**The European Union Committee**

The European Union Committee is appointed by the House of Lords “to consider European Union documents and other matters relating to the European Union”. The Committee has seven Sub-Committees which are:

- Economic and Financial Affairs, and International Trade (Sub-Committee A)
- Internal Market (Sub-Committee B)
- Foreign Affairs, Defence and Development Policy (Sub-Committee C)
- Environment and Agriculture (Sub-Committee D)
- Law and Institutions (Sub-Committee E)
- Home Affairs (Sub-Committee F)
- Social and Consumer Affairs (Sub-Committee G)

**Our Membership**

The Members of the European Union Committee are:

- Lord Blackwell  Lord Maclennan of Rogart
- Lord Bowness  Lord Marlesford
- Lord Brown of Eaton-under-Heywood  Lord Neill of Bladen
- Lord Dubs  Lord Radice
- Lord Geddes  Lord Renton of Mount Harry
- Lord Goodhart  Baroness Thomas of Walliswood
- Lord Grenfell (Chairman)  Lord Tomlinson
- Lord Hannay of Chiswick  Lord Woolmer of Leeds
- Lord Harrison  Lord Wright of Richmond

The Members of the Sub-Committee which carried out this inquiry (Foreign Affairs, Defence and Development Policy, Sub-Committee C) are:

- Lord Bowness (Chairman)
- Lord Boyce
- Lord Dykes
- Baroness Falkner of Margravine
- Lord Freeman
- Lord Hannay of Chiswick
- Lord Lea of Crondall
- Lord King of Bridgwater
- Baroness Symons of Vernham Dean
- Lord Tomlinson
- Lord Truscott

**Information about the Committee**

The reports and evidence of the Committee are published by and available from The Stationery Office. For information freely available on the web, our homepage is: [http://www.parliament.uk/parliamentary_committees/lords_eu_select_committee.cfm](http://www.parliament.uk/parliamentary_committees/lords_eu_select_committee.cfm)

There you will find many of our publications, along with press notices, details of membership and forthcoming meetings, and other information about the ongoing work of the Committee and its Sub-Committees, each of which has its own homepage.

**General Information**

General information about the House of Lords and its Committees, including guidance to witnesses, details of current inquiries and forthcoming meetings is on the internet at [http://www.parliament.uk/about_lords/about_lords.cfm](http://www.parliament.uk/about_lords/about_lords.cfm)

**Contacts for the European Union Committee**

Contact details for individual Sub-Committees are given on the website. General correspondence should be addressed to the Clerk of the European Union Committee, Committee Office, House of Lords, London, SW1A OPW

The telephone number for general enquiries is 020 7219 5791.

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Oral Evidence
Mr Douglas Alexander MP, Minister for Europe, and Mr Tim Barrow, Deputy Political Director and Assistant Director, EU External, Foreign and Commonwealth Office
Oral evidence, 23 June 2005

Dr Sarah Beaver, Director General, International Security Policy, Ministry of Defence
Oral evidence, 30 June 2005

Written Evidence
Mr Jimmy Hood MP, Chairman, Scrutiny Committee, House of Commons

NOTE: Pages of the report are numbered in bold type; pages of evidence are numbered in ordinary type. References in the text of the report are as follows:
(Q) refers to a question in oral evidence
(p) refers to a page of written evidence
ABSTRACT
The foreign policy of the European Union is a growth area. The EU is taking on more responsibility for the security of both its close neighbours, and for areas such as Darfur in Sudan and Aceh in Indonesia where differing crises have created desperate needs for financial and other forms of support. The more Member States act together through the EU, the more important it becomes that actions are taken in an open and transparent manner.

However, the effective scrutiny of the European Union’s Common Foreign and Security Policy has proved to be a challenge due to the sometimes urgent and sensitive nature of foreign policy, and to the often unique procedures for the adoption of texts. What can be done to improve the process?

The Government should:

- develop a culture of scrutiny and adopt efficient procedures for the deposit of documents;
- provide early warning of important new initiatives and proposed actions; and
- actively seek to deposit significant non-legislative documents for scrutiny.

By working closely with Government we can strive to ensure that sound foreign policies are adopted by the EU.
CHAPTER 1: INTRODUCTION

1. In the United Kingdom, foreign policy is essentially an executive, not a legislative, process. Parliament’s role is therefore to hold the Government to account for policy decisions. In order to be effective Parliament should be involved in this process at the earliest opportunity, examining proposals for action as well as the consequences of those actions. This is as true of European foreign policy as it is of the United Kingdom Government’s own decisions. This Report accordingly examines how Parliament can best hold the Government to account for the foreign policy of the European Union (EU).

2. The foreign policy of the European Union is known as the Common Foreign and Security Policy (CFSP). CFSP was created by the 1992 Maastricht Treaty and given a separate legal base to that of the European Community policies. Existing under Pillar II of the Treaties, it has its own legal instruments and does not form part of EC law. It is, broadly speaking, an intergovernmental policy.\(^1\) As a result, the European Parliament’s role in CFSP is principally advisory.\(^2\) National Parliaments therefore have a pivotal role to play in holding their own executives to account for the EU’s foreign policy.

3. Holding the Government accountable to Parliament for the formulation of CFSP has presented several difficulties for the House. The first relates to the process by which Government departments must deposit documents and legislative proposals for Parliamentary scrutiny. Chapter Two of this Report explains these processes, and the changes we, and the Government, have instituted in the past 18 months to make scrutiny of CFSP more effective.

4. The second is the manner in which CFSP legislative proposals are brought forward within the EU for agreement by Council. Falling within Pillar II, the usual procedures which apply to agreeing proposals for EC law and their scrutiny are not followed. This leads to reduced timescales for decision-making as well as less opportunity for Parliamentary input. We examine these problems in depth in Chapter Three.

5. The final difficulty in relation to Parliamentary scrutiny of CFSP arises from the current scrutiny practice which is based on proposals for legally binding decisions. This has proved to be insufficient since CFSP is to a large extent formulated by the Council through policy initiatives. Chapter Four examines

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\(^1\) Since the early 1970s Member States coordinated foreign policy under the name of European Political Cooperation. The change of name to CFSP was accompanied by the new policy instruments provided for in Pillar II.

\(^2\) The European Parliament Committee on Foreign Affairs (AFET) is consulted on the main aspects and basic choices of the CFSP and may ask questions of the Council of Ministers and make recommendations to it. (Art 21, TEU). Also, since most administrative and operational CFSP expenditure is charged to the EU budget, the European Parliament has an opportunity to raise foreign policy issues during budgetary proceedings.
ways of extending the scrutiny of the EU’s foreign policy to include non-legislative documents.

6. This Report only deals with issues arising out of the scrutiny of CFSP, which primarily falls under the responsibility of the Foreign and Commonwealth Office (FCO). In general we understand CFSP to include the European Security and Defence Policy (ESDP). The Ministry of Defence (MoD) is responsible for particular defence-related policies (especially those with operational implications). We therefore make reference to both Government departments but note, where relevant, differences in their practices. Certain recommendations are therefore addressed specifically to the MoD.

7. We make this report to the House for information.

8. We are grateful to the Minister for Europe, Mr Douglas Alexander, Dr Sarah Beaver, Director General, International Security Policy for the Ministry for Defence, and Mr Jimmy Hood MP, Chairman of the House of Commons European Scrutiny Committee, for their evidence on this inquiry.
CHAPTER 2: SCRUTINY OF CFSP

Our working methods

9. The following paragraphs provide a brief outline of the working methods of the Committee and, in particular, the sub-committee charged with examining EU foreign affairs. A comprehensive examination of the way in which the Committee scrutinise EU legislation is set out in our Report “Review of Scrutiny of European Legislation” (Scrutiny Review) from session 2002–03 and the Government’s response to that Report.³

The Scrutiny Reserve Resolution

10. The scrutiny work of the Committee is underpinned by a Resolution of the House (the Scrutiny Reserve Resolution) agreed on 6 December 1999⁴ according to which the Government undertakes not to agree to any legislative proposal in the Council of Ministers before parliamentary scrutiny is complete, unless there are “special reasons” for so doing. This mirrors a Resolution in the House of Commons.⁵

11. As recognised by the Scrutiny Review, the Resolution does not give the Committee power either to mandate ministers, or to force their hands.⁶ The Scrutiny Reserve does provide two important guarantees: transparency in the Government’s handling of EU policy; and time for the Committee to consider proposals and to make our views known.

12. The Government can override the Reserve by agreeing to the adoption of a proposal in Council before it has been cleared from scrutiny. We take such breaches of scrutiny very seriously and receive twice yearly data from the Government listing overrides by department which we analyse and publish in our Annual Report.⁷ We expect the Government to keep such overrides to a minimum and to provide an explanation whenever they occur.

The work of Sub-Committee C

13. The European Union Committee (the Select Committee) conducts much of its substantive work through seven sub-committees.⁸ Each sub-committee usually meets once a week. Membership comprises one or more members of the Select Committee as well as other co-opted members of the House.

⁴ Appendix 5.
⁸ A (Economic and Financial Affairs and International Trade), B (Internal Market), C (Foreign Affairs, Defence and Development Policy), D (Environment and Agriculture), E (Law and Institutions), F (Home Affairs), and G (Social Policy and Consumer Affairs).
Members may also on occasion be co-opted to a sub-committee for the purposes of a particular inquiry.

14. In session 1998–1999 the Select Committee allocated two principal areas of EU activity to the newly formed Sub-Committee C:
   - Common Foreign and Security Policy, including the European Security and Defence Policy; and
   - External Relations (some of the external responsibilities of the European Communities).

In session 2001–02 the Select Committee reallocated responsibility for the scrutiny of EU development policy to Sub-Committee C. The current remit of Sub-Committee C is accordingly foreign affairs, defence and development policy.9

The sift process

15. The Select Committee receives about 1100 documents a year for scrutiny. The categories of document which the Committee will consider are defined in the Committee’s Terms of Reference (see Box 6). The documents are deposited in Parliament by the Government. In every case, the Government Minister responsible for the area of policy concerned must submit to Parliament an explanatory memorandum which is expected within two weeks of the document’s deposit. This memorandum contains:
   - a summary of the subject matter of the document;
   - a statement of where ministerial responsibility lies;
   - notes on the legal base of the document, the legislative procedure which applies, and on the voting procedure;
   - statements on subsidiarity and the impact on United Kingdom law;
   - the Government’s view on the policy implications of the document;
   - a Compliance Cost Assessment (or a regulatory impact assessment), and where necessary, a risk assessment and scientific justification; and
   - details of any consultation which has taken place, the financial implications of the document and the likely timetable for consideration of the document within the EU institutions.

16. The Chairman carries out a sift of documents each week whilst the House is sitting (normally on Monday afternoons). Sifts are also carried out from time to time during parliamentary recesses.

17. The Chairman sifts documents into three categories:
   - those requiring no further examination and cleared from scrutiny;
   - those requiring further examination by a specified sub-committee or sub-committees or, occasionally, by the Select Committee; and

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9 See Appendix 7 for a comprehensive list of the Sub-Committee’s reports to date. For information on the Sub-Committee’s current inquiries and other activities, please see our web-site http://www.parliament.uk/parliamentary_committees/lords_s_comm_c.cfm
• those cleared from scrutiny, but which are nevertheless drawn to the
attention of the relevant sub-committee or the Select Committee for
information only.

18. A more detailed description of the sift process, along with an indication of
the criteria which the Chairman has in mind in making his decisions, is set
out in our Annual Report 2003.10

19. The sub-committees consider those documents sifted to them by the
Chairman of the Select Committee. Initial consideration of a document
normally takes place on the base of a scrutiny note prepared by Committee
staff. At this stage, a sub-committee may:
• decide that the document does not require further examination and clear
  it from scrutiny;
• decide to hold the document under scrutiny and to conduct a full-scale
  inquiry into the issues raised; or
• take some action short of a full inquiry: perhaps writing to the Minister
  responsible for the document seeking clarification or expressing
  particular concerns; or conducting a brief inquiry with limited evidence,
  perhaps to follow up earlier work.

20. Documents sifted for information normally do not require any further action
by the sub-committee, though they may be taken into consideration as
background material for an inquiry.

Scrutiny of CFSP: a special case

21. One of the recommendations of our Scrutiny Review Report was that the
Cabinet Office should keep a central record of overrides arising from each
Government department.11 This has enabled us to monitor more carefully
potential areas of weakness in the practices of particular departments.

22. From January 2003 to June 2004 the FCO was responsible for 31 overrides
out of a total of 77 for all Government departments.12 The second largest
number (15) came from the Department for Environment Food and Rural
Affairs (DEFRA) which deposits far more documents for scrutiny. The large
number of overrides from the FCO has for some time been a matter of
concern. In our Annual Report 2004 we concluded that there was a clear
problem in the area of CFSP, although the situation had been improving.13

Improved procedures for the scrutiny of CFSP

23. Over the last eighteen months we have been working with the Government to
improve the scrutiny of CFSP through the increased flow of information and
commitment of resources on both sides. This has resulted in a greatly

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  Europol’s role in fighting crime; and EU Russia Relations (HL 99), para 175.
reduced number of scrutiny overrides and an overall increase in the
effectiveness of Parliamentary scrutiny.\textsuperscript{14}

24. We explain the changes that have been made by the FCO and suggest further
improvements. We do this not least in the hope that this may encourage the
MoD to institute similar changes.

25. We divide our list of changes and recommendations into three categories:
those that concern the Government, those that affect the Committee’s own
working methods and those that are directed to the Council of Ministers.

\textit{Changes in the working methods of the Government}

26. The Minister for Europe, Mr Douglas Alexander, credited the drop in
scrutiny overrides from the FCO to a change of culture within the
department. Scrutiny is now “part of the understanding, part of the culture
within the Office: … [it] is not an add-on or something which can be set
aside, but rather a central part of the process of democratic scrutiny that one
would expect within a parliamentary democracy. I think that culture change
is now fairly deeply embedded within the Office.” (Q 2)

27. \textbf{We welcome the increased commitment to the scrutiny process shown
by the FCO over the previous two years and hope that the culture of
scrutiny which has been created will continue in future and be fully
adopted by the MoD.}

1) Commitment of resources to the scrutiny of CFSP

28. The FCO has had a dedicated scrutiny officer for CFSP since June 2003.\textsuperscript{15}
The scrutiny officer provides a single point of contact for our staff and is able
to advise on forthcoming items on the agendas of the General Affairs and
External Relations Councils. He is also able to ensure that desk officers
within the FCO recognise the importance of explanatory memoranda and the
need to deposit documents to allow sufficient time for scrutiny.

29. The Minister maintains that this dedication of resources has made a
“material contribution” to the FCO having been able to drive down the
number of overrides. (Q 2)

30. The MoD deposits far fewer documents for scrutiny than the FCO, and
therefore may not have the need for a full-time scrutiny officer. However,
there is now a dedicated officer who is able to provide a single point of
contact for our officials. FCO and MOD officials have held discussions as to
how this role might best be utilised.

31. \textbf{We urge both the FCO and MOD to continue to have a dedicated
person who exercises oversight of the scrutiny process of all proposals
going to Council, and acts as a single point of contact for Committee
staff.}

2) Effective scrutiny guidance

32. The Minister explained that “effective scrutiny guidance” is now being
provided for the desk officers working on CFSP. (Q 2) Following this

\textsuperscript{14} The latest figures are due to be published in the next Annual Report.

\textsuperscript{15} He is also responsible for the external aspects of Pillar I.
example, we urge the MoD to develop more specific scrutiny guidelines to those working on EU proposals.

3) Informal contacts

33. The Minister acknowledged that one of the contributory factors to driving down the number of scrutiny overrides has been “effective engagement” between Government officials and our Committee staff. (Q 3) In particular, we appreciate the willingness of desk officers to explain and discuss the detailed policy of documents with our staff. This ensures that any areas of uncertainty or ambiguity can be resolved prior to an examination of the document by the Sub-Committee, and helps to avoid any misunderstandings about the meaning of the document or the Government’s view.

34. Our objective is to provide the Government with our input on documents in advance of the Council meetings. We may choose to do so through correspondence. Where time permits, we may also request oral evidence from Ministers in advance of the Council meeting.

35. In this context we recall our conclusion in our Scrutiny Review Report which stated that: “Where a proposal is moving quickly through the legislative cycle we will more regularly ask government officials to be made available at short notice to assist the Committee in matters of explanation and elucidation.”16

36. We also recall the Government’s response: “The Government is happy for the Committee to invite officials to be made available to provide technical help and informal advice on the meaning and purpose of proposals.”17

37. In view of the short time often available to engage in an exchange of views and the wide-ranging subject matters of many proposals, we expect Government officials to readily continue to be available to assist Sub-Committee C in the scrutiny process when appropriate.

38. Such assistance was provided recently by the MoD for a Sub-Committee meeting on 15 November 2005 (see Box 1). We were grateful for the advice given and express our hope that we can continue to engage with MoD and FCO officials in a similar manner in the future.

39. “Short notice” in the context of CFSP may be a matter of days. If an explanatory memorandum is not deposited until a Monday and is to be discussed by the Sub-Committee at its Thursday meeting prior to a Council the following week, as may happen, officials will need to be made available at very short notice indeed.

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BOX 1

MoD assistance on the voluntary code of conduct on defence procurement

Officials volunteered to come and provide an advance briefing to Committee staff on the voluntary code of conduct for defence procurement which was being prepared by the European Defence Agency within a very quick timescale. This briefing was essential to enable the Sub-Committee to agree to hold an additional meeting on a day which would provide the optimum timescale for consideration of the documents and correspondence with Ministers on any points which we wished to raise with the Government.

Officials also agreed to brief members at the Sub-Committee meeting which proved very helpful for a full and better understanding of the documents.

We accepted the MoD’s explanation, well in advance of the November GAERC, that due to the EDA’s own timetable there would be little time for scrutiny. The EDA itself should be encouraged to produce papers more in advance of its Steering Board meetings to take into account parliamentary scrutiny.

4) Unsigned explanatory memoranda

40. Beyond the “culture change” in the FCO, the most important change in practice has been the Government’s recognition that forwarding unsigned explanatory memoranda to our staff can provide additional time for preparation of scrutiny.

41. As stated in our Scrutiny Review, all explanatory memoranda must be signed by the relevant Government Minister as they provide the definitive statement of the Government’s view: in effect they constitute the Government’s evidence to Parliament. Given that it can frequently take some days for a ministerial signature to be obtained, we have agreed a system with the FCO whereby the documents themselves, along with unsigned, i.e. draft, explanatory memoranda are sent to Committee staff some time in advance of the signed memoranda (usually one to three working days) in order that our staff have sufficient time to draft scrutiny notes for the Sub-Committee. Upon receipt of the signed explanatory memorandum, it may then be quickly circulated to the Sub-Committee along with the document and final briefing, thus providing increased time for scrutiny. We have found this practice invaluable.

42. Given the small number of documents deposited by the MoD, there is less history of advance provision of explanatory memoranda. However, the MoD has recently provided advance information on important new developments which the Sub-Committee was then able to examine more effectively.

43. We reiterate the importance of receiving a signed explanatory memorandum for the final version to be considered by the Sub-Committee. In order to be considered in the Chairman’s sift, signed memoranda must be deposited by midday each Thursday during Parliamentary sittings.

44. **The “effective engagement” (Q 2) between our staff and officials within both the FCO and MoD has been an important development which has enabled the fast and effective handling of scrutiny. We fully welcome the advance provision of explanatory memoranda and briefings on forthcoming documents.**

*Changes in the working methods of the Committee*

1) **The holding of additional meetings**

45. Sub-Committee C normally meets every Thursday morning whilst the House is sitting. Very occasionally this does not provide sufficient time for scrutiny, especially of ESDP missions. The Sub-Committee is prepared to meet on alternative dates for the purpose of scrutiny. For example, the Sub-Committee met on Wednesday 17 November 2004 before the House was prorogued in order to examine the proposed launching of the EU Military Mission in Bosnia and Herzegovina\(^{20}\) along with two other documents. More recently, the Sub-Committee met on Tuesday 15 November 2005, as well as meeting on the Thursday of that week, in order to discuss the papers for the forthcoming European Defence Agency steering board (including the proposed voluntary code of conduct for defence procurement).\(^{21}\) We were able to hold these meetings due to prior notification that documents would be deposited shortly before being agreed in Council.

46. **For it to be practicable to organise extra meetings which a majority of Members are able to attend, the Government must give as much notice as possible, either informally or in writing, of documents which will require scrutiny.**

2) **Use of the written procedure**

47. It is preferable that sub-committees meet in order to discuss documents which have been deposited for scrutiny. However this is not always possible, especially during Parliamentary recesses. In these situations we are able to scrutinise documents by written procedure. This simply means that documents and explanatory memoranda are circulated to members as usual, with members being asked to provide any comments in writing. The Sub-Committee Chairman is given authority to clear a document unless any member objects by a certain time. This is an efficient way of ensuring Parliamentary oversight during recesses and was used most recently by Sub-Committee C during the last week of September 2005 to examine three documents prior to the 3 October General Affairs and External Relations Council (GAERC).\(^{22}\)

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\(^{22}\) Proposal for a Council Decision repealing Council Decision 2001/131/EC and concluding consultations between the EU and Haiti under Article 96 of the Cotonou Agreement; Council Decision concerning the conclusion of an exchange of letters between the European Union and Thailand, the Philippines, Singapore, Malaysia, and Brunei on their participation in the Aceh Monitoring Mission (AMM) in Aceh; Council Common Position extending Common Position 2004/694/CFSP on further measures in support of the effective implementation of the mandate of the International Criminal Tribunal for the former Yugoslavia (ICTY).
3) Consideration of documents prior to the sift

48. In certain instances—for example, when a document is deposited at very short notice, or during a parliamentary recess—it may be necessary for the Sub-Committee to consider documents prior to the Chairman’s sift taking place. In these instances the Sub-Committee may consider documents which have not yet been sifted to it. The Sub-Committee cannot on its own initiative clear documents prior to the sift as there may be a need for other sub-committees to examine a particular document. The Sub-Committee may, however, recommend that a document be cleared at the following sift by the Select Committee Chairman. The Chairman may also write to the Minister to raise concerns noted by the Sub-Committee prior to the sift.

49. We will only examine documents at very short notice where there is a real urgency (that is, a real need for a document to be deposited just days prior to its probable agreement by Council). In these cases we expect the Government to explain fully the urgency of the situation and to provide as detailed an explanatory memorandum as soon as possible, particularly with regard to the Government position, in order to enable effective scrutiny.

50. Although documents may be informally considered prior to the weekly sift, it is essential that the Government ensure that documents are deposited in sufficient time to allow the Chairman to consider whether they should be sifted for examination to the Sub-Committee.

4) Sifts during recesses

51. It is neither possible, nor necessary, for there to be a weekly sift during recesses (especially the long summer recess). However, the Chairman has always held planned sifts during recesses in order that the sub-committees can continue to examine documents. During the summer recess of 2005 sifts were held on 8 September and 4 October.

52. Through careful management of the sift process during the summer recess in particular, and through use of the written procedure, there should be little need for overrides to take place merely because the House is not sitting. Although it may not be possible to deal with all urgent items during the summer, careful planning, together with Government officials, should ensure that effective scrutiny of most documents continues to take place.

5) Prorogation

53. The Select Committee is a sessional committee. This means that it, and its sub-committees, continue to operate over prorogation until reappointed in the next session of Parliament. Following prorogation and the beginning of a new session, there will be a rotation of members of each sub-committee and some members may leave and be replaced. The Sub-Committee may nevertheless continue to meet immediately following prorogation with its members from the previous session so that scrutiny work should not be unnecessarily affected. This is particularly important given that prorogation usually takes place at the beginning of November when a large number of documents will normally be deposited for the November GAERC.

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6) Dissolution

54. The Select Committee ceases to exist upon a dissolution of Parliament. It is not possible for the Committee to scrutinise, nor to clear, any documents during the period of dissolution. This results in a number of overrides which we accept as largely inevitable. However, it is important that contacts between our staff and government departments continue over this period in order that documents may be properly and quickly scrutinised once the Committee is reappointed.

55. We urge the Government, when a dissolution is imminent, to deposit as many documents as possible prior to dissolution in order that scrutiny may take place before the Committee ceases to exist.

Changes in the working methods of the Council

56. While there is genuine urgency with regard to some CFSP documents, there are others where this is not the case. One category which stands out is extensions of joint actions, common positions and council decisions where the current instrument is about to expire. The date on which an instrument needs to be renewed is, by definition, known well in advance. When such renewals are submitted for scrutiny at the very last minute we are usually informed by the Government that the reason is late submission by the Council Secretariat. This may be due to prolonged discussions concerning the renewal of such instruments but we wish to be involved in the decision-making process at as early a stage as possible.

57. Where the timing of a proposed extension is entirely predictable we urge the Government to give notice of the impending decision as early as possible to enable Parliamentary scrutiny to take place. We suggest that the Government in turn encourage the Council Secretariat to forward drafts to Member States at an early date.

58. The Council Secretariat may also be responsible for delays in scrutiny by holding up documents forwarded by the Commission. A recent example of this was a Commission Communication on the 10th Anniversary of the Euro-Med Partnership. The Commission published this document on 12 April 2005 and sent it to the Council Secretariat on 18 April. However, it was not until 27 October that the Council Secretariat circulated the document thus triggering a request from the Cabinet Office for the FCO to produce an explanatory memorandum. Committee staff and members were able to see the published Communication, but the Sub-Committee were unable to scrutinise it formally without the deposit of an explanatory memorandum setting out the Government’s position. Scrutiny only took place one week prior to the Summit which approved the five-year work programme set out in the Communication. There was no opportunity for any correspondence with or evidence from the Government on this important Summit.


59. In their letter to us, the Government provide an assurance that they will monitor the situation and ensure that the same early warning mechanism which they have developed for legislative material is transposed for non-legislative material. This is a helpful response. However, the Government should explain why it is not possible for an explanatory memorandum to be produced prior to the circulation of a document by the Council Secretariat. Though the Cabinet Office cannot be expected to keep track of the vast majority of documents which they have not yet received, it should be possible to take notice of significant new initiatives such as the Communication on the Euro-Mediterranean Partnership which was a published document being used to prepare for a major international summit.

26 Extract reproduced in Appendix 4.
CHAPTER 3: SCRUTINY OF LEGISLATIVE INSTRUMENTS

The legislative process

60. In order to better understand the particular difficulties faced by national parliaments when conducting scrutiny of CFSP it is necessary to understand how the legislative process under Pillar II differs from that under Pillar I.

61. The Council is the legislative body for both the European Community (EC) and the European Union. However, whereas under Pillar I it often shares that power with the European Parliament, under Pillar II legal instruments are decided primarily by the Council of Ministers (normally the General Affairs and External Relations Council (GAERC)) or by the European Council. The Commission generally has the right of initiative for EC law. However, the role of the Commission and the European Parliament is very limited in regard to CFSP.

62. Under Pillar II the Council is both the promoter of initiatives and the ultimate decision-maker. Initiatives usually originate from the Presidency or the High Representative for CFSP, but any Member State may put forward proposals for new legislation. CFSP came into being with the entry into force of the Maastricht Treaty on 1 November 1993. The Treaty created two new CFSP instruments: common positions and joint actions. The 1997 Treaty of Amsterdam added one further instrument: the common strategy. These instruments are binding in international law but are not directly or indirectly applicable in the same way as EC law in Member States. Box 2 provides an overview of these instruments, and of those EC legal instruments which are also used to implement the EU’s foreign policy.

BOX 2

CFSP Instruments

a) Common positions define the approach of the Union to a particular matter of a geographical or thematic nature. Common positions commit Member States to ensuring that national policies conform to the common position. An example of a common position would be the coordination of Member State policies against the illicit traffic in diamonds in relation to Liberia, Sierra Leone and Angola (2001/758/CFSP).

b) Joint actions are operational actions by the Member States under the auspices of CFSP. One example is the support for the Palestinian Authority in its efforts to counter terrorist activities emanating from its territories (2000/298/CFSP). All ESDP missions require a joint action to become operational.

27 The different procedures are the co-decision procedure, the consultation procedure, the cooperation procedure and the assent procedure.

28 The European Parliament has a limited right of initiative in that it has the possibility of asking the Commission to put forward a proposal.

29 This is equally the case under Pillar III.

30 Dr Javier Solana is the current High Representative of the CFSP and the Secretary-General of the Council.

31 Article 15 Treaty on European Union (TEU).

32 Article 14 TEU.
c) **Common strategies** are set out overall policy guidelines for activities with individual countries. These guidelines apply to both the EU and its Member States. Each strategy specifies its objectives, its duration and the resources that will have to be provided by the EU and the Member States. The Council implements them by adopting joint actions and common positions. The last common strategy to be adopted was the strategic partnership with Ukraine in 1999 (1999/877/CFSP).

d) **Decisions** are implementing instruments, which derive their legal base from a previously agreed joint action or common position. For example, in 1999 the Council agreed to a Joint Action for a European Union contribution to combating the destabilising accumulation and spread of small arms and light weapons in Cambodia (1999/34/CFSP). In the same year, the Council adopted a Decision to implement that Joint Action (1999/730/CFSP). In November of 2005, the Council extended and amended the 1999 Decision.

e) **Regulations** are used to implement economic or financial sanctions against a third country, for example where it is in breach of international human rights. A regulation provides the legal basis for the sanction in EC law and will usually be supplemented by another CFSP instrument. An example is Regulation (EC) No 1334/2000 setting up a Community regime for the control of exports of dual-use items and technology.

The European Council may also set out **general guidelines** for CFSP, including matters with defence implications. These are non-binding.

63. The differences in procedures under Pillars I and II lead to two distinct problems for the scrutiny of CFSP: shortage of time available for scrutiny and lack of opportunity to examine proposals before they are effectively agreed at working level. This Chapter examines these two problems and makes recommendations as to how the Government can best work within the current legislative processes to aid effective Parliamentary scrutiny.

**Speed of decision-making within CFSP**

64. Under the Treaty of Amsterdam, where a proposal for new EC legislation is formulated a period of six weeks must elapse between a Commission proposal and the Council’s first examination of the proposal. This is to ensure that there is sufficient time for parliamentary scrutiny. Under Pillar II, however, there is no agreed time which must pass between a proposal first being made and the Council taking a binding decision on the proposal. This means that scrutiny may have to take place just days before an instrument is due to be agreed in Council. In these cases we may not be able to respond to the Government and raise our concerns prior to a decision being made.

65. The Government have themselves recognised this problem in their response to our earlier Scrutiny Review Report, stating that: “left to the last moment, or wielded as a delaying device, scrutiny by any national parliament can be

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33 Article 13 TEU.
34 Article 23(2) TEU.
35 Arts 301 and 133 Treaty Establishing the European Community.
36 Article 13 TEU.
37 Protocol IX to the Treaty of Amsterdam on the role of national parliaments.
viewed in Brussels more as a procedural requirement than a substantive contribution to the policy debate.\textsuperscript{38}

66. It is rare to have months to examine early drafts of CFSP proposals as can be the case in relation to proposals for EC law. This is clearly necessary as the Council must be able to respond quickly to international crises. But the speed with which the Council can take CFSP decisions poses an acute problem for scrutiny.

67. This issue has become more pertinent since January 2003 when the first European Security and Defence Policy (ESDP) mission became operational. The EU now has a crisis management capacity which it can choose to employ in a very short time. National parliaments are thus left with little opportunity to make a considered input into decisions to launch ESDP missions.

68. The EU agreed to develop crisis management capability, both civilian and military, in 1999.\textsuperscript{39} Four years later, in January 2003, the first mission became operational in Bosnia and Herzegovina. The EU has now embarked upon three military and twelve civilian missions.\textsuperscript{40} On ESDP missions the Council will often need to take decisions within a short time-frame, as illustrated by Box 3.

**BOX 3**

**Council decision-making on ESDP missions**

EU Police Mission in Bosnia and Herzegovina (EUPM): the Council stated that it would examine the “possibility of the European Union taking part in the development of the international police force in Bosnia and Herzegovina” in its Conclusions of 10 December 2001 and announced its readiness to establish the EUPM in its Conclusions of 18 February 2002.

EU Police Mission in the Former Yugoslav Republic of Macedonia (EUPOL Proxima): just 13 days elapsed between the Macedonian authorities inviting the EU to deploy a Police Mission on 16 September 2003 and the Council adopting a Joint Action on 29 September 2003 to establish the mission.

EU Rule of Law Mission in Georgia (Just Themis): there was a period of 25 days between the Prime Minister of Georgia inviting the EU to deploy a Rule of Law Mission on 3 June 2004 and the Council adopting the Joint Action on 28 June 2004.

EU Rule of Law Mission for Iraq: it took over three months from the European Council’s consideration of the report of the fact-finding mission to Iraq on 5 November 2004 and the GAERC’s political agreement on 21 February 2005 on the full mission.

EU Security Sector Reform Mission in the Democratic Republic of the Congo (EUSEC DRC): on 26 April 2005 the DRC government officially requested EU assistance of security sector reform; the Council had already approved the General Concept for setting up such a mission on 12 April 2005; on 2 May 2005 the Council adopted, using the written procedure, a Joint Action to establish the mission.

\textsuperscript{38} European Union Committee 20th Report (2002–03): Government Responses: Review of Scrutiny; Europol’s role in fighting crime; and EU Russia Relations (HL 99), para 162.


\textsuperscript{40} The Austrian Presidency website provides a comprehensive list of the ESDP operations undertaken to date: http://www.eu2006.at/en/Policy_Areas/General_Affairs_andExternal_Relations/ESDP/ESDP_Operations.html.
69. Despite the short time-frames available, we have been able to examine these missions prior to agreement in Council, with the exception of the integrated rule of law mission to Iraq. This has only been possible due to the new procedures outlined in Chapter Two. Nonetheless, we highlight the importance of the Government’s taking additional steps in relation to ESDP missions.

70. The EU’s decision to launch an ESDP mission, through agreement of a joint action, is preceded by a number of other developments. Normally a country’s authorities will make an official request for assistance, which is followed by an EU fact-finding mission to that country. On the basis of that fact-finding mission the EU decides whether or not to send an ESDP mission. However, as was the case with the Police Mission in Macedonia and the Security Sector Mission in the DRC, this is not always the order of events. The EU can choose to send a fact-finding mission to a country prior to the official request for assistance to allow for a very quick response once that request comes through.

71. The Government has developed the practice of sending a first letter informing us of an impending mission at the time of deployment of the fact-finding mission. Where there is time, the Government sends a second letter informing us of the outcome of that fact-finding mission.

72. This is a highly welcome practice but one which the Government is yet to apply in a systematic way. At the 3 October 2005 GAERC the Council recorded its intention to respond positively to a request from the Moldovan and Ukrainian authorities for a border mission on the Moldova/Ukraine border. A fact-finding mission was despatched, which concluded that the Commission rather than the Council was best placed to carry out this mission. It was only in the context of an explanatory memorandum relating to the mandate of the EU Special Representative to Moldova that we were informed of the fact-finding mission’s mandate and recommendations.

73. We underline the great importance of the Government keeping us informed of potential ESDP missions at an early stage, including in those cases in which the Council chooses not to act. Given the speed at which eventual joint actions on ESDP missions are adopted, early warning is crucial for scrutiny. We urge the Government to make these letters as detailed as possible. It is at this stage, when the Council is yet to make a final decision, that we can most usefully make a contribution.

Upstream scrutiny

74. In our Scrutiny Review we reached the conclusion that we should aim to work at the earliest possible stage in the policy-making cycle: so-called upstream scrutiny. The Government strongly supported this view, stating in its response: “As we have repeatedly stressed, scrutiny by the Committee is most effective, and influential, the earlier it takes place. … Reliance on definitive texts, which by their nature are only produced late in the decision

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making process, reduces the practical influence of the Committee and the impact of its work.”

75. Performing upstream scrutiny of CFSP poses particular problems, not only because of the limited time which may be available, but because of the way in which proposals are initiated. In most cases there is little opportunity for the Sub-Committee to examine an early proposal which is intended to form the basis for a new legislative instrument since the Commission is not involved. Drafts at working group level are necessarily restricted due to the political sensitivities involved in the negotiations between Member States. This means, however, that the “draft” proposal which the Sub-Committee examines is normally already agreed as the final version. The function of scrutiny is thus reduced to agreement or otherwise with the overall policy with details no longer negotiable.

76. Even where the Commission has been involved in the early stages of a proposal, usually when there is a development aid as well as a foreign policy aspect to the proposal, we are often left uninformed of any discussions which take place between the Commission proposal and the adoption of the final policy by Council. The EU Strategy for Africa (Box 4) demonstrates that the Government is willing to discuss proposals with the Sub-Committee, but that it is difficult to have any substantive input into proposals before they are decided upon by Council.

**BOX 4**

***Scrutiny of the EU Strategy for Africa***

The June 2005 European Council invited the Council to draw up a long-term global strategy towards Africa, in the light of the UN Summit outcomes, with a view to the European Council in December 2005.

The United Kingdom Presidency also listed Africa as one of its priorities and stated its commitment to the Strategy for Africa.

We were thus aware that a Strategy would be forthcoming at an early stage in its development.

The Commission published its draft Strategy on 12 October 2005. The Government deposited its explanatory memorandum on 20 October and Sub-Committee C considered the document at its meeting on 27 October.

The Sub-Committee agreed to hold the document under scrutiny and to request that Ministers give oral evidence on the proposed Strategy. We were informed by officials within the FCO that the final Strategy, whilst it would take into account the Commission document, would differ from it significantly. It was therefore agreed that the evidence session should be held in late November in order that the Sub-Committee might have as much information at its disposal as possible, but sufficiently early for views to be made known to the Government prior to the adoption of the final Strategy by the European Council.

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We were provided with two papers which had been prepared for the working groups by the United Kingdom Presidency and Javier Solana respectively which outlined a number of proposed priorities for the Strategy. We were able to take these into account in formulating questions for the Secretary of State for International Development, Hilary Benn, and the Parliamentary Under-Secretary of State for the FCO, Lord Triesman, when they came to give evidence on 29 November. We were extremely grateful for this information.

However, the final Strategy, which bore little resemblance to the original Commission proposal, was not made available until after its adoption by the European Council on 15 December. Thus, despite the help given to the Sub-Committee by both Ministers and officials within the FCO and the Department for International Development (DfID), we were not practically able to scrutinise the Strategy prior to a decision being made.

77. We recognise that it is not possible for national parliaments to be involved at every stage of the decision-making process, and that political sensitivities prevent the Government alerting us to differences of opinion that exist between the Member States. However, we ask that the Government aid the Sub-Committee’s work in the following ways.

78. As with letters alerting us to putative ESDP missions, we wish to be kept informed of potential new initiatives at an early stage. The Conference of Community and European Affairs Committees of Parliaments of the European Union (COSAC), at its recent meeting in London in October 2005, noted that upstream scrutiny of CFSP is difficult and pointed out that “governments of Member States can assist national parliaments by alerting scrutiny committees to policy reviews being undertaken by Council working groups.”

79. We strongly support this recommendation and highlight in Box 5 a recent example where early warning would have been very helpful to assist upstream scrutiny. Since the Council is a largely closed institution, we can only be alerted to policy reviews by the Government.

**BOX 5**

**Scrutiny of the EU Code of Conduct on Arms Exports**

In May 1998 the EU adopted a Code of Conduct on Arms Exports. The Code is a politically binding instrument that seeks to create “high common standards” for all EU members to use when making arms export decisions and to increase transparency among EU states on arms exports.

In October 2003 Council working groups started a review of the EU Code.

The Minister for Europe wrote to alert the Committee to the forthcoming Code of Conduct on 24 June 2005 and we received an explanatory memorandum on the revised Code on 4 July 2005, only two weeks before the substantially revised Code was agreed in Council on 18 July.

On such a wide-ranging and important issue the Sub-Committee may have chosen to conduct an inquiry if alerted to the review at a much earlier stage.

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80. The Government should alert the Committee to potential new initiatives and reviews of existing legislation and policies at as early a stage in the process as possible. Where draft proposals cannot be provided due to the restricted nature of the documents, the Government should outline the main proposals along with a statement of the Government’s position.

81. During the United Kingdom Presidency the Government has been understandably reluctant to set out its position on proposals where negotiations are still continuing. Now that the Presidency has passed to Austria, we expect to receive a full statement of the Government’s position on each draft legislative instrument, whether in agreement or disagreement. Although this may not be possible during the course of negotiations, there is no reason why it should not be possible once a text has been agreed. The process of scrutiny is not only important for the purpose of Parliamentary input into proposals, but for ensuring that the process by which they are agreed is as transparent as possible. Thus a full analysis of the advantages and disadvantages of a particular proposal serves a useful function even where effective agreement has already been reached.

82. Where advance notification of proposals or draft instruments cannot be given the Government should provide a full indication of the reasons for this in either its explanatory memorandum on the deposited document or by letter. This should include, where necessary, an explanation of the main points of disagreement on a particular proposal.
CHAPTER 4: SCRUTINY OF NON-LEGISLATIVE DOCUMENTS

The use of non-legislative documents in CFSP

83. Over 80 per cent of all documents deposited by the FCO and the MoD in CFSP are legislative documents. Ironically this is much higher than the percentage of legislative documents deposited by those Government departments which deal with EC law (such as DEFRA). This is primarily due to the fact that under Pillar I the Commission frequently publishes green and white papers which begin the legislative process, whereas under Pillar II, as noted in the previous Chapter, the Commission is less directly involved and, therefore, the documents that may be deposited are draft legislative texts. So the supposedly non-legislative field of foreign policy is characterised by the scrutiny of mainly legislative instruments.

84. However, many important CFSP policy developments fall outside the legislative framework. In December 2003 the European Council agreed, for the first time, an EU Security Strategy to provide an over-all strategic framework for the EU’s foreign policy.45 Also in December 2003 the EU agreed a strategy to prevent the proliferation of Weapons of Mass Destruction.46 In December 2005 the European Council agreed a comprehensive EU strategy for Africa.47 None of these strategies fall within the definition of the Scrutiny Reserve Resolution (i.e. they are not common strategies). Nonetheless the Government has deposited all of them for scrutiny. It is quite clear that such strategies represent significant developments in the EU’s foreign policy and the decision to deposit these strategies was thus very welcome.

85. This Chapter explains why it is important for national parliaments to examine non-legislative proposals and examines what can be done by the Government to keep us better informed of non-legislative documents and major new policy initiatives.

Applicability of the Scrutiny Reserve Resolution to non-legislative documents

86. The fact that so much of the CFSP is taken forward by politically significant rather than legally binding decisions has led to a variety of scrutiny practices across the national parliaments of the EU. Some parliaments only scrutinise legally binding decisions, while others, such as the parliaments of Denmark, Latvia, Slovakia, Slovenia and Sweden, scrutinise all items for discussion on a Council agenda.48

48 For a full and up-to-date account of EU national parliaments’ scrutiny of CFSP see COSAC Fourth Bi-annual Report: Developments in European Union Procedures and Practices relevant to Parliamentary Scrutiny, October 2005.
87. In the United Kingdom the categories of document which the Government must deposit are defined by the terms of reference for the scrutiny committees of both Houses. The House of Lords Select Committee is appointed “to consider European Union documents and other matters relating to the European Union.” The full definition of “documents” is set out in Box 6.

**BOX 6**

**European Union Select Committee: Terms of Reference**

The expression “European Union documents” shall include the following documents:

(i) any proposal under the Community Treaties for legislation by the Council or the Council acting jointly with the European Parliament;

(ii) any document which is published for submission to the European Council, the Council or the European Central Bank;

(iii) any proposal for a common strategy, a joint action or a common position under Title V (provisions on a common foreign and security policy) of the Treaty on European Union which is prepared for submission to the Council;

(iv) any proposal for a common position, framework decision, decision or a convention under Title VI (provisions on police and judicial co-operation in criminal matters) of the Treaty on European Union which is prepared for submission to the Council;

(v) any document (not falling within (ii), (iii) or (iv) above) which is published by one Union institution for or with a view to submission to another Union institution and which does not relate exclusively to consideration of any proposal for legislation;

(vi) any other document relating to European Union matters deposited in the House by a Minister of the Crown.

88. Under the Scrutiny Reserve Resolution the Government must not give agreement in Council to any proposal for a common strategy, joint action or common position which is still subject to Parliamentary scrutiny. This neither mandates nor precludes the deposit in Parliament of non-legislative documents. It does, however, mean that non-legislative documents can be agreed in Council prior to the completion of scrutiny without this constituting an override.

89. Nonetheless, as Box 6 demonstrates, the Government does deposit non-legislative material. Certain categories are particularly relevant to CFSP. Under categories (ii) and (v) the Government will deposit Commission reports and communications and other documents which are published for consideration by the Council. For example, the EU Strategy for Africa, noted above, began with a draft proposal contained in a Commission communication.

90. It is category (vi) of the Committee’s terms of reference which is potentially the most useful, but also the most problematic. This category provides for the Committee to examine documents which the Government deposits in the exercise of its own discretion. It is important as it enables us to consider non-

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49 Appendix 5, para 1.
legislative documents. It is problematic because it is not subject to any further definition. It is necessarily a broad provision, but one which we attempt here to expand upon in the field of CFSP.

**Scrutiny beyond the Reserve Resolution: current practice**

91. In response to our 2002 Scrutiny Review the Government specifically recognised that “it is right that scrutiny should extend beyond the examination of specific proposals for EU legislation, to include a consideration of policy development within the EU at an early stage.”

92. Accordingly, the Government now deposits a number of CFSP and ESDP documents which are not legislative proposals. (Q 12) In the period July 2004 to December 2005, 18 such non-legislative documents were considered in the Chairman’s sift. In Box 7 we have divided the non-legislative documents into those originating from the Commission and those that have been drafted by the Council (Presidency or Secretary-General/High Representative).

**BOX 7**

**Non-legislative documents considered July 2004–December 2005**

<table>
<thead>
<tr>
<th>Commission:</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Communications on various thematic or geographical issues (8)</td>
</tr>
<tr>
<td>• Legislative work programme (1)</td>
</tr>
<tr>
<td>• Green papers (1)</td>
</tr>
<tr>
<td>• Commission staff working papers and reports (3)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Council:</th>
</tr>
</thead>
<tbody>
<tr>
<td>• ESDP Presidency Reports (3)</td>
</tr>
<tr>
<td>• Draft operational programme of the Presidencies (1)</td>
</tr>
<tr>
<td>• Russia—Four Common Spaces: an agreement between the EU and Russia, prepared by the Council Secretariat (1)</td>
</tr>
</tbody>
</table>

93. The considerable majority of non-legislative documents that the Government currently deposits for scrutiny come from the Commission. Of the 18 non-legislative documents deposited in the past 18 months, only 6 have originated in the Council. With the exception of the ESDP Presidency Reports and the Presidencies’ draft operational programme, there does not appear to be any obvious rationale for the choice of documents deposited.

94. Sub-Committee C also considers Commission reports, communications and recommendations on external relations issues falling outside CFSP. In particular, we receive large numbers of documents relating to enlargement and the European Neighbourhood Policy for both of which the Commission

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51 See Appendix 6 for a full list of all documents considered in the Chairman’s sift in the fields of CFSP and ESDP from July 2004–December 2005.
has specific competence.\footnote{Olli Rehn is currently Commissioner for Enlargement; Benita Ferrera-Waldner is currently Commissioner for External Relations.} We are content with the Government’s record of deposit in these two policy areas and restrict our comments in this report to CFSP and ESDP.

95. Commission communications and green papers relevant to CFSP often deal with thematic or geographical issues on which there is shared competence. In our experience the Government’s explanatory memoranda tend to summarise the Commission’s proposals but provide little analysis of what CFSP action is being considered by the Council.

96. A recent example of such a Commission Communication related to Commission proposals for EU-Palestinian cooperation beyond the Israeli disengagement from Gaza in September 2005.\footnote{Communication from the Commission to the Council and the European Parliament: EU-Palestinian cooperation beyond disengagement—towards a two-state solution, COM (2005) 458 final.} The Communication set out a number of proposals in relation to Commission programmes as well as suggestions for Member State actions to enhance the role of the EU in the peace process. In view of the central importance of the Middle East Peace Process, we would have welcomed a much fuller analysis in the explanatory memorandum of the Government’s view on the Member States’ role.\footnote{Explanatory memorandum submitted by the Foreign and Commonwealth Office on 25 October 2005.}

97. \textbf{It is necessary for our scrutiny of Commission documents for the Government to give a broad view and explain their position on the overall issue and, where it is a Member State competence, what course it seeks the Council to follow.}

98. This happened in respect of the November 2004 Commission Green Paper on Defence Procurement. The MoD not only provided an explanatory memorandum on the Green Paper but attached a non-paper on the Government’s alternative proposals. On the basis of these documents the Sub-Committee took evidence from the Minister which was published as part of a Report on the European Defence Agency.\footnote{European Union Committee, 9th report (2004–05): European Defence Agency (HL 76).} The process allowed the Committee to make a contribution to this developing policy at an early stage.

**Scrutiny beyond the Reserve Resolution: recommendations for further improvement**

\textit{The importance of non-legislative documents}

99. There are three major reasons why it is important that the Government deposit non-legislative documents for scrutiny: the need for upstream scrutiny; the importance of broad frameworks; and the launching of major new initiatives without any implementing legislative measures.

100. As was noted in the previous Chapter, upstream scrutiny of CFSP is a serious challenge. The examination of non-legislative documents enables the Sub-Committee to analyse policy developments at an earlier stage than is possible when considering legislative proposals which are likely to be decided within a short time-frame.
101. Furthermore, a large number of documents presently examined by the Sub-Committee are implementing instruments, i.e. decisions and regulations, which flow from a previously agreed policy. By way of illustration, in the period July 2004 to December 2005, 120 legislative documents in the field of CFSP deposited for scrutiny by the FCO and MoD were considered in the Chairman’s sift. Out of these, 53 were Council decisions, and a further 6 Council regulations. Once the basic policy has been agreed, these implementing measures are rarely controversial.

102. Perhaps most important is the fact that a number of initiatives simply never result in legislation at all. This is the case with the three strategies on Security, Non-Proliferation and Africa mentioned above. The Government will deposit such documents under categories (ii) or (v) since they are generally published by either the Commission or the Council as public documents.

103. More problematic are those Council decisions which are neither published nor decisions of such magnitude that it is quite obvious that the Government need deposit them for scrutiny. The best example of such a decision is the Battlegroups initiative under which Member States provide personnel and equipment capable of undertaking rapid response operations. An EU factsheet describes the initiative as “a key element of the EU’s military capabilities development and of the 2010 Headline Goal.” Despite originating within the MoD, we were not alerted to the existence of the proposals until we had specifically requested further information following their being agreed in Council.

BOX 8

**Battlegroups**

Members were initially alerted to the Battlegroups initiative through newspaper reports and the June and December 2004 ESDP Presidency Reports.

The Chairman of Sub-Committee C, Lord Bowness, asked the Government, during the debate on the EU Security Strategy, why there had been no formal notification of this initiative. The Minister, Lord Triesman promised to respond by letter. In his letter Lord Triesman informed the Chairman that the June 2004 Council decision to set up Battlegroups had not been submitted for scrutiny as there had been “no formal EU decision (i.e. Common Position, Joint Action or Council Decision).” The Minister went on to say: “However, the June 2004 European Council endorsed the initiative through Conclusions language and Defence Ministers made national pledges towards the Battlegroups targets at the Defence Ministers informal General Affairs and External Relations Council in November 2004.”

In February 2005, at our request, the Government produced a paper outlining the policy and United Kingdom commitments. In her oral evidence Sarah Beaver, Director General, International Security Policy on behalf of the MoD, regretted the decision not to inform Parliament of the Battlegroups initiative. (Q 24)

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56 For example, Council Decision implementing Council Joint Action 2005/556/CFSP appointing a Special Representative of the European Union for Sudan.

57 For example, Council Regulation imposing certain restrictive measures in respect of Uzbekistan.


59 HL Deb 20 Jan 2005 col 991.
104. The Battlegroups example illustrates the difficulty of restricting the scrutiny of CFSP to legislative instruments. It is quite clear, as the Minister for Europe acknowledged in his evidence to us, that there are Council decisions which, whilst not legally binding, “have a very significant effect in international affairs.” (Q 12)

105. It is the Council that formulates CFSP. In order for the Committee to properly scrutinise the Government’s handling of CFSP it is necessary for the Government to start systematically depositing a number of non-legislative Council documents.

106. We acknowledge that the Government is already depositing a number of useful non-legislative documents. However we believe that the Council takes politically significant decisions on non-legislative proposals that are not currently subject to scrutiny by Parliament. We therefore welcome Mr Douglas Alexander’s acknowledgment that there is “further scope for a greater degree of transparency” in the Government’s handling of the scrutiny of CFSP. (Q 12)

107. We conclude that the failure of the MoD to inform the Committee of the Battlegroups initiative was a serious mistake. We urge the Government to provide an assurance that major initiatives such as this will in future be deposited for scrutiny.

108. In the paragraphs that follow we invite the Government to agree our suggestions for further categories of non-legislative CFSP documents to be deposited for scrutiny in Parliament.

Non-legislative documents to be deposited

109. It is not possible to provide a definition which would necessarily cover all major non-legislative documents without also covering many routine and trivial documents. The discretion inherent in category (vi) documents should accordingly be retained.

110. It is the responsibility of each Government department to ascertain what proposals for possible new reviews, strategies or other initiatives falling under Pillar II of the Treaties should be deposited. We expect the Government to act in a transparent manner in the exercise of that discretion.

111. We do, however, make the following suggestions which may assist the FCO and MoD in coming to a decision on a particular document. Firstly there are certain specific categories of document which we will, from time to time, directly request. Box 9 relates a particular example which has proved extremely useful. It is not normally possible for us to request specific documents, however, because we will not know they exist unless the Government informs us. Newspaper reports and Council conclusions appear too late for effective scrutiny (as was evidenced by the Battlegroups initiative).
European Defence Agency Steering Board Papers

The European Defence Agency (EDA) was established in July 2004. In our Report on the Agency in March 2005, we recommended that the Government be open in its dealings with the EDA, and submit a number of yearly documents related to the EDA for scrutiny. We have been encouraged by the MoD’s acceptance that this is an area where the MoD should take the lead, and indeed the Department’s ready co-operation on submitting for scrutiny Steering Board and Council documents. (Q 21)

Since the publication of that Report and the Government’s response there have been two Steering Board meetings in June and November 2005. Prior to the second meeting we were alerted to the fact that it was likely that a voluntary code of conduct on defence procurement would be agreed, though at that stage negotiations were still continuing.

Despite the short timescale, our request to review the Steering Board papers, some of which are of a routine nature, ensured that we were alerted to this important new initiative.

Secondly the Government should deposit a non-legislative document for scrutiny where the proposal politically commits the Council, and hence the Member States, to a particular and significant course of action.

As Box 10 demonstrates, significant developments are recorded as a multitude of different document types, including reports, guidelines, recommendations, frameworks or simply agreements.

The words used to describe the Council’s intent in relation to a document or development is, however, important. Items which the Council notes, discusses, underlines, welcomes or stresses (and other similar terms which do not denote agreement to follow a specific course of action) we would not expect the Government to deposit for scrutiny. Items which the Council agrees, endorses, or approves we expect the Government to deposit for scrutiny.

In addition, we expect the Government to deposit for scrutiny any new initiative which is likely to appear in the next ESDP Presidency Report.

To illustrate the above recommendations, Box 10 lists a number of examples of the types of documents which we wish to see deposited.

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61 Noted in Box 1.
**BOX 10**

Examples of the type of non-legislative document which we recommend should be deposited

<table>
<thead>
<tr>
<th>1) Reports</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Report on integrating the fight against terrorism into EU external relations policy. Endorsed at the 13 December 2004 GAERC.</td>
</tr>
<tr>
<td>• Report considering the practical implementation of EU-OSCE cooperation in conflict prevention, crisis management and post-conflict rehabilitation. Approved at the 13 December 2004 GAERC.</td>
</tr>
<tr>
<td>• Report on EU activities in the framework of prevention, including implementation of the EU programme for the prevention of violent conflicts. Approved at the 13 June 2005 GAERC, with a view to its adoption by the European Council on 16–17 June 2005.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>2) Recommendations, guidelines, conceptual frameworks</th>
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<tbody>
<tr>
<td>• A series of guidelines aimed at improving the EU export control system for goods that may be used either for civilian or military purposes. Endorsed at the 13 December 2004 GAERC.</td>
</tr>
<tr>
<td>• Detailed proposals for the implementation of the Presidency’s document entitled “European Defence: NATO/EU consultation, planning and operations.” Approved at 13 December 2004 GAERC.</td>
</tr>
<tr>
<td>• Recommendations on the accelerated decision-making and planning process for EU rapid-response operations. Approved at the 23 May 2005 GAERC.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>3) New initiatives</th>
</tr>
</thead>
<tbody>
<tr>
<td>• New policy of engagement with Libya, 5 concrete actions. Agreed at the 11 October 2004 GAERC.</td>
</tr>
<tr>
<td>• Comprehensive package of EU assistance to Iraq. Agreed at 2 November 2004 GAERC.</td>
</tr>
<tr>
<td>• Priorities for EU involvement with Afghanistan. Agreed at the 13 December 2004 GAERC.</td>
</tr>
<tr>
<td>• Civilian Headline Goal 2008. Agreed at 13 December 2004 GAERC.</td>
</tr>
<tr>
<td>• EU Strategy to combat the illicit accumulation and trafficking of small arms and light weapons (SALW). Endorsed at the 7–8 November 2005 GAERC with a view to its adoption by the European Council in December.</td>
</tr>
</tbody>
</table>
117. The 1999 Scrutiny Reserve Resolution defines the categories of documents which the two Houses may hold under scrutiny. We do not propose any change to the Scrutiny Reserve Resolution. It will continue to be the case that there will be no possibility of an override on a non-legislative document.

118. We do, however, recommend that the scrutiny process be the same for non-legislative as for legislative documents. The Government should make every effort to deposit a non-legislative document as much in advance of the Council meeting at which it is to be considered as possible. We also maintain that non-legislative documents should be accompanied by comprehensive explanatory memoranda rather than by covering letter.

119. The Chairman of the House of Commons European Scrutiny Committee, Mr Jimmy Hood MP, has been consulted and agrees with these recommendations.\(^{62}\) It is important that the Government continue to follow the same practice for both Houses in relation to both the documents chosen for deposit and to other information provided, for example by Ministerial letter.

**Documents that need no longer be deposited for scrutiny**

120. We welcome Mr Douglas Alexander’s suggestion that we should look at whether there are further CFSP documents that could be added to the list of non-depositable documents.\(^{63}\) (Q 6)

121. We propose that the following no longer need be deposited for scrutiny:

- Status of forces agreements based on the model status of forces agreement previously cleared by the Committee.\(^{64}\) Any agreement which significantly departs from this model should continue to be deposited, as should any amendment to the model agreement itself.

- Status of mission agreements based on the model status of mission agreement previously cleared by the Committee.\(^{65}\) Any agreement which significantly departs from this model should continue to be deposited, as should any amendment to the model agreement itself.

- Article 24 framework and participation agreements based on the model framework and participation agreement previously cleared by the Committee.\(^{66}\) Any agreement which significantly departs from this model should continue to be deposited, as should any amendment to the model agreement itself.

- Additional protocols to agreements with third countries to take into account the accession of new Member States.

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\(^{62}\) Written evidence p 1.

\(^{63}\) This is a list of categories of document which we have agreed with the Commons European Scrutiny Committee need no longer be deposited. European Union Committee, 1st Report (2002–03): Review of Scrutiny of European Legislation (HL 15), para 167.

\(^{64}\) Model agreement on status of forces for EU military crisis management operations.

\(^{65}\) Model agreement on the status of the European Union civilian ESDP mission in a Host State.

\(^{66}\) The legal and financial parameters relating to participation of third states in ESDP operations is agreed between the EU and the third state under Article 24 TEU.
We will invite the Commons European Scrutiny Committee formally to agree with this proposal. If it does, and if time allows, Committee staff will monitor non-deposit of these documents as they do with other similar categories.

**Reporting on Councils**

122. Although not restricted to non-legislative documents, ministerial reports on Council meetings, both in advance of the meetings and following their conclusion, are extremely valuable in ensuring that we are kept fully informed of developments in CFSP.

123. The Government submit for publication in Hansard written ministerial statements giving a broad overview of the agenda for forthcoming Councils and Council Conclusions. **We do not believe that it would be practical either for the Sub-Committee or for the Government for there to be prior scrutiny of all items for discussion on the Council agenda. It is important nevertheless that we are able to request from the Government, usually by correspondence, further information on items which appear to be of a substantial nature, but relating to which there have been no formal documents submitted for scrutiny.**

124. We have established an informal agreement with the Government that the Minister for Europe will attend a meeting of the Sub-Committee to provide oral evidence on current developments in foreign policy on a regular basis. In practice it has not been possible to arrange these meetings as regularly as we had originally envisaged (four times a year). The last published evidence session held was held on 11 November 2004. The next evidence session took place on 26 January 2006 and particularly focused on developments which occurred during the United Kingdom Presidency of the EU.

125. We consider these sessions to be invaluable, though we consider that sessions held twice a year following the June and December European Councils should suffice. In his evidence on this inquiry the current Minister for Europe assured us that he would be happy to give oral evidence twice a year. (Q 15)

126. **We seek an assurance from the Government that the Minister for Europe will continue to provide oral evidence on current developments in European foreign policy twice a year.**

127. A motivating factor for this Report was the experience of Sub-Committee C that Defence Ministers who negotiate in Council on behalf of the United Kingdom have not been subject to sufficient parliamentary scrutiny. Internal agreement between the FCO and MoD means that the FCO takes the lead on the majority of defence issues, including ESDP missions (both civilian and military) and ESDP Presidency Reports.

128. Defence Ministers attend the GAERC twice a year in May and November when they take decisions on defence-related matters. However, it is the Minister for Europe who provides both the pre- and post-GAERC written statements and who is responsible for any correspondence with the Committee concerning the Council.

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68 A report of the evidence is expected in February 2006.
129. This is insufficient when it comes to holding Defence Ministers accountable for the decisions they take in Council. The MoD maintained in their evidence that a direct relationship with the Committee would be a duplication of effort. (Q 36) We do not accept this view. On the contrary, we believe that time would be saved were the Minister to write to us directly.

130. **The MoD should provide separate written ministerial statements on defence matters prior to and following each defence GAERC in May and November.**

131. In her oral evidence on behalf of the MoD, Sarah Beaver stated that the MoD were happy, in principle, to provide oral evidence on ESDP once per year. The Minister for Defence Procurement, Lord Drayson, came to give evidence on current developments in European defence on 19 January 2006. We appreciated the Minister's evidence and hope that he found the session as useful as the members of Sub-Committee C did.

132. **The MoD should provide a Minister to give oral evidence to the Sub-Committee following each defence GAERC in May and November.**
CHAPTER 5: CONCLUSIONS

133. We welcome the increased commitment to the scrutiny process shown by the FCO over the previous two years and hope that the culture of scrutiny which has been created will continue in future and be fully adopted by the MoD. (para 27)

134. We urge both the FCO and MOD to continue to have a dedicated person who exercises oversight of the scrutiny process of all proposals going to Council, and acts as a single point of contact for Committee staff. (para 31).

135. We urge the MoD to develop more specific scrutiny guidelines to those working on EU proposals. (para 32)

136. In view of the short time often available to engage in an exchange of views and the wide-ranging subject matters of many proposals, we expect Government officials to readily continue to be available to assist the Sub-Committee members in the scrutiny process. (para 37)

137. We reiterate the importance of receiving a signed explanatory memorandum for the final version to be considered by the Sub-Committee. In order to be considered in the Chairman’s sift, signed memoranda must be deposited by midday each Thursday during Parliamentary sittings. (para 43)

138. The “effective engagement” (Q 2) between our staff and officials within both the FCO and MoD has been an important development which has enabled the fast and effective handling of scrutiny. We fully welcome the advance provision of explanatory memoranda and briefings on forthcoming documents. (para 44)

139. For it to be practicable to organise extra meetings which a majority of Members are able to attend, the Government must give as much notice as possible, either informally or in writing, of documents which will require scrutiny. (para 46)

140. We will only examine documents at very short notice where there is a real urgency (that is, a real need for a document to be deposited just days prior to its probable agreement by Council). In these cases we expect the Government to explain fully the urgency of the situation and to provide as detailed an explanatory memorandum as soon as possible, particularly with regard to the Government position, in order to enable effective scrutiny. (para 49)

141. Although documents may be informally considered prior to the weekly sift, it is essential that the Government ensure that documents are deposited in sufficient time to allow the Chairman to consider whether they should be sifted for examination to the Sub-Committee. (para 50)

142. We urge the Government, when a dissolution is imminent, to deposit as many documents as possible prior to dissolution in order that scrutiny may take place before the Committee ceases to exist. (para 55)

143. Where the timing of a proposed extension is entirely predictable we urge the Government to give notice of the impending decision as early as possible to enable Parliamentary scrutiny to take place. We suggest that the Government in turn encourage the Council Secretariat to forward drafts to Member States at an early date. (para 57)
144. The Government should explain why it is not possible for an explanatory memorandum to be produced prior to the circulation of a document by the Council Secretariat. Though the Cabinet Office cannot be expected to keep track of the vast majority of documents which they have not yet received, it should be possible to take notice of significant new initiatives such as the Communication on the Euro-Mediterranean Partnership which was a published document being used to prepare for a major international summit. (para 59)

145. We underline the great importance of the Government keeping us informed of potential ESDP missions at an early stage, including in those cases in which the Council chooses not to act. Given the speed at which eventual joint actions on ESDP missions are adopted, early warning is crucial for scrutiny. We urge the Government to make these letters as detailed as possible. It is at this stage, when the Council is yet to make a final decision, that we can most usefully make a contribution. (para 73)

146. The Government alert the Committee to potential new initiatives and reviews of existing legislation and policies at as early a stage in the process as possible. Where draft proposals cannot be provided due to the restricted nature of the documents, the Government should outline the main proposals along with a statement of the Government’s position. (para 80)

147. Where advance notification of proposals or draft instruments cannot be given the Government should provide a full indication of the reasons for this in either its explanatory memorandum on the deposited document or by letter. This should include, where necessary, an explanation of the main points of disagreement on a particular proposal. (para 82)

148. It is necessary for our scrutiny of Commission documents for the Government to give a broad view and explain their position on the overall issue and, where it is a Member State competence, what course it seeks the Council to follow. (para 97)

149. In order for the Committee to properly scrutinise the Government’s handling of CFSP it is necessary for the Government to start systematically depositing a number of non-legislative Council documents. (para 105)

150. We acknowledge that the Government is already depositing a number of useful non-legislative documents. However, we believe that the Council takes politically significant decisions on non-legislative proposals that are not currently subject to scrutiny by Parliament. We therefore welcome Mr Douglas Alexander’s acknowledgment that there is “further scope for a greater degree of transparency” in the Government’s handling of the scrutiny of CFSP. (Q 12) (para 106)

151. We conclude that the failure of the MoD to inform the Committee of the Battlegroups initiative was a serious mistake. We urge the Government to provide an assurance that major initiatives such as this will in future be deposited for scrutiny. (para 107)

152. It is the responsibility of each Government department to ascertain what proposals for possible new reviews, strategies or other initiatives falling under Pillar II of the Treaties should be deposited. We expect the Government to act in a transparent manner in the exercise of that discretion. (para 110)

153. Items which the Council notes, discusses, underlines, welcomes or stresses (and other similar terms which do not denote agreement to follow a specific
course of action) we would not expect the Government to deposit for scrutiny. Items which the Council agrees, endorses, or approves we expect the Government to deposit for scrutiny. (para 114)

154. In addition, we expect the Government to deposit for scrutiny any new initiative which is likely to appear in the next ESDP Presidency Report. (para 115)

155. We do not propose any change to the Scrutiny Reserve Resolution. It will continue to be the case that there will be no possibility of an override on a non-legislative document. (para 117)

156. We do, however, recommend that the scrutiny process be the same for non-legislative as for legislative documents. The Government should make every effort to deposit a non-legislative document as much in advance of the Council meeting at which it is to be considered as possible. We also maintain that non-legislative documents should be accompanied by comprehensive explanatory memoranda rather than by covering letter. (para 118)

157. We do not believe that it would be practical either for the Sub-Committee or for the Government for there to be prior scrutiny of all items for discussion on the Council agenda. It is important nevertheless that we are able to request from the Government, usually by correspondence, further information on items which appear to be of a substantial nature, but relating to which there have been no formal documents submitted for scrutiny. (para 123)

158. We seek an assurance from the Government that the Minister for Europe will continue to provide oral evidence on current developments in European foreign policy twice a year. (para 126)

159. The MoD should provide separate written ministerial statements on defence matters prior to and following each defence GAERC in May and November. (para 130)

160. The MoD should provide a Minister to give oral evidence to the Sub-Committee following each defence GAERC in May and November. (para 132)
Sub-Committee C

The members of the Sub-Committee which conducted this inquiry were:

- Lord Bowness (Chairman)
- Lord Boyce
- Lord Dykes
- Baroness Falkner of Margravine
- Lord Freeman
- Lord Hannay of Chiswick
- Lord King of Bridgwater
- Lord Lea of Crondall
- Baroness Symons of Vernham Dean
- Lord Tomlinson
- Lord Truscott
APPENDIX 2: LIST OF WITNESSES

The following witnesses gave evidence:

Foreign and Commonwealth Office
Mr Jimmy Hood MP, Chairman, Scrutiny Committee, House of Commons
Ministry of Defence
## APPENDIX 3: GLOSSARY OF ACRONYMS AND TECHNICAL TERMS

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
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<tbody>
<tr>
<td>CFSP</td>
<td>Common Foreign and Security Policy</td>
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<tr>
<td>COSAC</td>
<td>The Conference of Community and European Affairs Committees of Parliaments of the European Union</td>
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<tr>
<td>DEFRA</td>
<td>Department for the Environment Food and Rural Affairs</td>
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<td>DfID</td>
<td>Department for International Development</td>
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<tr>
<td>DRC</td>
<td>Democratic Republic of Congo</td>
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<tr>
<td>EC</td>
<td>European Community</td>
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<tr>
<td>EC Law</td>
<td>European Community Law</td>
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<tr>
<td>EDA</td>
<td>European Defence Agency</td>
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<tr>
<td>EM</td>
<td>Explanatory Memorandum</td>
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<tr>
<td>ESDP</td>
<td>European Security and Defence Policy</td>
</tr>
<tr>
<td>EU</td>
<td>European Union</td>
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<tr>
<td>EU OSCE</td>
<td>The European Union The Organisation for Security and Co-Operation in Europe</td>
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<tr>
<td>EUPM</td>
<td>EU Police Mission in Bosnia and Herzegovina</td>
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<tr>
<td>EUPOL</td>
<td>EU Police Mission in the former Yugoslav Republic of Macedonia Proxima</td>
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<tr>
<td>EUSEC</td>
<td>EU Security Sector Reform Mission in the Democratic Republic of Democratic Republic of the Congo</td>
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<tr>
<td>FCO</td>
<td>Foreign and Commonwealth Office</td>
</tr>
<tr>
<td>GAERC</td>
<td>General Affairs and External Relations Council</td>
</tr>
<tr>
<td>MOD</td>
<td>Ministry of Defence</td>
</tr>
<tr>
<td>NATO</td>
<td>North Atlantic Treaty Organisation</td>
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<tr>
<td>SALW</td>
<td>Small Arms and Light Weapons</td>
</tr>
<tr>
<td>SOFA</td>
<td>Status of Forces Agreement</td>
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<tr>
<td>SOMA</td>
<td>Status of Mission Agreement</td>
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<tr>
<td>TEU</td>
<td>The Treaty on European Union</td>
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<tr>
<td>UN</td>
<td>United Nations</td>
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</tbody>
</table>
APPENDIX 4: EXTRACTS TAKEN FROM A LETTER TO THE CHAIRMAN, SELECT COMMITTEE ON THE EUROPEAN UNION, HOUSE OF LORDS FROM THE MINISTER FOR EUROPE, FOREIGN AND COMMONWEALTH OFFICE RE: “COMMISSION COMMUNICATION ON THE 10TH ANNIVERSARY OF THE EUROMED PARTNERSHIP” DATED 20 DECEMBER 2005

Thank you for your letter of 24 November on your decision to clear the above Commission Communication from scrutiny. I am pleased that you agreed with the Commission’s proposals for a five-year work programme which will help move the Barcelona Process forward.

Your letter asks for an explanation for the seven month delay between the publication of the Commission Communication and the Government’s depositing of the text for scrutiny. The Government shares your concern. The Commission produced its Communication on 12 April and sent it to the Council Secretariat on 18 April. However, it was not until 27 October that the Council Secretariat circulated this document. The trigger for the Cabinet office to request an Explanatory Memorandum from Government departments is the circulation of a text from the Council Secretariat. I regret that neither we nor the Cabinet Office spotted the time delay in order to provide an explanation to your Committee before an EM was submitted.

Officials at the United Kingdom Permanent Representation to the European Union in Brussels have raised this issue with the Council Secretariat and ascertained that this was an administrative mistake, for which they apologise. A delay of seven months is certainly not common and the Council Secretariat has highlighted that this is an isolated case. Nevertheless, the Cabinet Office and FCO will continue to monitor the situation.

Additionally, the FCO will ensure the same early warning mechanism we have developed for legislative material (Joint Actions, Common Positions etc) is transposed for non-legislative documents, such as Commission Communications. I know your Committee has acknowledged that the FCO has made great strides in recent years in the early deposit of legislative material using unofficial texts. A similar system, whereby the FCO submits Commission documents at a suitable stage as unofficial text, would reap the same rewards in those cases where the Council was likely to consider the document quickly or where there was likely to be a delay in the text being circulated by the Council Secretariat.
APPENDIX 5: SCRUTINY RESERVE RESOLUTION RELATING TO THE WORK OF THE EUROPEAN UNION COMMITTEE (6 DECEMBER 1999)

The House has resolved:

“That—

(1) No minister of the Crown should give agreement in the Council to any proposal for European Community legislation or for a common strategy, joint action or common position under Title V or a common position, framework decision, decision or convention under Title VI of the Treaty on European Union—

(a) which is still subject to scrutiny (that is, on which the European Union Committee has not completed its scrutiny);

(b) on which the European Union Committee has made a report to the House for debate, but on which the debate has not yet taken place.

(2) In this Resolution, any reference to agreement to a proposal includes—

(a) agreement to a programme, plan or recommendation for European Community legislation;

(b) political agreement;

(c) in the case of a proposal on which the Council acts in accordance with the procedure referred to in Article 251 of the Treaty establishing the European Community (co-decision), agreement to a common position, to an act in the form of a common position incorporating amendments proposed by the European Parliament, and to a joint text; and

(d) in the case of a proposal on which the Council acts in accordance with the procedure referred to in Article 252 of the Treaty establishing the European Community (co-operation), agreement to a common position.

(3) The minister concerned may, however, give agreement to a proposal which is still subject to scrutiny or which is awaiting debate in the House—

(a) if he considers that it is confidential, routine or trivial or is substantially the same as a proposal on which scrutiny has been completed;

(b) if the European Union Committee has indicated that agreement need not be withheld pending completion of scrutiny or the holding of the debate.

(4) The minister concerned may also give agreement to a proposal which is still subject to scrutiny or awaiting debate in the House if he decides that for special reasons agreement should be given; but he should explain his reasons—

(a) in every such case, to the European Union Committee at the first opportunity after reaching his decision; and

(b) in the case of a proposal awaiting debate in the House, to the House at the opening of the debate on the Committee’s Report.

(5) In relation to any proposal which requires adoption by unanimity, abstention shall, for the purposes of paragraph (4), be treated as giving agreement.”

<table>
<thead>
<tr>
<th>DATE</th>
<th>DOCUMENT TYPE</th>
<th>TITLE</th>
<th>DECISION</th>
</tr>
</thead>
<tbody>
<tr>
<td>06/07/04</td>
<td>Additional protocol</td>
<td>Proposal for a Council Decision on the signature and provisional application and the conclusion of a Protocol to the Euro Mediterranean Agreement between the European Communities and their Member States, of the one part, and the Arab Republic of Egypt to take account of the accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Hungary, the Republic of Latvia, the Republic of Lithuania, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the EU.</td>
<td>Cleared</td>
</tr>
<tr>
<td>13/07/04</td>
<td>Council decision</td>
<td>Council Decision concerning the conclusion of the Agreement between the European Union and Bosnia and Herzegovina on security procedures for the exchange of classified information.</td>
<td>Info only</td>
</tr>
<tr>
<td>13/07/04</td>
<td>Commission communication</td>
<td>Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee on an EU-India Strategic Partnership; and Add 1—Annex.</td>
<td>Sifted</td>
</tr>
<tr>
<td>07/09/04</td>
<td>Common position</td>
<td>Possible Common Position imposing a travel ban against three Belarusian government figures implicated in state sponsored disappearances.</td>
<td>Info only</td>
</tr>
</tbody>
</table>

69 Date of the Chairman’s sift at which document was initially considered. Certain documents included here will have been deposited prior to July 2004; other documents will have been deposited during this period but not considered in the sift.

70 Specific attention is drawn to additional protocols, status of mission agreements and status of forces agreements; non-legislative documents are italicised.

71 Brackets at end of title denote department which deposited the document. Where no indication is given, the document was deposited by the FCO.

72 Key to decisions: “Sifted”—document was sent to Sub-Committee C for examination; “Info only”—document was cleared at the Chairman’s sift but sent to Sub-Committee C for information; “Cleared”—document was cleared outright at the sift and not drawn to the attention of the Sub-Committee; “Cleared FPCC” (cleared following previous consideration by the Sub-Committee)—document was considered by the Sub-Committee prior to examination at the sift and recommended for clearing, but would otherwise have been sifted to the Sub-Committee.
<table>
<thead>
<tr>
<th>DATE</th>
<th>DOCUMENT TYPE</th>
<th>TITLE</th>
<th>DECISION</th>
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<td></td>
<td>Council regulation</td>
<td>Draft Staff Regulations for the European Defence Agency. (MoD)</td>
<td>Info only</td>
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<td></td>
<td>Council decision</td>
<td>Draft Council Decision on the financial provisions applicable to the general budget of the European Defence Agency (EDA). (MoD)</td>
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<td>Council decision</td>
<td>Rules applicable to national experts and military staff on secondment to the European Defence Agency. (MoD)</td>
<td>Info only</td>
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<td>Common position</td>
<td>Council Common Position amending Common Position 2004/179/CFSP concerning restrictive measures against the leadership of the Transnistrian region of the Moldovan Republic.</td>
<td>Info only</td>
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<tr>
<td>14/09/04</td>
<td>Council and Commission decision</td>
<td>Proposal for a Decision of the Council and of the Commission on the conclusion of a Partnership and Cooperation Agreement between the European Community and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Tajikistan, of the other part.</td>
<td>Info only</td>
</tr>
<tr>
<td>12/10/04</td>
<td>Common position</td>
<td>Common Position concerning the lifting of restrictive measures against Libya.</td>
<td>Info only</td>
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APPENDIX 7: REPORTS

Recent Reports from the Select Committee

Session 2005–2006 Reports prepared by Sub-Committee C

Session 2004–2005 Reports prepared by Sub-Committee C
Current Developments in European Foreign Policy (2nd Report session 2004–05, HL Paper 44)
European Defence Agency (9th Report session 2004–05, HL Paper 76)

Session 2003–2004 Reports prepared by Sub-Committee C
Current Developments in European Foreign Policy (19th Report session 2003–04, HL Paper 118)

Session 2002–2003 Reports prepared by Sub-Committee C
EU Russia Relations (3rd Report session 2002–03, HL Paper 29)
Current Developments in European Foreign Policy (37th Report session 2002–03, HL Paper 152)
Minutes of Evidence

TAKE BEFORE THE EUROPEAN UNION COMMITTEE
(SUB-COMMITTEE C)
THURSDAY 23 JUNE 2005

Present
Bowness, L (Chairman)  Lea of Crondonall, L
Boyce, L  Symons of Vernham Dean, B
Falkner of Margravine, B  Tomlinson, L
Freeman, L  Truscott, L
Hannay of Chiswick, L

Examination of Witnesses

Witnesses: Mr Douglas Alexander, a Member of the House of Commons, Minister for Europe, and Mr Tim Barrow, Deputy Political Director and Assistant Director, EU External, Foreign and Commonwealth Office, examined.

Q1 Chairman: Minister, good morning. Can I welcome you to your first meeting of this Sub-Committee of the European Union. Can I take the opportunity somewhat belatedly on behalf of the Committee to congratulate you on your appointment and we look forward to this being the first of many sessions. We are very grateful to you also for agreeing to take questions on two subjects. We are conscious that there are a lot of questions and a relatively short amount of time. The first section is on the CFSP scrutiny. This a short inquiry which we are undertaking and perhaps I might just say by way of explanation that it is part of our ambition to improve the scrutiny of CFSP and we do not come to this, I think I speak for the whole Committee, with any hostility towards CFSP, we do not come to this, I think I speak for the whole Committee, with any hostility towards CFSP, but in fact we seem to be enjoying a really very strong and effective relationship. Perhaps come with the idea that if we can establish a good way of working for better scrutiny perhaps over areas which have not otherwise been subject to scrutiny, who knows, you may even find that you have support for the decisions you have taken rather than dissatisfaction at the fact that they have been taken irrespective of what it is, so we do approach it in the spirit of co-operation and hope that you will share that objective with us.

Mr Alexander: Thank you very much. Firstly, of course may I apologise for the very slight delay in my arrival. I think giving evidence is the rude good health of Cabinet working because as I sat round the Cabinet table this morning with a rising level of anxiety as the conversation continued, I was conscious of my obligation to be here at 10.45, so it is good to be here and I am very grateful for the opportunity to meet with you. If I might just make the briefest of introductory remarks, I am accompanied today by Tim Barrow, our Deputy Political Director and Assistant Europe Director who will support me in the course of our discussions this morning and, where appropriate, contribute to our discussions. Let me just also reaffirm on a personal level that it is a personal commitment of mine and indeed of the whole Office to ensure that your Committee is well informed of European Union business and to reduce the amount of time the Foreign Office is obliged to override the scrutiny reserve. My sense, on the basis of the work I have been undertaking obviously before my appearance today, is that I inherit a broadly successful relationship and you were kind enough to reflect that in your introductory remarks, and I hope that, not just on the basis of what I say today, but in my time as Europe Minister, we are able to strengthen what seems to be a really very strong and effective relationship.

Q2 Chairman: Thank you, Minister. It is accepted generally that the Government has successfully reduced the number of overrides certainly in the last 18 months. What practical measures have actually contributed to that success?

Mr Alexander: I think in the first instance it is a clear example of effective ministerial and official leadership in the sense that it has been a priority that has been identified by ministers, but it has also been a matter which has received particular attention from Tim and from his colleagues. The fact, for example, that we have a dedicated scrutiny officer working directly to the agenda advanced by the Committee I think has made a material contribution to the fact that we have been able to drive down the number of times that the scrutiny reserve was also used, so we have a dedication of resource. We have also made sure that there is effective scrutiny guidance provided around
the Department to make sure that it is part of the understanding, part of the culture within the Office that this is not an add-on or something which can be set aside, but rather a central part of the process of democratic scrutiny that one would expect within a parliamentary democracy. I think that culture change is now fairly deeply embedded within the Office. I was reading in my briefing papers in the middle of the night last night that I think the quickest we have managed to receive papers from Brussels, turn them around and have them in a position where an explanatory memorandum is ready for sign-off by a minister before coming before your Committee was four hours. Other than in those circumstances we will manage that on every occasion, I would be cautious of giving a guarantee, but I think it shows the enthusiasm with which members of Tim’s team now take this part of their work.

Q3 Lord Hannay of Chiswick: Could I just follow that up, Minister. I think we have felt that there has been a real effort made and we do recognise that the nature of these documents is a bit different from scrutiny of legislative proposals of the European Union which proceed to our slower process and one which is easier to predict exactly. However, I think where we have been most doubtful is in areas falling under the responsibility of the Ministry of Defence where I am not sure we are quite as convinced that they have taken on board what I call the “culture of scrutiny” and there was some difficulty over some of the decision-making relating to the European Defence Agency which in fact, as you know from the report of this Committee, we strongly supported and yet we were given very inadequate opportunities to discuss it and see it. I do not know whether, perhaps through consultation with your opposite number in the Ministry of Defence, you see that this much-increased activism you have told us about in the Foreign Office extends also to that Department.

Mr Alexander: If it would be helpful, I will certainly make those points to ministerial colleagues in the MoD. Your question also gives me the opportunity to make one further point which is relevant not just to the Foreign Office, but indeed to other departments which it was remiss of me not to acknowledge at the outset. That is, one of the other contributory factors to the success in driving down the number of times the scrutiny reserve has been in place has actually been the work of this Committee itself and in particular of your clerks. I have to say that the more I have explored this issue in recent weeks with Tim and his colleagues, it has been evident to me that there has actually been a strong personal rapport between the relevant officials which means that a constructive and flexible approach has been taken both in terms of on occasions the times of meetings of this Committee, but on a much more prosaic and day-to-day basis there has actually been very effective engagement. For example, something fairly straightforward, which is not something we always like to work with, is the idea that you share an unsigned explanatory memorandum with the Committee which allows there to be the beginnings of a process of scrutiny within this Committee on the basis then of a ministerial signature in the formal process being taken forward, so I think there are lessons which are not unique to the Foreign Office and on that basis I will be happy to correspond with my ministerial colleagues in the MoD.

Q4 Lord Tomlinson: Can I just pick up that very last point because I think it is very welcome to members of this Committee to hear that statement, particularly about the informal liaison and really to accept what you have said as being a statement of gratitude for the fact that it is happening and a commitment to that process continuing and perhaps deepening and certainly that would be very welcome from our point of view. However, to pick up on what Lord Hannay was saying, CFSP policy proposals are often endorsed by the Council as a political agreement and the legislative proposal finalised at a somewhat later date. Now, can the Government explain how it is approaching scrutiny where the text is not sufficiently formalised and is put forward merely as a political agreement and the role perhaps of this Committee now to process an informal consultation and help in that?

Mr Alexander: Yes, I am grateful for that opportunity. Perhaps this provides an opportunity to place on the record where we stand in relation to those decisions reached by political agreement which are not an uncommon feature of this area of work. In truth, it has proved to be one of the grey areas in CFSP scrutiny and we are aware of that and seek to reflect that in the proactive approach that we take to working with your Committee. Of course, where possible, scrutiny should be completed before a proposal is decided upon by political agreement. This is consistent with the Government’s general position set out in the Resolutions of the House of Lords of 6 December 1999, but, as all members of this Committee from their expertise and experience are aware, some of these decisions can, by their very nature, be very fast-moving and we need to try and reflect that. Legislative proposals are quickly developed in the working groups and are moved on rapidly to COREPER for agreement subsequently by the Council of Ministers. I think it is also, by way of context, fair to acknowledge that that is not always a reflection of the fact that suddenly there has just been a decision to look at something, but the nature of foreign affairs events themselves can dictate that action needs to be taken at very great speed. However, texts can still require finalisation by
linguistic experts or indeed by legal experts before they can be formally agreed and if this cannot be completed within a desirable timeframe, political agreement is sometimes necessary, with even the English and the French texts being the basis of discussion. This allows the relevant European Union bodies to start planning and implementing the proposal immediately and when all the procedures have been completed, it is then agreed formally of course by the Council of Ministers. The other situation in which political agreement can apply is when the Presidency consciously chooses to put an issue of disagreement before ministers at the specific Council meeting in order to try and overcome the impasse which may have been encountered at official level. Decisions are then made and can be taken by ministers which allow officials to take forward the work that is being undertaken. I think that that in particular, not least given sometimes the contentious nature of those particular issues and indeed the decisions which emerge subsequently from the Council, is one of the areas where we need to look most clearly at our parliamentary procedures to see where we can anticipate the likely route of travel of those decisions. The other area which is worth acknowledging candidly at this stage as a matter of some concern in the other House at the moment is circumstances, for example, during a general election or indeed in the weeks following a general election where on the floor of the House of Commons last week during a debate with the Chair of the European Scrutiny Committee, Jimmy Hood raised with me what seemed to me a very fair point in saying, “Europe has not stopped operating. Indeed, if anything, Europe has been even more active in recent weeks while we do not have a House of Commons European Scrutiny Committee up and running”. I undertook to pass on those concerns directly to the Leader of the House and to the Whips’ Office and I am sure that on the basis of those conversations, they are well aware of the strength of feeling. I sought to bring that in to reflect the fact that there can be very different circumstances in which there can be difficulties in terms of making sure that people are aware of the decisions. Although we have sought to minimise the number of circumstances in which these political decisions avoid the appropriate scrutiny, of course in recent months there can be circumstances, for example, the need to avoid a legal vacuum where there have been circumstances in which the legal basis of an existing measure may expire, so it may prove necessary, secondly, the wish that a measure of benefit to the United Kingdom should come into operation as soon as possible, thirdly, to achieve an advantageous package to do with other measures and, in the case of our pending Presidency of the European Union, to ensure measures agreed sometimes during a helpful Presidency. Therefore, if a text has reached political agreement, it is possible that proposals then can be taken forward, passed by the Council of Ministers through political agreement before, and pending, the final legal and linguistic processes. Frankly, we often negotiate hard during those working groups to produce a final text which satisfies the United Kingdom position and is ultimately something that we can, therefore, sign up to. It can potentially be embarrassing for the United Kingdom if we then seek to reopen the text, so I think what appears to be an obvious opportunity is often not as great an opportunity in reality. The Government would not expect a text to reach agreement by ministers which does not satisfy the United Kingdom’s concerns and of course those decisions are seen as being decisions on the basis of unanimity, so we obviously work, even where there are political decisions, to ensure that those decisions as closely as possible reflect the position of the British Government which would be subject to scrutiny by this Committee.

Q5 Chairman: Can I just take this opportunity to pick up a point. You mentioned the concern in the other place about what happens during elections. It is a point which has occurred to us as well about what happens during times of recess. We will be happy to look at ways in which we could cope with that and we may even have some suggestions, but clearly if you have any suggestions as to how we, as a committee, could help, we would be, I am sure, very receptive to those ideas and would want to consider them.

Mr Alexander: I am very grateful for that. Suffice to say, I should put on the record our gratitude for the ongoing work that the Committee has undertaken and in recent weeks not least in the light of the present position in the Commons. I think it is fair to say that my colleague Jack Straw, the Foreign Secretary, has probably managed, along with specific steps being taken at official level, to imprint very clearly during his four years in the Foreign Office the centrality of Parliament to the way that the Foreign Office should operate. In that sense, when I say that I have sympathy with the position that Jimmy Hood has explained over recent weeks and having expressed that concern volubly, I am confident that I am on the same course as the Foreign Secretary. He candidly acknowledges in recent days on the floor of the House of Commons that the area of scrutiny by Parliament of European legislation is something which frankly we could do better, albeit we are discussing today something that has been broadly successful in terms of driving down the number of circumstances in relation to the scrutiny reserve. I think there is a real opportunity for your Committee at the moment, not least in terms of the widening debate about what is the
appropriate relationship with the European Union, to contribute, on the basis of your own experience, suggestions to what I think is the ongoing thinking across government and indeed within Parliament more broadly as to ways we can improve the situation. Certainly it was reflected in the debate in the House of Commons in recent days that there is a sense that we could do this better and not least, given the importance of the decisions and the volume of the paperwork which you are all very familiar with, it is a real challenge for us to make sure that we do this as effectively as possible.

Q6 Lord Tomlinson: You did say that you would be looking at parliamentary procedure and I think that is very welcome, but linking it to the earlier statement which has been made about the informal nature of contacts and how beneficial it can be, this is one of the areas where that would be particularly the case and the qualitative nature of the informal contact will in fact minimise any problems that might emerge in relation to scrutiny, so we hope that that can be borne specifically in mind in this particular area as well as generally. Mr Alexander: I think that is a very valid point. I think there are one or two specific areas in terms of your own developing thinking of this area. I think one area which we have been encouraged by on your part has been the willingness to meet outside normal hours and to recognise that sometimes, in order to ensure that scrutiny takes place, we need to reflect what are very fast-moving areas elsewhere. I think there are valuable lessons to be learned already in terms of your own experience of avoiding the overrides in those circumstances. Secondly, the point which you just made in terms of the use of scrutiny during the recess or, for example, during elections and the work that has been taken forward here, a further area of possibility would be the use of written procedure which worked very well on the understanding by the Committee of the Council’s decision to launch a military mission in Bosnia and that seems to us again to provide a level of assurance in terms of your rightful place being acknowledged and recognised. We would also look at the possibility of whether there can be an increase in the list of non-depositable items which is another area which could be a possibility. We were pleased that you agreed not to scrutinise agreements in the framework of model agreements for European and NATO countries involved in the crisis management operations and there are other areas I can add to that list in order to take forward the process.

Q7 Lord Lea of Crondall: The third question is about confidentiality where a minister can give agreement to the proposal if he considers that it is confidential. I think we are aware that if you have got an international negotiation going on about anti-dumping proposals and so on, that is one sort of criterion which one understands, but do we have a list of criteria? Mr Alexander: I do not wish to break down the spirit of consensus which has emerged in the session today, but I think the premise of your question, which is what I consider to be confidential, is in danger of falling into error. In reality, these documents are owned by the European Union and in particular by the Council Secretariat and we are, as you rightly acknowledge, bound by the rules in terms of the sharing of documents internationally. In essence, it is the Council Secretariat which determines a document’s classification based on its content and we are obliged to reflect that. The Government, therefore, in no real sense owns these documents as they originate from the Council of Ministers and we must respect the classification of the Council Secretariat and the classification that they have themselves determined upon, and we are bound, in terms of the Council’s Security Regulations of 2001, to do so. These have been adopted in the European Union system by way of a decision which is legally binding on the Member States, of course the United Kingdom included. The decision is addressed in the Council and is adopted by it and, therefore, we are bound by virtue of Article 203-EC as a member of that Council. Of course, as you rightly acknowledge, it is only right that Member States and international organisations need to have an appropriate system of protection for what can be highly sensitive documents. These can either affect the effectiveness of CFSP policies or indeed at times the security and lives of personnel in the field and, therefore, we have no difficulty with the concept of effective and good document security. Given that where a document is deposited for scrutiny it becomes public, it is not possible in every circumstance to deposit classified documents with the committees for these reasons, but of course it is the case that drafting unclassified explanatory memoranda, which we have established, we see as offering a way forward and I would certainly be interested in the Committee’s thoughts as to whether that has provided an adequate basis for scrutiny to be taken forward.

Q8 Lord Lea of Crondall: So the words “if he considers this” are simply superfluous because we are really only talking about, from what you are saying, the classification in Brussels? Mr Alexander: That is right. It is not an independent judgment that is exercised in Westminster or in Whitehall as to whether to provide documents. I think it would be helpful to share with you the fact that there have really only been a couple of occasions in the last six months, as I recollect, where
Mr Alexander: Of course our intention would be to share as much information as possible, but you are of course right to recognise that sometimes these decisions, by their very nature, are very fast-moving and it is only fair to acknowledge before the Committee that there can be circumstances where it simply is not possible to have the level of scrutiny which all of us would want. I think the good faith in which the Government approaches this question is probably best evidenced by a specific example. If you look, for example, at the EU police mission to the Democratic Republic of the Congo, it was established that the Government followed the following steps, and let me just set them out to the Committee. A letter was sent by the Government on 27 October 2004 to inform the committees of a fact-finding mission to be sent to the DRC to establish the viability of a follow-on police mission to the Commission’s Integrated Police Unit at Kinshasa. A second letter was then sent on the 26 November, a month later, to inform the committees of the fact-finding mission’s recommendations and to highlight that planning for an ESDP mission would commence. The first draft Joint Action under the cover of an explanatory memorandum was sent to the committees on 26 November. This was cleared by your Committee on 1 December 2004 by written procedure and by ministers at the Competition Council on 7 December 2004. A third letter was then sent on 20 January 2005 in response to some specific questions arising from this Joint Action to inform your Committee of its mandate in relation to EUPOL at Kinshasa, staffing, staff security and budgetary requirements. Therefore, I think that evidences the fact that, even in fast-moving circumstances, we do earnestly endeavour to ensure that your Committee is kept updated. It is always easy to find a positive example, but I think it does show our determination to do so and it also reinforces my earlier point that where there can be the kind of flexibility that this Committee has shown in the past allied to the effective and informal relationships between clerks and officers in our work, then I would hope that in most circumstances we would be able to find a way round a situation and that the kind of inflexibility which can result in there not being proper scrutiny can be avoided.

Q11 Baroness Symons of Vernham Dean: Thank you, and I hope we can take it as read that that sort of assurance would also apply to ESDP missions which were not so much based upon the necessity of some peacekeeping or policing activity, but also to those connected with natural disasters where there could also be a possibility of our handling that sort of issue.
Mr Alexander: Absolutely and our interest in ensuring that this relates to our concern for appropriate parliamentary scrutiny rather than the output in terms of what the nature of the action is.

Q12 Baroness Symons of Vernham Dean: That is helpful. Can we turn to the sorts of decisions then when the commitments are not subject to formal decisions in Council, but where they might be said to be nonetheless significant in terms of their impact in terms of the likely level of public interest in the way that those sorts of not just ESDP, but CFSP as well, commitments are made. Can you give us any view about Parliament’s role, or do you think Parliament has a role, over those sorts of decisions because I think that in some of those, they are maybe questions of judgment, but we would like to feel that your judgment would err on the side of generosity in terms of parliamentary scrutiny?

Mr Alexander: Yes, I think it is a very fair question. My experience has already taught me that much of the Office’s work revolves around words and in that sense, whether it is in any formal legal instrument or whether it is simply on the basis of other words that are spoken, they can have a very significant effect in international affairs. It is, therefore, right for me to look at concerns on a range of other documents. Let me just give you a sense that our desire for a greater level of transparency is actually manifesting itself in that broader range of decisions. We already send the Committee the Commission Communications to the Council and the European Parliament, biannual Presidency Reports, draft agreements, the Operational Programme of the Council, and in this case for 2005 submitted by the incoming Luxembourg and United Kingdom Presidencies, and European neighbourhood Action Plans. Again I hope that evidences our good faith, but I would hope that perhaps after today’s session, we would have the opportunity at official level and clerk level to have a further conversation as to what specific documents you would be interested in being given access to. It may be the case that if you have not seen sight of them already, you would not be fully aware, so we would have to bring to the table what other documents there are that we are aware of, but I think that if there is further scope for a greater degree of transparency, then certainly I will support that at ministerial level to make sure that happens.

Baroness Symons of Vernham Dean: Thank you, Chairman. I think we have covered the outstanding points on the classification.

Q13 Chairman: Just before we leave this point, can you perhaps explain to us how you and your colleagues in the MoD share responsibility for the scrutiny of these sorts of items?

Mr Alexander: With relief, I will turn to my official at this point in the sense that my knowledge is principally in the Foreign Office rather than the MoD and ask him just in terms of the official level how information and these discussions are taken forward. Perhaps it would be appropriate to acknowledge at this point in relation to Baroness Symons’ question that the only caveat I would add to my, I hope, generous offer to have a genuine discussion about the sharing of documents is that even with the better systems we have now got in place, our personnel and resources are limited and we will need to continue to operate within that framework and if there are further documents we can provide, we will be happy to do so.

Mr Barrow: With regard to the sharing out to the Foreign Office and the MoD on scrutiny, I should say two things. First, with regard to CFSP scrutiny under which ESDP sits, we in the Foreign Office have the overall responsibility in this. My department and myself are responsible for trying to take that forward and ensuring that overall there is a productive relationship with this Committee and proper scrutiny is taken into account in Brussels in the Brussels process. With regard to ESDP, we in the Foreign Office have the lead for civilian ESDP and, therefore, we offer explanatory memoranda and information to the Committee on those issues and the Ministry of Defence has responsibility for military questions in operations and that is a basic sort of division, so in terms of institutions in the military field, it is the MoD to whom you would look. I should say that we do work extremely closely together both obviously on policy, but also on scrutiny. We talk often with our colleagues in the MoD to share the sort of practice we have with you and to find ways to tackle the difficulties in military ESDP where particularly it is more likely you will have classified material for military ESDP than in some of our areas and also quite often you will have a greater sense of urgency in some of these ESDP areas than you have with some of the CFSP areas we deal with. Although not exclusively, and we have our difficulties too in these areas, but the MoD have them as a greater proportion than we do. We also share with them the advice which your clerks, your officials give us about putting letters in early so we look at an early-warning mechanism on things coming up. If, for instance, the Political Director is talking to your Committee about the scope of issues arising in the field of CFSP, we would seek to inform you at that time about military ideas as well as other policy areas and all the other good practice we have been talking about. So there is a formal lead for the MoD in certain areas but we try and make it a team effort, as you would expect.

Q14 Lord Hannay of Chiswick: I think there was a third area in which this sort of work could not proceed as satisfactorily as it might and that is if
every attempt is made to stick rigorously to the letter of formal scrutiny obligations because a very large number of decisions taken are actually somewhere in the kind of grey area in ESDP and in CFSP. I think we recognise on CFSP that you tend to lean towards openness and fullness and we are just really asking about that, and I think the Minister very helpfully responded to the first question I asked by saying that you discuss this with the MoD. I think we are slightly less than convinced that they also lean in that direction, but we would like to encourage them to do so because I think if you take a very, very strict and narrow interpretation, you will exclude a great amount of the paperwork which goes on prior to a decision on ESDP.

**Mr Alexander:** Yes, I would like to turn to that in a second, but perhaps I may reveal a touching naivety as I come new to this area of work. If you look at the increased significance of the civilian dimension of ESDP missions and given the proximity of the FCO and the MoD working together, I think there may be opportunities for the culture which we have developed of informal contact bleeding over and informing the other areas of work of ESDP missions. I think the kind of practice of the extraordinary meeting which was convened by this Committee in order that we could clear the Council Joint Action in support of its protection of nuclear facilities in the Russian Federation is a very good example where in highly sensitive areas a distinctive approach was taken which allowed the public scrutiny to take place. My sense is that with the rise, the significance and the frequency of the civilian ESDP missions, then actually there will be an opportunity for that best practice to be spread.

**Mr Barrow:** I very much agree, Minister. In the distinction I made between military and civilian, of course what we are finding quite often is that where ESDP is managing the focus is, what you might call, itself something on the cusp and it is that progression from military to civilian. Therefore, of course we are working very closely together and that means that good practice and our policy in any area, including scrutiny, spreads. I think you are right. We have some evangelists for scrutiny by departments, and there is James Eke who deals with the clerks on a regular basis, because I think there was a sense some time ago in Brussels that we had the Brussels process and then back in capitals there was the scrutiny obligation and they were not linked together. Actually now I think we have been better at linking them together, as the Minister said earlier, in making part of the responsibility to developing policy to consider scrutiny, not because it is a chore, but, as the Chairman said, because it is helpful and we have found that. So we have found the process of the more informal relationship and more flexible relationship with this Committee rewarding and helpful and that is the tale we tell in Whitehall and not just to any particular department, but in general.

**Q15 Lord Truscott:** I think the evidence we have had from the Minister has been extremely informative and I think the Committee finds this oral session with the Minister invaluable, but really following on from that, I just wonder whether it would be possible for the Minister for Europe to give an undertaking to come before this Subcommittee in the future perhaps twice a year to report back on the state of the CFSP and, there has been some suggestion, perhaps after European Councils. I wonder whether that is something he might be able to consider.

**Mr Alexander:** I do not think I will be reviewing anything to a committee as experienced as this Committee, but officials in the Foreign Office prepare me well for evidence sessions. Whether you manage to discharge that or not is an entirely different matter and you will ultimately judge it by 12.15 this afternoon. I was given a long and detailed answer in response to that question and suffice to say I will answer it and say I will be very happy to come back and follow the precedent established by the former Minister for Europe.

**Q16 Chairman:** Just briefly and lastly, we get a letter from the Government with the provisional agenda for the General Affairs Council. Will you make it a habit to include a commentary on the UK’s position and priorities on the issues on that agenda? I will not say it never happens, it happens sometimes, but it would be helpful, I am sure, if, as a matter of practice, it could happen.

**Mr Alexander:** I think I can offer you a partial yes to that question in the sense that of course in line with our commitment to Parliament and our genuine desire to increase transparency, of course where it is appropriate then we will add the UK commentary and we will ensure that it is brought before your Committee. I am sure you will appreciate that there can be circumstances before the General Affairs Council when it is not altogether advantageous for the British negotiating position to be in the public domain and, with that important caveat, I think the way forward might be for there to be further discussions between our FCO Scrutiny Coordinator and with your clerks in terms of how we can better monitor the quality and relevance of the information that we are able to share with you ahead of the General Affairs Council to see if there are better ways that we can take it forward.

**Chairman:** Minister, may I bring this part of the evidence session to a close by thanking you so much for the very full replies that you have given to our
questions. We appreciate very much the spirit of cooperation which you have brought to this session and I hope that our report will be useful, and your evidence will be an essential part of it and I think we see this very much as the start of the process rather than the end of it. Thank you.
THURSDAY 30 JUNE 2005

Present: Bowness, L (Chairman) Tomlinson, L
Lea of Crondall, L Truscott, L
Symons of Vernham Dean, B

Examination of Witness
Witness: Dr Sarah Beaver, Director General, International Security Policy, Ministry of Defence, examined.

Q17 Chairman: Dr Beaver, good morning. Thank you very much indeed for coming to give evidence to the Sub-Committee in connection with our inquiry into the scrutiny of CFSP. I think you gave evidence to us on the European Defence Agency inquiry that we carried out and the Committee has already expressed its thanks for the very helpful Government response. I have to say to you that we come to this whole question of CFSP matters really recognising that much of it falls outside the traditional scrutiny process and not from a position of hostility. It does not give rise to the same sort of legislation in the same kind of way that other matters do. We believe that decisions are made in all sorts of different ways and different fora which perhaps, within the spirit of parliamentary scrutiny, we should together find a way of bringing into the process. I think I speak for the Sub-Committee when I say that is where we start. There are an increasing number of ESDB missions where we recognise the Council have got to make decisions quickly. I think there is a paper which suggests possible missions elsewhere. How can the Government ensure that Parliament and this Committee do have the opportunity for adequate scrutiny of these decisions even if, as I say, they are not traditional decisions that are subject to scrutiny? Dr Beaver: My Lord Chairman, perhaps it would be helpful just to make a couple of points at the beginning. On the question of ESDB missions, we very much assume that it is for the FCO to lead on the tabling of documents and the overall scrutiny process for decisions. We obviously work with them very closely, but it is essentially in a supporting role because all these ESDP decisions on missions need to be taken in the wider context of CFSP. I think what has been helpful to us is perhaps the correspondence that we have had and your own report on the European Defence Agency because the emergence of the European Defence Agency has demonstrated that this is an area where it will be appropriate for the MoD to lead and to be responsible for tabling documents for scrutiny, and we found your report particularly helpful and the correspondence around it and, more recently, on the battle groups initiative. I think we are moving to a better understanding now of what your scrutiny requirements are and we can perhaps be more open than we have been in the past about the provision of documents and so on for scrutiny because it is not so much as we had originally understood this, just about taking joint actions, common positions and decisions, it is very much a question of perhaps providing your Committee with more background information and I think in that your report and the subsequent correspondence have been helpful.

Q18 Chairman: Thank you. Have you got any particular ideas in mind as to how we might take it forward? I know there have been discussions between officials and there have been suggestions of some of the other documents that we might receive.
Dr Beaver: As for the suggestion that maybe we could have ministers or officials coming to give evidence perhaps once a year on ESDP issues, certainly in principle we would be happy to comply with that. I think one of the things that would be most helpful is if we had ongoing discussions with your officials as to what kind of things it is that they might be interested in. If we can have more of an unofficial dialogue then perhaps we would be better at anticipating your need. There is one qualification I should make and this is perhaps what has caused us problems in the past as to where the boundary is between your very understandable general wish to understand the context in which decisions are being made and the question of whether or not you are formally scrutinising documents and decisions before Government makes them because I think perhaps we are straying into new areas there.

Q19 Chairman: Have you any proposal to appoint a permanent scrutiny coordinator because your colleagues in the FCO do have that? Dr Beaver: We have not formally done that, but certainly it would be in our Directorate for Policy on International Organisations that any such permanent coordinator could rest.

Q20 Chairman: So it is a matter that we could pursue?
Dr Beaver: Right.
Q21 Baroness Symons of Vernham Dean: My Lord Chairman, our colleague, Lord Hannay, was very keen to pursue this topic when we spoke to the Foreign Office minister, Douglas Alexander. Last week Lord Hannay was saying that he was not convinced that the Ministry of Defence had taken on what he called “the culture of scrutiny” in quite the same way as the FCO had done, which I think is quite a pungent point from somebody with Lord Hannay’s experience. The Lord Chairman has just asked about the scrutiny coordinator. May I follow up the point by asking about what sort of scrutiny guidance is issued in the MoD, because the Foreign Office minister was very strong on the point that there was now effective scrutiny guidance within the FCO and that was becoming part of what he described as “the culture within the office”, and he went on to say that “scrutiny is not an add-on or something that can be set aside but a central part of the process of democratic scrutiny that one would expect within a parliamentary democracy”. It was a statement which, as you would imagine, brought a good deal of smiling around the table. I just wonder whether this same embracing of the culture of scrutiny could be said to exist in the MoD.

Dr Beaver: Perhaps in response to that I could go back to my first point, that actually on most of these issues in relation to ESDP it is agreed between ourselves and the Foreign Office that it is very much a Foreign Office lead on the tabling of documents for scrutiny. I think it has really only been in the last year or so, with the developments on the European Defence Agency, that it has become clear that this is a subject where it would be right and proper for the MoD to take the lead on scrutiny. I think there is actually a very good awareness amongst my colleagues, both in my own area of the Directorate for Policy on International Organisations and our colleagues in the Defence Procurement Agency, about the needs and wishes of this Committee and Parliament in general to be actively engaged in the scrutiny process.

Q22 Baroness Symons of Vernham Dean: Is there guidance?

Dr Beaver: We follow the general guidance that is laid out by the Cabinet Office. I have been very aware of it for the last three years because there was a correspondence back in 2002–03 between the Chairman of the European Union Scrutiny Committee and ministers in our Department and the Foreign Office about how the scrutiny of ESDP should be conducted.

Q23 Baroness Symons of Vernham Dean: But there is not any specific MoD guidance that you have issued because, as you said, the MoD has its differences with others through the nature of the work. Do you not feel that maybe specific guidance would be useful to MoD officials?

Dr Beaver: We certainly have been quite deeply involved in the development in my own policy area of how the Government responded to the inquiry from this Committee and others, and a Committee of the Commons, on how scrutiny should be conducted and really it is a very small team of people involved. Most of our activity is within the Ministry of Defence and not directly linked with the European Union business. I am not sure that we would need supplementary guidance. I happen to have with me the general Cabinet Office guidance which is certainly our point of reference for all of this.

Q24 Lord Truscott: My Lord Chairman, I think there is a real question here of the difference in the ethos in the MoD and the Foreign Office. I find the MoD sometimes overly cautious in terms of the documents that it is willing to release. We are not talking about protecting secrets and those sorts of issues. I think in the past the MoD’s role in a way has been to restrict information, quite rightly, to protect national interests. We are moving into another area here where increasingly with the CFSP and the ESDP there does have to be democratic accountability and I am not sure that the MoD has entirely taken this on board. I just wondered, Dr Beaver, whether you had any ideas on how maybe the ethos of the MoD could be addressed in such a way that it does meet the requirements of the development of the CFSP and the ESDP and the role of committees like ours?

Dr Beaver: My Lord, perhaps I might, with due deference to your experience, obviously, take slight issue with that because I think the culture of the openness which has come from the Freedom of Information Act has actually been something we have very much taken to heart within the Ministry of Defence. Indeed I would say that process is ongoing, but generally there has been a considerable move in recent years, particularly since the Freedom of Information Act came into force fully, to think right from the outset, “Is this information that we should disclose?”, and we have had a lot of requests for information and certainly for the most part we have been able to comply with those requests. I think sometimes the Department has been quite proactive in saying this information should be in the public domain anyway. I hear your point and I know we have a reputation, but I hope we are doing something to overcome that. When we had the original correspondence of our ministers with the Committee in 2002–03 there was very much concern from a minister’s point of view about security information and obviously we have to honour and respect the classification of documents that originate in the European Union. There was also a concern that Government ministers themselves need to be able
sometimes to take decisions very rapidly on security and defence issues. Indeed in the context of the battle groups initiative one of our contentions is that many of our European partners need to accelerate their decision-making processes because if we are to intervene effectively to prevent a crisis we need to take decisions quickly. Against all of that background, I still think that we have come to a better understanding of what your requirements are. Possibly we could do more and, in retrospect, I regret that perhaps we had not put forward into Parliament perhaps a little bit of an explanation of the battle groups initiative which we launched. There are possibilities that we could do with this in that you could pick up and tell us of your interests from Council conclusions, where these have been referred to, but generally I think we are moving in a more open direction. That is certainly our intention.

Lord Truscott: The paper that we produced said that the Foreign Office circulated about six times more papers than the MoD. I still think there is this issue that the MoD is used to dealing with foreign and security issues whereas the Foreign Office is far more used to circulating general policy papers. I think we will have to get the MoD to move to a position where it is freer in perhaps circulating general policy papers on these sorts of issues.

Q25 Chairman: Your comment about the conclusions is one of the areas that concern us because, yes, you can pick up things from conclusions, but the conclusion is probably the evidence of political agreement. To read about that and then ask for details is in a sense very much after the event. We are not approaching this on the basis that we are going to disagree with everything that is in the conclusions. You might even find that you could have parliamentary approval or support. We are not trying to put ourselves into a position that we do not have in law or constitutionally. Reading about the political decisions is one of the things that concerns us, particularly in this area.

Dr Beaver: Perhaps I could go back to the point that I made at the beginning. Generally we work very closely with our colleagues in the Foreign Office, but we would expect them to lead overall in the tabling of the document for scrutiny. That is why the volume of papers that we circulate will always be less than our Foreign Office counterparts. It is not that we are not associated with them, but it has been agreed between us that they should lead.

Q26 Lord Tomlinson: I think we have already started to move further than the legislative proposals into the whole question of the scrutiny of non-legislative proposals. There are, quite evidently, ESDP commitments which are not subject to a formal decision in Council but which are nevertheless significant. I believe that Parliament should be able to scrutinise these documents. Does the Ministry of Defence?

Dr Beaver: Council conclusions?

Q27 Lord Tomlinson: Yes. Well, as I said, documents which are not subject to a formal decision in Council but which are of substantial significance, the scrutiny of non-legislative proposals. We believe that the increasing numbers which are not subject to formal Council decisions are matters that, if we are to do our job properly in relation to Parliament, we should be able to scrutinise. Is that view shared by the Ministry of Defence?

Dr Beaver: I think on the whole we are certainly willing, and we have outlined to this Committee our proposals for the scrutiny of documents in relation to the European Defence Agency. I think at a level below that, where ministers are clearly involved, there are a number of documents that the EU Military Committee, for example, might be looking at, but they are essentially military documents, military advice, which goes up to a higher committee and because it is military advice in that context I think we might find it difficult to say these should automatically be tabled for parliamentary scrutiny in the formal sense.

Q28 Lord Tomlinson: I think at the moment we are clearly passing each other slightly in our travels. I want to pick up your welcome earlier offer, which I found helpful, in which you said that it would be very helpful to have a much closer collaboration with the secretariat of the Committee. One of the things the secretariat of the Committee will want to do at a very early stage is to discuss with you the handling of some of these non-legislative proposals. I am seeking, first of all, your assurance that that is welcome and, secondly, your reaction to my view that if the outcome of those discussions proves not to be entirely satisfactory from our point of view, that is an additional reason why we should have a ministerial commitment to regular meetings at ministerial level with the Select Committee.

Dr Beaver: Certainly we would be very pleased to take forward the discussion with your officials and I hope we will be able to meet your needs satisfactorily. I can also advise the Committee that the Secretary of State has indeed agreed that it would be appropriate for ministers or officials, say once a year, after the November GAERC or wherever seems most appropriate, to come and give evidence to this Committee.

Q29 Lord Tomlinson: Let me just pick up the “ministers or officials” point. As much as we are delighted to see officials, we do not automatically equate them as equal. There will be times when we are
saying quite explicitly we want to see somebody who is politically responsible rather than an official who is responsible for reporting back to the minister. Perhaps we can make it quite clear that ministerial discussion is something which on a regular basis we would like to be able to have. A regular basis could well be once a year. I think if you read the evidence of Mr Douglas Alexander from last week you will see he sets a standard which you might commend to your ministers to read and perhaps to emulate. Would you agree that the classification of documents to be deposited for scrutiny now needs to be revised in the light of experience? Are you over-classifying documents?

Dr Beaver: I think the point to make here is that we are not responsible for the classification of documents emanating from Brussels, that is the responsibility of the Council Secretariat. There is also the point that sometimes there are security constraints placed on documents by Member States who provide information in the first place or perhaps by NATO and we are bound to honour and respect those classifications. There is a procedure, but it would take considerable time to apply for the classification of a document to be reviewed. In terms of meeting your timescales for parliamentary scrutiny, I do not think that would be possible. The proposal that we have to prepare unclassified summaries of classified documents is probably the most helpful way forward.

Q30 Lord Tomlinson: I can see no circumstances in which a document subject to a Council Secretariat classification should be, for example, circulated to members of the European Parliament when the Ministry of Defence would be taking a view that the classification precludes its circulation to us. Would you accept that?

Dr Beaver: I understand your point on that, my Lord.

Q31 Lord Tomlinson: I think it is very easy to understand the point. I am asking if you concur with it.

Dr Beaver: It is perhaps fair to make the point that when there was negotiation on the Interinstitutional Agreement that was something that we were very mindful of within the United Kingdom and we put considerable constraints on any classified information being made available to members of the European Parliament that we would not be making available to your Lordships or the scrutiny committees in the other place. I think the arrangements are quite restricted that they have in place. I think in general our policy was one of similar constraints being applied in Europe as well as in relation to Parliament where we do feel bound to honour the constraints that are placed upon the documents by the Council Secretariat.

Q32 Chairman: There is a suggestion in what you have just said that guidance from the Cabinet Office and information can be given subject to the removal of some of the classified information or all of the classified information. Is that your understanding?

Dr Beaver: Yes, that is always the case. It will take time to sort out what those are and certainly it may be more rapid for us to work out what actually is the sensitive information and prepare an unclassified summary, as we have tried to do on previous occasions.

Q33 Lord Lea of Crondall: Let us relate this matter of classification back to the problem of the borderline area between legislative documents and non-legislative documents and let us assume that the principle of classifying documents in Brussels is parallel to the classification of documents in London and, as you say, this is very different, presumably there are similar classification systems. In the case of legislative proposals, obviously things cannot be classified beyond a level at which it is impossible for people to agree the legislation. Could you illustrate where in the public interest as it were the discussions become public in the Council of Ministers itself? There has been a lot of discussion about whether the Council of Ministers’ meetings should be open to being reported and so on. We have in the presidency document, which we are just looking at briefly, an enormous number of things which are in your field. How do you think the presidency of the Council has discretion to make sure that questions are opened up for discussion as opposed to the narrow point about the classification of documents? I think that would be worth asking you to think aloud about.

Dr Beaver: The discretion to open up discussions from the Council of Ministers?

Q34 Lord Lea of Crondall: Yes.

Dr Beaver: Clearly the Council conclusions will come out and be put in a form that is appropriate for public readership. I am aware that defence ministers, for example, have had confidential sessions of discussion and indeed I think it is very important that they have that ability to have discussions of a confidential nature. The nature of defence business is such that sometimes that is the only circumstance in which you can have a really useful discussion. If you thought that those discussions should be open meetings you would be changing their character entirely and they would probably be rather less useful meetings.

Q35 Lord Lea of Crondall: I totally understand that would be the concern. We have been given a remit as a European Union Select Committee to go more upstream and be aware of and involved with the decision-making process, not just when it has all been decided. Could you give some more consideration to
the problem of how we can then get involved in a better way more upstream because almost everything is very confidential at the upstream stage?

Dr Beaver: I take the point, my Lord. On the European Defence Agency point, we have already sent to the Committee our proposals of how we might covered very fully the position that we expected or not we are going to be able to meet your full the Agency issues its papers beforehand as to whether or not we are going to be able to meet your full timescales for scrutiny, but we will certainly do our best. On a lot of these other questions I have to go back to it and say that many of the times that these are coming up for Council decisions it will be in the context of the overall tabling and reporting which the Foreign Office will lead on, on keeping you informed of the upcoming business of those committees and I think we would see that as the most helpful way forward still, for there to be joint reporting, ie for the Foreign Office to lead on the reporting of the ministers because the defence ministers are often discussing what is then discussed overall. I know that there is some thought that it might be sensible for defence ministers to write separate reports, but we think they are really indivisible and that has always been the way that we have regarded the GAERC, which may take decisions on issues that relate to both foreign policy and defence ministers.

Q36 Baroness Symons of Vernham Dean: Do I take it from what you have just said that you do not think defence ministers will take kindly to the notion of writing separately to the Committee before the GAERC committees in November to tell us what their views are on the priorities specifically within the defence ministers’ remit? You have not actually been quite as explicit as that but it has been implicit in what you have just said.

Dr Beaver: We have discussed this issue with our Foreign Office counterparts and I think our joint view is that it would be duplicative if we were to do so.

Q37 Baroness Symons of Vernham Dean: It is the case that at some of these meetings there is not a Foreign Office minister present. I have sat as a defence minister without the presence of a Foreign Office minister and made a statement on behalf of HMG as a defence minister without the Foreign Office ministers there and the Ministry of Defence has taken the brunt of preparing the briefing that I was putting. I am concerned that the defence ministers are more protected from the scrutiny that the Foreign Office ministers would consider to be a natural part of their duty.

Dr Beaver: I understand your position. I certainly respect your experience. Clearly this is something we could ask our ministers to look at again. We would certainly be anxious to ensure that any correspondence from Foreign Office ministers covered very fully the position that we expected defence ministers to be taking in their appearance at the GAERC. We will, of course, be advising you of any formal decisions in relation to the EDA steering board that we might expect to be made.

Q38 Baroness Symons of Vernham Dean: Let me put it slightly differently. It is the case, is it not, that when one department writes on behalf of another, covering another department’s issues, they will clear the paper with the department who they are covering, in this case the Foreign Office clearing back with your ministers? However, that seems to me, in advance of GAERC meetings, to build in an extra layer of delay and thereby cut down the amount of time available for scrutiny by a parliamentary committee and possibly to the extent, given how heavy ministerial workloads are, of a matter of several days. If the ministers who are responsible for making policy are the ones who are advising the Committee in advance, that is a much more immediate relationship and actually I think it cuts down the work because they are going to have to duplicate anyway because they are going to be scrutinising what the Foreign Office are saying to them about their own priorities at the GAERC meetings. I view with some scepticism your point that this is duplicating. I think it will happen anyway that there will be two sets of ministers at these things. I think it would be quicker to have a direct relationship with ministers responsible for the policies at the GAERC both in terms of pre-warning and in terms of after the event telling us what happened. I just leave the point with you. My colleagues may take a different point of view from mine. Recent ministerial experience leads me to deduce that this is a recipe for delay and as much duplication as if there were a direct relationship. Let us ponder that one a little bit further. I would like to raise another point in relation to something Dr Beaver raised earlier on over the documents that are not subject to formal decision, the same point that Lord Tomlinson was raising with you a little earlier. When we saw Mr Alexander last week he said that he hoped that after the session we had with him we would have the opportunity for an exchange between our clerk and the officials in the Foreign Office in order to have a look at the sorts of areas where we would like to see more documentation over things which are not necessarily subject to formal decision making in Council. I appreciate that you are not a minister, you are an official, but I wonder whether you might be willing to put the same point to your
ministers, that we might have that sort of contact between MoD officials and our clerk on exactly the sorts of points that Lord Tomlinson was raising, to see whether we can come to some better understandings about the sorts of things where we are concerned that things are falling through the sieve and where we would like to get a better handle on what is going on?

Dr Beaver: We will certainly be very happy to take part in those discussions.

Baroness Symons of Vernham Dean: I think that would be helpful.

Q39 Lord Tomlinson: You were saying that you discuss with your counterparts in the Foreign Office and then you advise ministers, but ministers are shielded from the direct knowledge of what we are saying. They get it translated for them, pre-digested and pre-masticated for them and they are told that perhaps it is not necessary. I raise that point again as part of the reason why periodically the direct relationship with the minister is a very important part of our work. I think in the long run we will not be ever fully persuaded that scrutiny is being taken quite as seriously as it should be unless once in a while we speak to the boss man directly rather than have our thoughts interpreted, however well, to him. We think that we are probably the better direct communicators with him. I hope you can pass that on.

Dr Beaver: I shall.

Q40 Lord Truscott: I agree with Lord Tomlinson’s point that really we would want to have oral evidence on the ESDP at least once a year, following on from your earlier commitment that there should be an exchange of information with the Committee, particularly after the November GAERC. I understand from what you were saying earlier that you are quite happy to provide information and evidence to the Committee, but are you in a position to give that commitment to the Committee?

Dr Beaver: My Secretary of State has indicated he would certainly be happy to give evidence himself to the Committee and we would be happy to provide officials to support, if required. For example, the United Kingdom has been leading EUFOR in Bosnia and I think it might be a good idea for the Committee to take evidence from General Leakey who has been commanding forces, if that is what the Committee so wishes to do. That is not a scrutiny role; it is just a more general ESDP policy.

Lord Truscott: We are specifically looking at the scrutiny role as applied to the ESDP rather than individuals in charge of operations. It may be the case that we do want to talk to people about individual operations, but I think here we are talking about the whole question of accountability and the flow of information, particularly with regard to the development of the ESDP and having a regular report back preferably from the Secretary of State or another minister in the MoD.

Q41 Chairman: Dr Beaver, I think that probably brings us to the end of the questions that we had to pose. Perhaps I can pose another one to you. You have mentioned on a number of occasions that time is sometimes a problem. The Committee is well aware of this in this area of activity and we recognise that in our procedures, if we are going to do the scrutiny that we want to do, we may well have to be adjusted to accommodate that. Your colleagues in the FCO will know that it is not unknown for us to meet on a different day or an extra day. We have a written procedure. I know that there are difficulties with recesses and perhaps greater difficulty when Parliament is being dissolved for an election, but I suspect there are ways round that and we may even have some suggestions ourselves and there may be some precedents for the fact certainly so far as this House is concerned. We would not want you to think that because we meet at 10.30 on a Thursday and disappear from July to October somehow or other this presents a problem. We are very aware of it. We may have some suggestions. If there are any suggestions that you and your colleagues would want to make to the Committee as to how we could accommodate and overcome that problem, particularly of the more difficult times that I have indicated, we would be very pleased to receive them.

Dr Beaver: Thank you, my Lord Chairman. Certainly we appreciate your indication of flexibility because I think it is very much the nature of the kind of work that we are doing that the timescales are not always within our control. There are occasions when, for example, the United Kingdom has pushed for something, as we had done on the decision to set up the Agency Establishment Team to be proceeded with, and then the presidency of the day might decide suddenly to bounce a decision far earlier than we had anticipated. I am afraid that resulted, for example, in the autumn of 2003, in our ministers having to exercise a scrutiny override. On the question of whether or not we can think of any other ways in which we could overcome the timescale issue, I really think that we are, despite perhaps appearances to the contrary, very conscious of your needs for scrutiny and we will try and communicate again with your clerk as soon as we become aware of something that looks as though it is going to hit us as a fast ball.
30 June 2005

Dr Sarah Beaver

Q42 Chairman: We would not want time to be a problem. I am sure we will make some suggestions as to how that may be overcome. If there are any suggestions which you have that you think may be useful from your side of things, please let us know. Dr Beaver: Thank you.

Chairman: Dr Beaver, I think that completes the evidence session. Thank you very much indeed to you and your colleagues for coming.
Written Evidence

Letter from Mr Jimmy Hood MP, Chairman, European Scrutiny Committee, House of Commons

LORDS’ REVIEW OF THE SCRUTINY OF CFSP

Thank you for consulting me about your draft report *Review of Scrutiny: Common Foreign and Security Policy*. Although it was very kind of you to invite me to give oral evidence, I think that it will be possible to set out my views in writing, although of course I am willing to discuss them further if you wish.

I very much welcome the general thrust of the Report, especially its recognition that special measures are necessary to take account of the different timetable for CFSP scrutiny. I echo your finding that the FCO have become good at letting us have documents for scrutiny in good time. As with your sub-committee, our staff often receive advance, unsigned copies of Explanatory Memoranda (EMs) so that they can draft briefing for our Committee. Our deadline for the signed EM is slightly earlier than yours (we need it by mid-day on Thursday for the following Wednesday meeting), because a full brief has to be provided on nearly all documents, not just those on which we will be making a substantive report. We also support your recommendation that the Council should forward drafts to Member States as early as possible, although this may need pressure from several Member States.

The main recommendation which will affect my Committee, and which I welcome, is the suggestion that the Government should deposit non-legislative CFSP documents for scrutiny if their approval by the Council would amount to a political commitment. It is rather puzzling that there is a category of strategies agreed by the European Council which do not count as “common strategies” (eg, the recent EU strategy on small arms and light weapons); nevertheless, we do need to see them as they constitute important policy developments. I recognise that increasing the number of depositable documents will have implications for the workload of our staff and Members; but I believe that it is necessary for this aspect of the EU’s work to be properly scrutinised.

However, I also agree that there may be categories of document which are currently deposited but may not need to be. But I should like Commission staff working papers and reports to continue to be deposited; they are often important documents, and we have made a substantive report on at least one of them.

I am content with the suggestion that defence issues on the GAERC agenda should be the subject of a separate letter from a Defence Minister; but, to be meaningful, such letters will need to specify what the United Kingdom’s position was before the event and what actually happened. We may well wish to follow your lead in taking oral evidence from Defence ministers, but I expect that the Committee will wish to decide this on a case-by-case basis.

November 2005