removal of the limité classification on particular documents. We make the following observations:

- The guidance does fully not reflect the practice—which is more frequent than the provision of an unnumbered EM—of Ministers updating the Committee by a letter which reports, in a publicly disclosable form, the relevant contents of the limité document.
- The tone of the following paragraph does not, in our view, give due weight to the Committee’s right to request limité documents: “The fact that the Committees are aware of a given document and asked for it to be shared with them indicates that they believe it to be of interest and/or relevant to their scrutiny of other documents. It is advisable to find out why the Committee believe the limité document is of value, and then to consider the document against these ‘share’ and ‘what not to share’ guidelines.”
- With regard to the paragraph that refers to the likely non-deposit of “revised versions of documents that have already been deposited for scrutiny, but have been subject to only minor amendments. For example, minor changes to wording. This risks overburdening the Committees and their Clerks with documents that would not help them in their work,” we take the view that we would expect to be consulted about this category, and that it is for the Committee to decide what changes are “minor” and whether this risks “overburdening” Members and the secretariat.

*50. The draft guidance issued by the Government on making limité documents available to the Committee places a welcome emphasis on the need for the Government to press at EU level for the removal of the limité classification on particular documents. We ask the Government to reflect on our other observations on the guidance and bring back an improved text to our successor Committee.*

*51. We continue to take the view that the Government should be making access by Parliament to limité documents more straightforward, and the first step is for Parliament to know which limité documents have been issued. We stress that the Government would retain its discretion over whether or not to release them to us.*

*52. Despite the modest nature of our request the Government's replies have been both evasive and frustrating. We recommend that our successor Committee demands the simple weekly list this Government has seemingly found it impossible to provide.*

## 6 TTIP scrutiny

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53. The EU-US Transatlantic Trade and Investment Partnership (better known as TTIP) has been the subject of considerable interest in Parliament and among the wider public and is likely to be the subject of scrutiny by our successor Committee.

54. We held two oral evidence sessions with the responsible Minister, Lord Livingston, in June 2014<sup>36</sup> and February 2015.<sup>37</sup> Given the potential scale of the agreement and its impact on many areas of Government policy we have been pleased to note the engagement of other Select Committees in TTIP scrutiny—notably the Business, Innovation and Skills Committee, the Environmental Audit Committee<sup>38</sup> and the Health Committee.

55. One outstanding issue arising from TTIP is the scrutiny process from now until the conclusion of the agreement, and potentially beyond that during the ratification of any Agreement by individual Member States.

56. Much criticism of the TTIP process in 2014 centred on the lack of transparency and poor availability of information, with—for example—the negotiating mandate only being made publicly available in October 2014, after a leaked version being available online for over a year. The new Commission has taken a series of steps to address this but its efforts regarding parliamentary scrutiny have, so far, centred on MEPs not national parliamentarians.

57. Lord Livingston told us in February that he was seeking to ensure that the increased access to documents recently granted to MEPs was extended to MPs. He added that “we would like to see further documents made available to the Chair of the Scrutiny Committee”<sup>39</sup> and proposed discussions “to increase the ability of this Committee to have access raised to a level of things similar to those that will go to the top officials and so on.”

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58. We asked the Minister to set this out in more detail in correspondence, given that the essence of the scrutiny process is that it is based on public documents, and also to ensure that any special arrangements take account of the involvement of other Select Committees. We received the Minister’s reply as we finalised our Report, which stated:

“The new EU trade commissioner Cecilia Malmström has, with UK support, committed to greater transparency and has now published the negotiating mandate, a number of position papers with accompanying explanatory material, and EU textual proposals in nine of expected twenty-four chapters of the agreement. This material is available for

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36 Oral evidence taken on [11 June 2014](#), HC 292

37 Oral evidence taken on [26 February 2015](#), HC 1084

38 Ninth Report of the Committee, *Environmental risks of the Trans-Atlantic Trade and Investment Partnership*, HC 857

39 Oral evidence taken on [26 February 2015](#), HC 1084, Q 52

40 Oral evidence taken on [26 February 2015](#), HC 1084, Q 52

everyone to consider at: <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1230>. The Commission plans to make public further material as negotiations progress.

“Alongside this extensive public material, the Commission is now making additional restricted material available to MEPs, such as draft textual proposals. We would like to see equivalent access extended for UK parliamentarians and will explore the scope and methods by which this information can be shared while still preserving the confidentiality of sensitive documents.

“Further steps we are taking to improve transparency with the public are:

- the creation of a new Ministerial Advisory Board on Trade. This Board will include a full range of interested parties—representatives of business, trades unions, civil society groups and consumers.
- publication of a series of UK explanatory notes on key aspects of the negotiations and ongoing publication of information about progress in the negotiations.”

59. Following the session the Minister also provided us with additional updates on the eighth negotiating round, TTIP and CETA Ratification and UK Relationship with the EU, ISDS and Increased Transparency, which we have published on our website.

60. We discussed with Lord Livingston what information would be made available during the weeks (or months) in the new Parliament before a new Scrutiny Committee meets. He replied that the Government “will continue to write as if the Committee exists, so that there is not a gap in documentation—the documents continue to come to the Committee, and they have it during that period.”<sup>41</sup> We stressed to the Minister that there is no mechanism to publish incoming documents within this period, so there would be a need for the Government to make proper alternative arrangements to inform all Members of the House.

**61. We recommend that our successor Committee hold a session with the relevant Minister early in the new Parliament to take forward our scrutiny of TTIP. We agree that MPs and Peers should have equivalent access to documents as MEPs (as should Parliamentarians of other EU Member States) and urge the Government to secure this important commitment.**

**62. We ask the Government to inform all Members of the House about the progress of negotiations during the period before Select Committees are appointed, when there is no mechanism for our Committee secretariat to publish incoming correspondence.**

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41 Oral evidence taken on [26 February 2015](#), HC 1084, Q 55

## 7 Stakeholder survey

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63. In the final stages of the Parliament we conducted a survey of our stakeholders. The pace and scale of our work (scrutinising over 1,000 documents a year) means that we only rarely conduct full-scale inquiries into particular measures, but we nonetheless welcome submissions and regularly refer to them in our Reports. A particular example in the 2014–15 Session was our work on the Ports Regulation,<sup>42</sup> which included liaison with both the UK Major Ports Group and the trade union Unite.

64. Twenty-five organisations responded to the survey, including several umbrella groups representing a number of their members. The results revealed a considerable degree of interest in the scrutiny process and we received some positive feedback about the work we had done.

65. We posed the question “If you have submitted comments, what response did you receive, and were you content with the outcome?” The majority painted a positive picture:

- “A supportive and informed response”;
- “The comments were listened to and we were content with the outcome”;
- “staff are always very helpful”;
- “The Committee response was detailed ... The Committee’s engagement with Government Ministers was extremely helpful”;
- “Helpful response, good understanding of the issues. Our concerns were raised effectively with the Minister”;
- “The Committee ... used the information we provided to hold the Government to account very effectively”; and
- “We, and related professions, were called to give evidence to the Committee. We were very satisfied with the outcome.”

66. Others were not wholly positive:

- “confirmation of receipt”;
- “No response that I can recall”;
- “We were ... satisfied that the Committee sought assurances on the areas of concern from the Minister responsible before allowing the dossier to proceed. However it was not clear what level of assurance the Committee was seeking ... the decision to give the dossier a green light would appear to be entirely subjective”.

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42 See the Committee’s [Fourteenth Report of Session 2014-15](#), HC 219-xiii

*67. Our Scrutiny Reform Report concluded that we would in future consider in more detail the “impacts” of EU legislation. Stakeholder engagement is clearly an important part of that process. We have some excellent examples over this Parliament of effective liaison with outside bodies, but there is always more that could be done to raise the profile of the Committee, particularly using our website and social media, and we look to our successor Committee in the new Parliament to take that forward. We recommend that our successor Committee repeat this survey exercise at regular intervals in the new Parliament to get feedback on the scrutiny system.*

## 8 Scrutiny Reform Report and the BBC

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68. As part of the Scrutiny Reform Report, which we published in November 2013, we considered the issue of the “visibility of scrutiny in the media.” Regarding the role of the media and the BBC’s coverage of both the Committee’s work and of the EU in general, as well as the BBC Charter, its Framework Agreement with the Secretary of State and the general law we concluded that: “given the possibility of some form of EU referendum—either on membership or following treaty change—over the next ten years, the media, particularly (given its role) the BBC, needs to ask itself difficult questions about how it deals with EU issues. We are not convinced that the Prebble Review and the responses from the BBC Executive and BBC Trust have sufficiently asked, let alone answered, these questions.”<sup>43</sup>

69. We followed up our Report by a long exchange of correspondence to secure the appearance of Lord Patten, who initially refused our invitation to appear on three occasions, and then (following Lord Patten’s resignation) the new Chairman of the BBC Trust, Rona Fairhead, who initially wrote to the Committee Chairman stating that there were “people who were better equipped” to give oral evidence.<sup>44</sup>

70. She appeared before the Committee on 14 January 2015 and Lord Hall, the Director-General of the BBC, appeared on 11 March 2015. All the relevant correspondence has been published on our website. We draw attention to the letter to Lord Hall of 14 January 2015 in which we asked him to treat that letter as he would a formal summons, and note that we were strongly supported by the Liaison Committee, the Committee of all the Chairs of House of Commons Select Committees.

71. We questioned both sets of witnesses on the issues raised by our Scrutiny Reform Report relating to the BBC’s coverage of our Committee and of wider EU issues. We are pleased to have had the opportunity to have public exchanges with the BBC and to place these on the record. The review of the BBC’s EU coverage conducted by a panel led by Lord Wilson of Dinton in 2005 was very critical of the BBC,<sup>45</sup> and we are not convinced either that the action taken since then has been sufficient, or that the review which in part followed up some of Lord Wilson’s recommendations (known as the Prebble Review<sup>46</sup>) was sufficiently thorough.

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43 [Scrutiny Reform Report](#), para 259

44 Oral evidence taken on 14 January 2015, HC 918, Q 18

45 [BBC Coverage of the European Union](#), Independent Panel Report, 2005

46 BBC, [A BBC Trust Review of the breadth of opinion reflected in the BBC’s output](#), July 2013

## The oral evidence session with the BBC Trust

72. During the oral evidence session with Rona Fairhead and Richard Ayre, with respect to the role of the BBC Trust we covered the implications of Article 6 of the Charter and the degree of independence and impartiality of the BBC.

73. Rona Fairhead stated that “the Trust is essentially a regulator, and the final sovereign body”,<sup>47</sup> and that the Trust is “the guardian of the licence fee payer.”<sup>48</sup> She stated that it is the Trust’s obligation “to ensure that the level of impartial, independent journalism is appropriate” and that the Trust is “the final court of appeal for complaints”.<sup>49</sup> She stressed the Trust’s important concern that there is “a breadth of view”.<sup>50</sup> She agreed when asked if “the independence of the BBC in areas such as editorial standards and guidelines is circumscribed by and subject to the Charter and Framework Agreement, and therefore to the obligations to achieve its primary purpose of serving the public interest and follow its main objective of promoting its public purposes, which include sustaining citizenship and civil society, and promoting education and learning”.<sup>51</sup>

74. In the view of Richard Ayre, a BBC Trustee and Chair of the Editorial Standards Committee of the Trust, “the executive of the BBC, under the Charter, has absolute editorial discretion, provided that they operate within the editorial framework set by the Trust”.<sup>52</sup> He went on to say “there is absolute editorial independence, guaranteed by the Charter, for the executive”.<sup>53</sup> As respects regulatory standards, Mr Ayre stated that “it is one of the principal functions of the Trust”.<sup>54</sup>

75. Within a short space of time, on 4 March, Rona Fairhead, speaking after the publication of the Culture, Media and Sport Committee Report on the Future of the BBC, stated that “the cleanest form of separation would be to transfer the Trust’s responsibilities for regulation and accountability to an external regulator” which “would have responsibility for all matters of regulation”.<sup>55</sup> This proposal for such profound reform, which she indicated was the “front-runner”, would have substantial implications for the questions of governance and impartiality in general.

76. Richard Ayre confirmed that there were proposals for reviewing the BBC editorial guidelines after the General Election and in the context of the review of the Charter.<sup>56</sup> On breadth of opinion, Rona Fairhead stated that “impartiality is at the core of the

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47 Oral evidence taken on 14 January 2015, HC 918, Q 3

48 Oral evidence taken on 14 January 2015, HC 918, Q 3

49 Oral evidence taken on 14 January 2015, HC 918, Q 3

50 Oral evidence taken on 14 January 2015, HC 918, Q 4

51 Oral evidence taken on 14 January 2015, HC 918, Q 5

52 Oral evidence taken on 14 January 2015, HC 918, Q 7

53 Oral evidence taken on 14 January 2015, HC 918, Q 7

54 Oral evidence taken on 14 January 2015, HC 918, Q 8

55 Speech to the Oxford Media Convention, [BBC Governance – the case for intelligent reform](#)

56 Oral evidence taken on 14 January 2015, HC 918, Q 36

organisation”.<sup>57</sup> Richard Ayre strongly defended the Prebble review.<sup>58</sup> There was then the following exchange:

“**Q55 Chair:** With respect, it is not just about the impartiality of the breadth of opinion. It is about the question of the subject matter of the European Union and the extent to which there is a proper degree of impartiality in the people who are presenting the programmes in the manner in which the people are chosen on the balance of opinion in individual programmes. That is the key question, surely. It is not just a question of breadth of opinion or voices; it is a question of impartiality with respect to the subject matter. That is the key issue.

“**Rona Fairhead:** You are quite right, but this report itself was about impartiality, because the definition of impartiality that was being looked at was—was there a sufficient breadth of range of opinion? That had come up in the Bridcut report, to which Richard referred. Clearly, it is about balance and due impartiality for the very important subjects.”

### The oral evidence session with Lord Hall and James Harding

77. During our oral evidence session with Lord Hall and James Harding, important issues were raised regarding Lord Hall’s role as Editor-in-Chief and Director General, and in relation to the question of independence in relation to the BBC Charter, the Framework Agreement and the general law.

78. We remain concerned following that session that Lord Hall did not seem, in our view, to appreciate fully the limitations on the BBC editorial independence imposed by Article 6 of the Charter, the Framework Agreement and the general law. We were glad to note that Lord Hall stated that on “impartiality, I think that is just fundamental. I really do.”<sup>59</sup> However, we were not satisfied with his responses as to the balance to be struck in delivering that impartiality in respect of different views on the EU issue, and we challenged him that few voices were heard from those with strong views criticising the EU among backbenchers, including from the Labour Party.<sup>60</sup>

79. On the question of impartiality we had the following exchange with Lord Hall:

“**Q12 Chair:** But you agree that there are two sides to this equation, in terms of whether or not you want more integration. You cannot really answer my question by referring back to this diffusion of voices. There is a question. Quite simply, there are people who believe that there should be more integration and there are people who believe there should not. On that issue, what I am asking you is very simple—that you make sure that there is a

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57 Oral evidence taken on 14 January 2015, HC 918, Q 39

58 Oral evidence taken on 14 January 2015, HC 918, Q 47

59 Oral evidence taken on 11 March 2015, HC 918, Q 8

60 Oral evidence taken on 11 March 2015, HC 918, Q 63

complete and equal balance between those two views as and when they come out of the radio or the television.

**Lord Hall:** Our job is to ensure that we are impartial and reflect all sides of an argument.

**Chair:** So you do agree with me.

**Lord Hall:** Yes, I do.

**Chair:** Thank you very much.

**Lord Hall:** But I'm saying it's a bit more complicated than that, because there are those who might say, "Well, on this particular issue, I might be saying 'less integration'. On that issue, I might be saying 'more integration'." We have to make sure we are reflecting those views, too, across all our output."

80. Overall, following our questioning, we were not satisfied that Lord Hall was sufficiently clear about the structure of the oversight he exercised over those who worked under him as Editor-in-Chief. We were also concerned that neither he nor James Harding sufficiently appreciated that the issue of the EU is not only a party-political, but a cross-party issue for backbenchers.

81. We note that James Harding expressed the following concerns:

"If you detect a reluctance among people like me to come to parliamentary Committees to discuss editorial judgments, you are right. There is a real reluctance to do so, and I know that you understand that. I appreciate, Sir William, the points that you made at the outset about the responsibility of the BBC to inform, but the reason why we prize that independence so dearly is that if the public are going to trust the BBC to be independent and to cover politicians impartially, it has got to be clear that journalists, editors and the people who run a news organisation as important as the BBC are not asked by politicians to come and account for what they do and, in effect, do the bidding of those politicians."<sup>61</sup>

This, in turn, concerned us, because such editorial judgements are constrained by the limitations of the Charter, the Framework Agreement and the general law.

82. We are gravely concerned that despite our clear message in the session that we would have expected that the BBC would give full coverage to the proceedings attended by Lord Hall and James Harding, apart from a broadcast on BBC Parliament after the session and a short summary of the proceedings on the BBC website, there was to our knowledge no news commentary, analysis or interviews on any of the mainstream programmes of the BBC of the proceedings. We note in this context our continued concerns that there was similarly little coverage of our seminal report on European Scrutiny Reform of November 2013. We regard these failures as inexplicable, and in our view they could be construed as a breach of the BBC's duties under its Charter and Framework Agreement, and particularly

in respect of its public purposes. Furthermore, we find them difficult to understand given Lord Hall's repeated statements of how seriously he took the issue of impartiality, and the steps he referred to in his oral evidence of how attention is paid to the "flow of information" and a "common response",<sup>62</sup> with many (including daily) meetings between editors and senior managers.

83. James Harding argued that there is a huge amount of work that goes into impartiality, "into understanding where the arguments are, where the range of opinions are, making sure that you access those points of view", and added that there was a meeting each morning at 9:00am at which he chaired a news conference, as well as a weekly meeting.<sup>63</sup> Our experience above demonstrates, in our view, potential weaknesses in this system. We did note, however, that when pressed on these points, James Harding replied that "I've got the message".<sup>64</sup>

84. We note that four particular aims were set out by the BBC in its Response to the Wilson Report:<sup>65</sup>

"to offer our audiences across all platforms clear, accurate and accessible information about the way EU institutions work and their impact on UK laws and life;

"to ensure impartiality by reflecting the widest possible range of voices and viewpoints about EU issues; to test those viewpoints using evidence-based argument or informed opinion;

"to demonstrate the relationships between the different member states and the European Union.

"to reveal and explain to our audiences areas of contentious fact and disputed principle."

85. Given the fact that the Wilson Report raised such serious criticisms of the BBC's treatment of EU issues, we remain profoundly unconvinced that these aims have been fulfilled.

86. We are not yet convinced that the BBC's training adequately equips BBC editors, correspondents, producers and interviewers to devise the questions and coverage to reflect all sides of the EU equation, in accordance with the BBC Charter and its obligations. We were told by Lord Hall that the organisation is "very reflective. It thinks very hard about what it is doing ... The culture, I think, is one of questioning", and on the question of the complexity of the issues in question, we were told that "the challenge is to say 'this is complex; it matters. Now we, as journalists, must try to get to grips with it'".<sup>66</sup> In our view a good deal more analysis is required.

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62 Oral evidence taken on 11 March 2015, HC 918, Q 34

63 Oral evidence taken on 11 March 2015, HC 918, Q 40

64 Oral evidence taken on 11 March 2015, HC 918, Q 48

65 [The European Union – Perceptions of the BBC's Monitoring: Management's Response](#), p 2

66 Oral evidence taken on 11 March 2015, HC 918, Q 60

87. When asked:

“The question that those surveys use that is relevant to our work is, ‘Does the BBC help me understand politics in Europe?’ We are back to the terminology of ‘Europe’, as opposed to ‘the European Union’. Do you think it is a bit woolly and vague, and that it is a question that is just thrown out? Do you think the question should be more direct? Should it be, ‘Does the BBC help you understand how the European Union operates and how it is relevant to the citizens of this country, in terms of the way they are governed?’ Do you think it should be a more direct, specific question, to get a better answer that you can work with?”

Lord Hall replied “I am happy to take advice on how we can get better in touch with the feelings of the licence fee payers on all these key issues.”<sup>67</sup>

88. When asked by the Chairman:

“I really regard that as a serious challenge to most of the evidence given today, because actually anyone who knew enough, knew that this was being omitted and had a mindset of the kind described in Wilson could not possibly ignore the [Scrutiny Reform] report. That is not just because we made it, but because we have expertise in this Committee based on our responsibilities and duties to the House of Commons, and it was unanimous. If the BBC chooses to ignore that, you have to accept that that was a serious mistake”

Lord Hall replied:

“I don’t agree. I am not going to get drawn into news judgments on the day your report came out—I don’t know the day it came out and I don’t know what the pressures were on the news teams from global events or indeed events in this country. I can’t and won’t say whether that was right or wrong. What I will emphasise is what I hope Mr Harding and myself have been emphasising throughout this session: we take the issues of Europe, the coverage of Europe and European institutions and the diversity of opinion on Europe extremely seriously. We think it is an important part of what our job is journalistically and editorially to the people who pay for us.”<sup>68</sup>

89. We were glad to note that towards the very end of the session Lord Hall said that both he and James Harding would “reflect on all the things raised this afternoon”.<sup>69</sup>

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67 Oral evidence taken on 11 March 2015, HC 918, Q 64

68 Oral evidence taken on 11 March 2015, HC 918, Q 66

69 Oral evidence taken on 11 March 2015, HC 918, Q 67

90. *In summary, we still remain deeply concerned about the manner in which the BBC treats EU issues. Our witnesses seemed to be more intent on defending and asserting their own opinions, mindset and interpretation of the obligations under the Charter and Framework Agreement than in whether they had in fact discharged them or whether they had the mindset to carry through their post-Wilson aims. In the interest of the licence fee payers, and the public in general, and in the context of the approaching General Election and a prospective referendum on the EU, and given the fact that the BBC themselves state that 58% of the public look to the BBC for news they trust, we believe that the BBC has a duty under its Charter, Framework Agreement and the general law, and following the Wilson report in particular, to improve substantially the manner in which it treats EU issues.*

91. *Furthermore, we conclude that in the light of the evidence we have taken over the past two years from the BBC, and given the statements made by the Chairman of the BBC Trust, Rona Fairhead, indicating that even she, as Chairman of the Trust, wishes to see reform of governance, that our criticisms of the way the BBC treats EU issues, and the approach by its leaders to the Committee, particularly the initial refusal to give oral evidence, shows that accountability to Parliament must be a key factor to be considered as part of the review of the BBC Charter in 2016, as should be strict adherence to the aims set out by the BBC in its response to the Wilson Review.*

92. We have already published the transcripts of both hearings, and we also publish a submission from the organisation Newswatch commenting on the session with the Chairman of the BBC Trust, the BBC's response to that submission (which in our view is dismissive), and the BBC's follow-up submission following the oral evidence session with Lord Hall.

93. We deeply regret the fact that Lord Hall's repeated refusals to give oral evidence delayed the session to such an extent that it has not been possible to conduct further work on these issues before the dissolution of Parliament. Our central tenet, regarding the BBC's coverage of the EU scrutiny process in the House, and EU issues more generally, is that the country's public service broadcaster must command wide confidence in its coverage of such a sensitive and complex issue. We do not believe that this has been achieved.

94. Given the possibility of a referendum on the UK's EU membership before the end of the decade, and potentially a renegotiation of the Treaties, the issue of how the media in general, and the BBC in particular, covers the EU is of paramount importance. We asked Lord Hall if, as Director-General, he would undertake to appear before our successor Committee, and he responded that "if the subject matter was one that involved the BBC in some sort of way, I or others would appear." We welcome this commitment.

## 9 Other developments

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95. Since publication of the Scrutiny Reform report we have maintained a close interest in the work of the Committee of Permanent Representatives (known as COREPER), and the associated issue of the new arrangements for Qualified Majority Voting in Council introducing new ‘voting weights’ for Member States, which came into force in November 2014. The Scrutiny Reform Report contained a critique of the opaqueness of the current EU legislative process, and we note the contrast with the way legislation is passed in the Westminster system.<sup>70</sup>

96. Our Chairman asked the Prime Minister about this particular issue during a Liaison Committee hearing in February 2015, and the Prime Minister replied that “our representative on COREPER—normally, Ivan Rogers—is riding to instructions given to him by the British Government, by British Government Ministers. If you are trying to posit that he can take decisions totally independent of the Government he works for, he cannot. He has to negotiate hard. He has sometimes to think about what compromises to make”, adding that “There are long communications such as, ‘If it goes this way, should I vote that way?’ There is an idea that there is some committee in Brussels deciding our future without reference to Ministers; that is not the case.”<sup>71</sup>

97. Over the course of this Parliament the Chairman and members of the Committee have been active participants in COSAC (the regular Conference of EU Affairs Committees). We note and welcome the increased focus by COSAC on democratic legitimacy and the role of national parliaments, and the fact that our Chairman has been a major participant and lead speaker in those COSAC debates and the discussions on these issues in COSAC more generally.

**98. *Making scrutiny more effective for the duration of the EU legislative process is a high priority for EU Affairs Committees across Member States. Our successor Committee will wish, we are sure, to take a continued and close interest in the role of COREPER, the new arrangements for QMV in Council, and their implications for the democratic legitimacy of the EU, alongside the other recommendations of the Scrutiny Reform Report.***

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70 [Scrutiny Reform Report](#), paras 72-78

71 Liaison Committee, Oral evidence taken on [24 February 2015](#), HC 1015, Qq 71-72. See also Annex B of the Minister for Europe’s letter submitted to us on 5 March, which notes that of the co-decision files completed under the Lithuanian Presidency between July and December 2013, of the 92 files, 44 were adopted as ‘A’ points and 48 as ‘B’ points (B points are subject to discussion, A points are taken without debate following agreement in COREPER).

# Conclusions and recommendations

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## Background

1. We are disappointed to note at the outset that the Government, despite its offers of dialogue, has stalled meaningful engagement with our Scrutiny Reform Report recommendations over the last 18 months: by an inadequate response which was six months late and published on the afternoon the House rose for the summer recess, followed by the initial refusal of the Foreign Secretary to appear before us to give oral evidence, alongside EU document debates recommended but not scheduled for over a year. Whether this is coalition politics or not, the result has been that much-needed reforms lie unmade. (Paragraph 9)
2. We note in particular that one effect of this is that both Standing Order No. 143 and the Scrutiny Reserve Resolution continue to use pre-Lisbon terminology, as they date from 1998—despite the fact that our Report included proposed new versions of both texts. (Paragraph 10)
3. As we have noted in our evidence sessions, Reports and correspondence, the Government’s policy on EU scrutiny reform is at odds with UK Ministers’ claims in their speeches across the EU about the role of national parliaments—including the Prime Minister’s Bloomberg speech. We can only assume that the importance attached by the Government to this fundamental principle does not extend to the scrutiny that takes place in this House. (Paragraph 11)
4. *In the face of the Government’s procrastination we have engaged with other Committees (particularly the Procedure and Liaison Committees) to make progress where we can. We set out in this Report what we have achieved and what more remains to be done, as a guide for our successors in the next Parliament. We hope that the new Government, whatever political party or parties it comprises, will have a more constructive and consistent approach to EU scrutiny reform and, furthermore, that that Government will recognise the need, in the UK’s national interest, to comply with the principles of accountability to Parliament prescribed under the Standing Orders of the House of Commons.* (Paragraph 12)

## Delays in scheduling debates

5. *The Government’s collective failure to schedule so many debates on EU documents over the past year is deplorable, and is a discourtesy to this Committee and to all Members of the House. We have not yet received an adequate explanation, and we doubt one will be forthcoming. Such a scenario must never be allowed to happen again. At the very least we expect a new Government to follow previous practice and ensure that all the outstanding debates are scheduled within a month of the debate recommendation being confirmed by the new Committee.* (Paragraph 30)

6. *We welcome the letter from the Procedure Committee which shares our disappointment at the Government's approach. We look to our successor Committee to engage with the new Procedure Committee in the next Parliament to pursue reform. (Paragraph 31)*

### Select Committees and EU Reporters

7. *The feedback we have received about the EU Reporter initiative has been generally positive. While we note that the Liaison Committee decided that Select Committees should have discretion over whether or not to appoint EU Reporters we would like to see as many Committees as possible in the new Parliament choose to do so. We recommend that all Departmental Select Committees (and cross-cutting Committees such as the Environmental Audit Committee) in the new Parliament specifically consider the appointment of an EU Reporter at their first meeting. (Paragraph 36)*

### Papers deposit

8. *We do not accept most of the Government's proposals for future non-deposit. At this stage of the Parliament, however, we consider that the best approach is to publish our recommendations for consideration by our successors. (Paragraph 39)*
9. *We set out in the Annex to this Report our response to the Government's proposals on "streamlining" which documents are formally deposited in Parliament. While we accept some of its proposals, the cumulative effect of the others would considerably reduce the number of documents formally scrutinised by Parliament, which we think would be a retrograde step. We trust that once the debates issue is resolved our successor Committee will engage with the Government to resolve the future scope of document deposit, and the associated updates of the Scrutiny Reserve Resolution (including an opt-in version of the Scrutiny Reserve Resolution). We note that deposit is a bicameral process, so any such changes will also need to be agreed by the House of Lords EU Committee. (Paragraph 40)*

### Limité documents

10. *The draft guidance issued by the Government on making limité documents available to the Committee places a welcome emphasis on the need for the Government to press at EU level for the removal of the limité classification on particular documents. We ask the Government to reflect on our other observations on the guidance and bring back an improved text to our successor Committee. (Paragraph 50)*
11. *We continue to take the view that the Government should be making access by Parliament to limité documents more straightforward, and the first step is for Parliament to know which limité documents have been issued. We stress that the Government would retain its discretion over whether or not to release them to us. (Paragraph 51)*

12. *Despite the modest nature of our request the Government's replies have been both evasive and frustrating. We recommend that our successor Committee demands the simple weekly list this Government has seemingly found it impossible to provide. (Paragraph 52)*

### TTIP scrutiny

13. *We recommend that our successor Committee hold a session with the relevant Minister early in the new Parliament to take forward our scrutiny of TTIP. We agree that MPs and Peers should have equivalent access to documents as MEPs (as should Parliamentarians of other EU Member States) and urge the Government to secure this important commitment. (Paragraph 61)*
14. *We ask the Government to inform all Members of the House about the progress of negotiations during the period before Select Committees are appointed, when there is no mechanism for our Committee secretariat to publish incoming correspondence. (Paragraph 62)*

### Stakeholder survey

15. *Our Scrutiny Reform Report concluded that we would in future consider in more detail the "impacts" of EU legislation. Stakeholder engagement is clearly an important part of that process. We have some excellent examples over this Parliament of effective liaison with outside bodies, but there is always more that could be done to raise the profile of the Committee, particularly using our website and social media, and we look to our successor Committee in the new Parliament to take that forward. We recommend that our successor Committee repeat this survey exercise at regular intervals in the new Parliament to get feedback on the scrutiny system. (Paragraph 67)*

### Scrutiny Reform Report and the BBC

16. *In summary, we still remain deeply concerned about the manner in which the BBC treats EU issues. Our witnesses seemed to be more intent on defending and asserting their own opinions, mindset and interpretation of the obligations under the Charter and Framework Agreement than in whether they had in fact discharged them or whether they had the mindset to carry through their post-Wilson aims. In the interest of the licence fee payers, and the public in general, and in the context of the approaching General Election and a prospective referendum on the EU, and given the fact that the BBC themselves state that 58% of the public look to the BBC for news they trust, we believe that the BBC has a duty under its Charter, Framework Agreement and the general law, and following the Wilson report in particular, to improve substantially the manner in which it treats EU issues. (Paragraph 90)*

17. *Furthermore, we conclude that in the light of the evidence we have taken over the past two years from the BBC, and given the statements made by the Chairman of the BBC Trust, Rona Fairhead, indicating that even she, as Chairman of the Trust, wishes to see reform of governance, that our criticisms of the way the BBC treats EU issues, and the approach by its leaders to the Committee, particularly the initial refusal to give oral evidence, shows that accountability to Parliament must be a key factor to be considered as part of the review of the BBC Charter in 2016, as should be strict adherence to the aims set out by the BBC in its response to the Wilson Review (Paragraph 91)*
18. We deeply regret the fact that Lord Hall's repeated refusals to give oral evidence delayed the session to such an extent that it has not been possible to conduct further work on these issues before the dissolution of Parliament. Our central tenet, regarding the BBC's coverage of the EU scrutiny process in the House, and EU issues more generally, is that the country's public service broadcaster must command wide confidence in its coverage of such a sensitive and complex issue. We do not believe that this has been achieved (Paragraph 93)
19. Given the possibility of a referendum on the UK's EU membership before the end of the decade, and potentially a renegotiation of the Treaties, the issue of how the media in general, and the BBC in particular, covers the EU is of paramount importance. We asked Lord Hall if, as Director-General, he would undertake to appear before our successor Committee, and he responded that "if the subject matter was one that involved the BBC in some sort of way, I or others would appear." We welcome this commitment. (Paragraph 94)

### Other developments

20. *Making scrutiny more effective for the duration of the EU legislative process is a high priority for EU Affairs Committees across Member States. Our successor Committee will wish, we are sure, to take a continued and close interest in the role of COREPER, the new arrangements for QMV in Council, and their implications for the democratic legitimacy of the EU, alongside the other recommendations of the Scrutiny Reform Report. (Paragraph 98)*

## Annex: papers deposit

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This note sets out the current Committee’s views in detail on the future of document deposit, in response to the Government’s proposals set out in the response to the Scrutiny Reform Report, to be considered in due course by the new European Scrutiny Committee in the 2015–2020 Parliament.

### Explanatory Memoranda (EMs)

Currently a short form of EM is used for one narrow and defined category of document (anti-dumping measures). The Government proposes new multiple Explanatory Memoranda (EM) templates:

- a) Full EM;
- b) “Shorter adapted EM ... for example on documents other than proposals for legal instruments”; and
- c) “Short-Form unsigned EM ... for issues that raise limited policy implications for the UK”.<sup>72</sup>

The EM is the Minister’s evidence to Parliament, and the Minister can be held directly accountable for it. Anything which dilutes this risks letting Ministers off the hook when there are scrutiny lapses. Instead of multiple forms of EM clearer guidance should be given to Departments that they should not feel obliged to make lengthy submissions under each heading if there is little to say, and also that they can say “not applicable” if this is the case.

This whole process could be made easier if the Government’s existing central [scrutiny guidance](#), which is itself long and extremely unwieldy (160 pages, including 18 Annexes), was updated and edited.

The Government proposes a Short EM for Schengen measures from which the UK is excluded.<sup>73</sup> Instead, the current template should be retained for the reasons previously set out.

### General principles

Notwithstanding the recommendations for additional non-deposit set out below, we recommend that:

- any document, of whatever type, in respect of which the Government asserts a Title V opt-in must be deposited;

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<sup>72</sup> [Scrutiny Reform Government Response](#), Annex A, p 41

<sup>73</sup> [Scrutiny Reform Government Response](#), Annex A, p 43

- if the Government identifies any legal or political significance in a non-deposit category, then that particular document should be deposited; and
- that if the measure relates in any way to Schengen measures, then it should be deposited.

### **Specific categories of document: deposit or non-deposit**

We recommend that the non-deposit of 15 categories of document as proposed by the Government (this includes some categories which are currently subject to non-deposit) should be ACCEPTED, but that the Government's proposals for 15 new non-deposit categories should be REJECTED. Further work is needed on three other categories to clarify the Government's definitions.

We also note that the Government took a number of ad hoc arrangements and presented them as a permanent pre-existing agreement to non-deposit. These are indicated in the list below, along with the recommended approach.

### **Categories of document proposed for non-deposit by the Government which we recommend should be accepted for future non-deposit**

#### *ND1 Anti-dumping proposals*

Agree to exclude from systematic deposit but the Government must alert Committee Clerks to potential sensitive measures in advance and check whether such measures should be deposited. Quarterly list to be provided to the Committees. Around 45 a year.

#### *ND2 Court of Auditors' reports on the EU Executive Agencies*

Agree non-deposit except where accounts have been qualified indicating a problem (in which case deposit). Around 45 a year.

#### *ND3 Extending or amending proposals on economic measures (tax breaks etc) for the EU local island economies*

Non-deposit for documents relating to individual non-UK Island economies acceptable unless the Government identifies something of legal or political significance, but blanket measures, such as those to clamp down on abusive tax regimes, should remain depositable.

#### *ND4 Routine amendments to customs tariff duties/tariff quotas*

As above, not to be deposited unless the Government identifies something of legal or political significance. Around 15 a year.

*ND5 Proposals on mobilisation of the European Globalisation Adjustment Fund*

Accept non-deposit except in cases where significant macro-economic issues arise, or where the measure either involves the UK or pertains to UK interests.

*ND6 EU Positions on Rules of Procedure for various Councils and Committees, including those established under Association Agreements*

Continue existing practice of non-deposit.

*ND7 Draft Council Decisions relating to decisions already taken in Association Councils or Committees*

Continue existing practice of non-deposit.

*ND8 Proposals to extend sanctions decisions (without making substantive changes) in pursuit of UN Security Council Regulations*

Agree to continue non-deposit but the Government must consult the Committees if there is any doubt about whether or not the change is “substantive”.

*ND9 VAT derogation requests relating to other Member States*

Non-deposit. Requests for derogations refused by the Commission (which are then reported to the Council) not depositable and no need to consult if a document only concerns another Member State. Otherwise, for draft Council Decisions about approvals for other Member States. consultation with Clerks if there is any doubt on their legal and political significance.

*ND10 Routine adaptations relating to Croatian accession*

Committee has previously agreed non-deposit, we recommend this practice should continue.

*ND11 Framework participation agreements for third party personnel contributions to EU crisis management operations.*

These are generally straightforward and do not require deposit.

*ND12 Sanctions decisions: “non-substantive” changes*

Continue current practice: presumption in favour of non-deposit provided Government continues to consult the Committees about whether or not the change is “substantive”.

*ND13 ECB recommendations to the Council on the external auditors of National Central Banks in the Eurozone*

Continue existing practice of non-deposit.

*ND14 Financial assistance commission reports: examples given in FCO paper are Management of the Guarantee Fund 2013, Borrowing and Lending Activities 2013, Guarantees covered by the General Budget 2013*

Non-deposit acceptable because these duplicate parts of the Annual Report on Guarantees covered by the general budget, which should continue to be deposited.

*ND15: Commission Decisions establishing the Commission's proposals to the Ministerial Council of the Energy Community*

Continue existing practice of non-deposit.

**Categories of document proposed for non-deposit by the Government which we propose should be rejected for future non deposit, and should therefore still be deposited**

*D1 Factual Commission reports where no issues arise*

We recommend that these should continue to be deposited. For Committees to decide whether “significant issues arise” (50 to 100 a year).

*D2. Court of Auditors' Special Reports*

We recommend that these should continue to be deposited as they often shed useful light on related legislative documents (up to 15 a year).

*D3 Proposals for Council Decisions to be adopted by the EU in EU/third country association committees, EEA joint committees and other international organisations and bodies*

The latter in particular often give rise to legal issues and should be deposited (recent examples relate to the WTO and the International Organisation of Vine and Wine). We recommend maintaining non-deposit only of the types of changes in the existing Cabinet Office guidance.

*D4. Financial proposals affecting the Eurozone in which the UK does not participate*

We recommend that these should continue to be deposited (more than 20 documents a year)

*D5. Financing documents affecting the Eurozone in which the UK does not participate*

As before, these should continue to be deposited.

*D6. Proposals to conclude aviation agreements with third countries*

These can be potentially significant and should continue to be deposited (around 5 a year).

*D7. Proposals for agreements with third countries on sharing classified information*

We propose that these should continue to be deposited (around 5 a year).

*D8 Technical / "minor" updates to Common Foreign and Security Policy decisions*

The definition of "technical" is often a fine one, we recommend that these should continue to be deposited (around 5 a year).

*D9 Annual decisions evaluating the EU capitals of culture*

Having reviewed this, and the current non-deposit of proposals to designate capitals of culture, we recommend that both should now be deposited (under 5 a year).

*D10. European Central Bank opinions on Commission proposals*

These are often significant and highly relevant to other documents under scrutiny, and should continue to be deposited (five to 10 a year).

*D11 Annual Budget Commission Reports*

These should continue to be deposited.

*D12 Gross National Income adjustment to Multiannual Financial Framework and macroeconomic imbalances procedure*

Continue to deposit.

*D13 Commission proposals for appointments/reappointments to EU organisations*

The original Cabinet Office guidance only refers to "reappointments". "Appointments" should continue to be deposited.

### *D14 Commission Staff Working papers*

Should continue to be subject to consultation with Committee Clerks, and not routinely non-deposited.

### *D15 Quarterly transfers of EU Budget appropriations*

Should continue to be deposited because those transfers shed light on the EU's financial situation. 4 a year.

## **Categories of document to be further reviewed**

### *R1: "Proposals impacting only on other Member States"*

The FCO provides an imprecise definition of this category "we can see this proposal impacting on some Fisheries proposals where UK fishing interests are not impacted", and "some taxation related examples ... would also ... fall under this category". Further information is needed on which documents would be included.

### *R2: Certain documents under the Ordinary Legislative Procedure*

Work to be done to update the existing arrangements on which documents are made available at different stages of this procedure, and to be handled on a case by case basis.

### *R3: Resolutions (unless they commit the EU to a course of action including new legislation, have potential implications for EU competence or would indicate a change in Government policy)*

Further work to be done to settle which documents would fall in this category.

# Appendix

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## Handling of Limité documents: Government guidance to Departments

For insertion into the [Cabinet Office's 'Parliamentary Scrutiny of European Union Documents: Guidance for Departments'](#)

### **Background**

In [response](#) to the House of Lords European Union Committee Inquiry report on "[Codecision and national parliamentary scrutiny](#)" (17th Report, 08-09), the Government agreed to share EU documents marked limité (often written as LIMITE) with the scrutiny Committees in confidence where they are judged to be relevant to documents under scrutiny. Chris Bryant MP, then Minister for Europe, confirmed this arrangement in his letter of 23 March 2010 to both Committees.

In the [Government response](#) to the European Scrutiny Committee Inquiry report on "[Reforming the European System in the House of Commons](#)" (24th Report, 13-14, pg 9) the Government set out its commitment to a strong and transparent scrutiny system, including sharing limité documents wherever possible and useful, and agreed to press for these documents to be made public where the limité marking is deemed unnecessary.

The following guidelines for handling limité documents are to provide clarity and underpin best practice in a) *sharing limité documents* with the Committees and b) *pressing for the removal of limité markings with the Council of the European Union (hereinafter 'the Council')*.

Information which bears an EU classification marking (i.e. RESTREINT UE / EU RESTRICTED, CONFIDENTIEL UE / EU CONFIDENTIAL, SECRET UE / EU SECRET or TRES SECRET UE / EU TOP SECRET) is not under the scope of these guidelines.

### **What does limité mean?**

Limité is not a security classification, but a distribution marking. Council Secretariat guidance states that documents marked limité may be given to any member of a national administration of a member state and the Commission (for the purposes of this guidance, national Parliaments are considered as part of national administrations). Limité documents may not, however, be given to any other person, the media, or the general public without specific authorisation, nor may they be published in any way which makes them accessible in the public domain.

### ***When are documents marked limité?***

Documents are marked limité in various circumstances, including: when they contain specific and possibly sensitive views expressed by Member States; when they contain draft proposals which are of a provisional nature or are evolving; or when they contain sensitive financial or security information or information that, if disclosed, would undermine the protection of public (e.g. defence and military matters) or individual interest.

It is for Member States to decide whether to share limité documents with their national Parliaments. However, the document must retain the limité marking and so must not be used by the Parliamentary Committees in any way which makes public the substance or detail of the document. The attached Council guidance for staff (Annex X),<sup>74</sup> which we understand is still under consideration in light of the Access Info judgment, provides further information.

## **Handling Advice: Sharing limité documents**

### ***Principles when sharing***

Limité documents can be shared with the Committees in confidence and are made available on the Government's authority, but they cannot be deposited for scrutiny. There will be occasions when a proposal which is marked limité will be subject to an unnumbered Explanatory Memorandum (EM) and, although in those circumstances the limité text has not been deposited, the proposal will still be subject to the Houses' Scrutiny Reserve Resolutions by virtue of the EM having been submitted.

The Committees cannot publish or comment directly on any limité document in a way that publicly discloses its content, but the Committees can use the information to inform their overall scrutiny of a proposal. Officials can also provide off the record briefings on issues covered in limité documents to answer the Committee's questions whilst still ensuring that confidential material is not made public. This may require Ministerial approval depending on departmental procedures.

Officials should decide whether to share a given document on a case-by-case basis, taking into account its political and legal importance, and in light of the following guidelines:

### ***What to consider sharing:***

- **Revised versions of proposals or documents that have already been deposited for scrutiny, but have changed substantially.** Access to these documents will facilitate the Committees' continued engagement with the EU decision-making process. Examples include Presidency texts, working group texts, and texts produced during the trilogue process under the Ordinary Legislative Procedure (usually in the form of tables which compare the original proposal with the

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<sup>74</sup> Not published

positions advanced by the three institutions during negotiation). As there will be many iterations of these documents during the negotiating process, officials must decide at what point sharing a limited text will be most valuable to the Committees. An ongoing dialogue with the Clerks will often help to determine the most appropriate point to share such texts.

- **Draft Council or European Council Conclusions which relate to documents subject to scrutiny.** While Conclusions are not subject to scrutiny, Conclusions will often be adopted on or relevant to eg Commission Communications, which are depositable documents in their own right. Sharing copies of draft Council Conclusions can help the Committees with their scrutiny of the source document under consideration.
- **Documents which explain the progress or impact of a given programme or mission.** Sight of such documents will enable the Committees to engage the EU institutions and Government well in advance of any proposal to extend or alter EU programmes or missions. Examples include CSDP mission progress reports and strategic reviews, as well as draft budgets.
- **Documents which have been requested by the Scrutiny Committees.** The fact that the Committees are aware of a given document and asked for it to be shared indicates that they believe it to be of interest and/or relevant to their scrutiny of other documents. It is advisable to find out why the Committee believe the document is of value, and then to consider the document against these ‘share’ and ‘what not to share’ guidelines.

### **What not to share:**

- **Council Legal Service Opinions in their entirety, or documents which disclose the existence of Council Legal Service’ opinions.** The UK Government cannot disclose such information to Parliament as this would breach the Council Rules of Procedure - Article 6 on professional secrecy and disclosure of documents.
- Documents which disclose detailed and sensitive information about **Member States’ negotiating positions.**<sup>75</sup>
- **Revised versions of documents that have already been deposited for scrutiny, but have been subject to only minor amendments.** For example, minor changes to wording. This risks overburdening the Committees and their Clerks with documents that would not help them in their work.

See section 3.5. of the Cabinet Office guidance for further details of the stages of the procedure where limited documents may help in updating the Committees on developments.

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<sup>75</sup> The disclosure of Member States’ negotiating positions is not a reason per se to resist sharing limited documents. However, there may still be circumstances where the sensitivity of a document justifies it being withheld. If in doubt consult the relevant UKREP desk officer and departmental scrutiny co-ordinator.

## How do I share limité documents with the Scrutiny Committees?

Limité documents can be shared both informally - via an email from officials to Clerks - and formally - under the cover of a ministerial letter to the Committees or alongside an unnumbered EM.

The responsible Department **must** ensure that the following caveat is clearly included whenever a limité document is shared i.e. within the covering email or letter:

The attached document is being provided to the Committee under the Government's authority and arrangements agreed between the Government and the Committee for the sharing of EU documents carrying a limité marking. It cannot be published, nor can it be reported on in any way which would bring detail contained in the document into the public domain.

## What if the limité document is then made public?

If a limité document which has been shared with the Committees subsequently has its limité marking removed, the relevant scrutiny co-ordinator should contact the Clerks to let them know that the Committees can now treat it as a public document.

## Pressing for the removal of limité markings

As set out above, there are valid reasons for the use of the limité marking by the Council. However, where Departments think that the limité marking is not necessary or has been misapplied by the Council they should suggest its removal. Government committed to pressing for the removal of limité where unnecessary in its response to the European Scrutiny Committee's scrutiny reform inquiry report. This is an important part of Government's commitment to transparency and accountability through a strong scrutiny system, and strengthening the role of national Parliaments in EU decision-making.

## *When should I press for removal?*

The application of the limité markings should be consistent with the Council Secretariat's guidance. Therefore, this is our test for whether a document should or should not be marked limité. In line with the Council guidance on transparency (included in annex):

- a) Departments **should** press for removal of the Limité marking on the following documents, which Council guidance specifies should not be marked as limité:
  - Provisional agendas for Council meetings (including lists of «A» items) and for its preparatory bodies, with the exception of agendas for the Political and Security Committee, the Military Committee, the Military Committee Working Group, the Politico–Military Working Party, the Security Committee and the Terrorism Working Parties (internal and international aspects);

- Documents originating from a third party which have already been made public by the originator, such as cover notes and letters addressed to the Council by other institutions or bodies of the European Union or, a Member State;
- In the legislative field, «I/A» and «A» item notes submitted to Coreper and/or the Council, and draft legislative acts, draft common positions (Articles 251 and 252 TEC) and joint texts approved by the Conciliation Committee (Article 251 TEC) to which they refer; and
- Any other text adopted by the Council (including by the written procedure) which is intended for publication in the Official Journal.
- The latest version of a document which has previously not been marked as limité and which has not changed substantially.

Departments can also **consider** pressing for removal on documents which do not fit under the criteria above but are politically and legally important and where there is a clear case that it would be helpful for the Committees' work to be able to formally scrutinise this document, rather than just seeing it for information. For example, on dossiers which are coming up for adoption at Council swiftly but where no publically available text is available. Departments should not press for removal where the documents meet any of the criteria set out below.

- Departments **should not** press for the withdrawal of the Limité marking on the following documents, which Council guidance specifies should be marked as limité:
- Documents that **include a Council Legal Service Opinion or disclose the existence of a Council Legal Service' opinion**. The UK Government cannot disclose such information to Parliament as this would breach the Council Rules of Procedure - Article 6 on professional secrecy and disclosure of documents;
- Documents that disclose detailed and sensitive<sup>76</sup> information about Member States' negotiating positions;
- Documents that contain politically sensitive information that would undermine the decision-making process of the Council;
- Documents that contains draft proposals which are of a provisional or evolving nature; and
- When disclosure of the document would undermine the protection of public interest (public security, defence and military matters, international relations, the financial, monetary or economic policy of the Community or a Member

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76 The disclosure of Member States' general negotiating positions is not a reason per se not to push for the removal of the limité marking. The lead official, consulting as appropriate, should make a judgement as to the sensitivity of the negotiation positions. The bar here will be higher than for decisions about when limité documents can be shared with national authorities.

State), the privacy and integrity of the individual, commercial interests, court proceedings and legal advice, inspections, or investigations and audits.

Departments should also use these criteria to consider any requests from the Committees for the limit  marking to be removed from a document. If Departments are unsure about how to proceed, they should consult EGIS, FCO and UKREP officials.

### **How do I press for removal?**

Departments should instruct the relevant UKREP desk officer for the dossier in question to submit a request to the Council Secretariat.

If the request is denied by the Council Secretariat, but Departments in liaison with UKREP believe the case still has merit, then an appeal can be lodged and the Council Secretariat Transparency Unit will take another look at the document, together with the originating authority and Council Legal Service. If the Council Secretariat still believe that there is justification that the document should remain non-public, they will draft a reply which will go to the Information Working Party for their approval. If this is approved, Departments will be informed of the decision.

#### ***Further information:***

- 11336/11 - Handling of documents internal to the Council - on the Council's Public Register–9 June 2011<sup>77</sup>

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77 <http://data.consilium.europa.eu/doc/document/ST-11336-2011-INIT/en/pdf>

# Formal Minutes

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**Wednesday 18 March 2015**

Members present:

Sir William Cash, in the Chair

Andrew Bingham

Nia Griffith

Chris Heaton-Harris

Kelvin Hopkins

Chris Kelly

Henry Smith

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Draft Report (*Scrutiny Reform follow-up and Legacy Report*), proposed by the Chair, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 98 read and agreed to.

Annex and Appendix agreed to.

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

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

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

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[Adjourned till Tuesday 24 March at 10.00am.]

## Witnesses

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The following witnesses gave evidence. Transcripts can be viewed on the Committee's inquiry page at [www.parliament.uk/eu-scrutiny-inquiry-follow-up](http://www.parliament.uk/eu-scrutiny-inquiry-follow-up).

### Wednesday 11 March 2015 (HC 918)

*Question number*

**Lord Hall**, Director-General and **James Harding**, Director of News and Current Affairs, BBC

Q1-71

### Tuesday 20 January 2015 (HC 918)

**Rt Hon Philip Hammond MP**, Foreign Secretary and **Vijay Rangarajan**, Europe Director, Foreign & Commonwealth Office

Q1-44

### Wednesday 14 January 2015 (HC 918)

**Richard Ayre**, Trustee, BBC Trust, and **Rona Fairhead CBE**, Chairman of the BBC Trust.

Q1-60

### Wednesday 14 January 2015 (HC 918)

**Rt Hon David Lidington MP**, Minister for Europe, **Ivan Rogers**, Her Britannic Majesty's Permanent Representative to the European Union, and **Jill Morris**, Associate Director, Europe, Foreign and Commonwealth Office.

Q1-66

### Relevant evidence session

### Wednesday 11 February 2015 (HC 1061)

**Rt Hon William Hague MP**, First Secretary of State and Leader of the House.

Q1-43

## Published written evidence

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The following written evidence was received and can be viewed on the Committee's inquiry web page at [www.parliament.uk/eu-scrutiny-inquiry-follow-up](http://www.parliament.uk/eu-scrutiny-inquiry-follow-up) INQ numbers are generated by the evidence processing system and so may not be complete.

- 1 Foreign and Commonwealth Office (SCI0001)
- 2 Department for Business Innovation and Skills (SCI0002)
- 3 David Keighley, Director, News-watch (SCI0003)
- 4 James Harding, Director, News and Current Affairs, BBC (SCI0004)
- 5 Rona Fairhead, Chairman, BBC Trust (SCI0005)