Government Response to the House of Commons European Scrutiny Committee Report HC 109-1 of Session 2013-14 Reforming the Scrutiny System in the House of Commons

Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty

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Government Response to the House of Commons European Scrutiny Committee 24th Report HC 109-1 of Session 2013-14, *Reforming the Scrutiny System in the House of Commons*

The Government welcomes the European Scrutiny Committee's Inquiry into Reforming the Scrutiny System in the House of Commons and the detailed consideration the Committee has given this important issue. The Government is clear that national parliaments and national governments are the main sources of democratic legitimacy and accountability in the EU, as the Prime Minister and Deputy Prime Minister set out in their speeches of January and October 2013. The Government is therefore committed to strengthening the role of national parliaments in EU decision-making.

The Government is also committed to ensuring accountability and transparency in the way in which Government operates, including through effective parliamentary scrutiny arrangements. This Government has already taken significant steps in this direction.

First, through the EU Act 2011 we increased Parliament's control over EU decision-making, ensuring that Parliament has the right to debate and decide on a wide range of EU business, and ensuring that any proposed treaty change or decision in the existing Treaties that moves a power or an area of policy from the UK to the EU would require a referendum before the UK Government could agree to it. Importantly, the EU Act also makes clear that directly applicable EU law only has effect in the UK by virtue of the will of Parliament – through the European Communities Act 1972 and other Acts of Parliament.

Second, this Government has dedicated considerably more time to EU business in Parliament with 12 debates on the floor of the House in 2012-13, and 11 in 2013-14, more than double the number in 2007-08 (3) and 2008-09 (5).

Third, the Government has also enhanced the arrangements for scrutiny of Justice and Home Affairs proposals, including debates on the floor and specific consideration of the Government's decisions on opting in to such measures.

The Government is keen to strengthen the role of national parliaments and national governments in EU decision making and agrees with many of the key recommendations made by the European Scrutiny Committee, such as making greater use of Departmental Select Committees interest and expertise, using the annual Commission Work Programme as a tool to prioritise scrutiny of upcoming EU business, and laying pre-European Council Written Ministerial Statements to increase transparency ahead of European Council meetings.

The Government considers that the UK has a robust parliamentary scrutiny system and that the House of Commons European Scrutiny Committee and the House of Lords European Union Committee are both highly effective. At the same time, the Government is keen to work with Parliament to strengthen the system further, so that Government and Parliament are better able to promote British interests in the EU.

In particular, the Government sees scope to mainstream scrutiny of EU business to make better use of expertise, interest and influence across the House, particularly in Departmental Select Committees; to streamline the scrutiny process to ensure that it focuses on the most important issues to the UK, while spending less time on lower priority issues; and to ensure that Parliament is able to maximise its impact in Brussels by engaging as early and effectively as possible in EU decision-making processes.

This Paper sets out the Government's response to each of the Committee's conclusions and recommendations. The Committee's text is in bold, and the Government's response is in plain text. Paragraph numbers in parentheses refer to the Committee's report.

Chapter 1: Introduction

1. The increase in the scope of Qualified Majority Voting — and the accompanying change in the nature and significance of the decision-making processes in the Council and Coreper — is highly significant for parliamentary scrutiny. In this context, it is clear that any EU scrutiny system is necessarily a hybrid of document-based and mandating processes. The challenge is to ensure that both aspects — that is, which documents are being scrutinised and the nature and effect of parliamentary influence — are both carefully considered. (Paragraph 34)

The Government agrees that it is important to continue to ensure that the documents being scrutinised and the nature and effect of parliamentary influence are both carefully considered in parliamentary scrutiny arrangements.

The Government believes that the current system of parliamentary scrutiny in the UK has a number of important strengths. It ensures that Parliament is able to scrutinise an extensive range of EU decisions systematically. It also promotes transparency by ensuring that all relevant EU documents, Explanatory Memorandum and Committee Reports are made public. Importantly, all debates are also held in public.

The Government would however like to see a wider range of interested Members become more involved in the scrutiny of EU business. We think that a given piece of EU business should be considered in the context of the broader policy area of which it is a part. This would help Parliament to influence decision-making and promote British interests in Brussels more systematically and effectively.

In this context, the Government would welcome a greater role for Departmental Select Committees, drawing more extensively on their expertise, interest and influence (see response to recommendation 14 below). Whilst fully respecting Parliament's independence, the Government offers thoughts later in this Response on how the dialogue between Parliament and Government on European business might be strengthened, including through a greater role for Departmental Select Committees.

2. We believe that the House is very well served by the current level of UK representation in the National Parliament Office in Brussels. We see no reason, particularly at a time of budgetary restraint, substantially to increase the size of the NPO, though we note that in the lead-up to and during the UK Presidency of the EU in the second half of 2017 there may be a need for a modest increase in its staffing. (Paragraph 38)

It is of course for the House to determine the level of representation it has in the National Parliament Office in Brussels, and important to note the current budgetary

climate. The Government agrees that the House is well served by the National Parliament Office in Brussels, however Parliament might consider the scale of its representation compared to that of other national parliaments and the impact that this has on Parliament's ability both to engage as effectively as it might in the early stages of the legislative process, and to identify opportunities to engage with other national parliaments on issues of mutual interest. We note that with very few exceptions, national parliaments now have officials permanently based in Brussels. In the Government's view this network of national parliament representatives has an important role to play in channelling information and strengthening parliaments' direct engagement with the Institutions, including the European Parliament and its members, and strengthening coordination between national parliaments. This is further enhanced by effective engagement between the National Parliament Office and the UK Permanent Representation in Brussels.

Parliament can play an important role in promoting British interests in the EU. The Government is keen where possible to support Parliament and parliamentarians in engaging more with the European Institutions in Brussels and with national parliaments in other EU member states. The Government has for example supported a series of visits for parliamentarians to Brussels and other key European capitals, through which parliamentarians have been able to explore key issues and strengthen networks across Europe. Parliament might wish to consider how further to promote opportunities for parliamentarians to engage with the European Institutions, including British and other Members of the European Parliament, and with national parliamentarians from other EU Member States.

3. In our view there is scope for increasing, and a need to increase, access by other Members of the House to the valuable material the NPO provides, particularly the Brussels Bulletin, and we will liaise with the NPO in order to take this forward. (Paragraph 39)

The Government welcomes this initiative and agrees that the valuable material provided by the National Parliament Office should be as accessible as possible to Members of the House.

Chapter 2: The role of the European Scrutiny Committee: Examining Merits?

4. Under Standing Order No. 143 (1)(c) we have the flexibility to report on why particular documents, or groups of documents, are politically important. Clearly these powers already amount to 'sifting plus'. The workload created by a detailed consideration of the political merits of all the 1,000 documents a year which we scrutinise would risk overburdening the process —and would overlap with the work of Departmental Select Committees—but we see a need to build on our existing powers to make the scrutiny process as a whole more coherent and make a series of recommendations to achieve this. We will also

in future define our assessment of legal and political importance as including in particular our assessment of its political and legal impact on the United Kingdom, continuing to draw on the impact assessments prepared both by the Government and by the Commission. (Paragraph 46)

The Government recognises the important role that the Committee plays in assessing the implications of EU proposals for the UK. The Government will continue to provide thorough Explanatory Memoranda (EMs) to assist in this process, considering carefully the political and legal impact of proposals on the UK. The Government is happy to work with the Committee to determine if more needs to be done to ensure that this impact is properly assessed in EMs.

Chapter 3: The role of the European Scrutiny Committee: stages of scrutiny

Explanatory Memoranda

5. Explanatory Memoranda are the Government's evidence to Parliament, and are signed off in each case by a Minister. We expect Ministers in all Departments to ensure that staff are supported and trained to produce high-quality EMs, and also to maintain strict systems of quality control and oversight, including by Departmental lawyers. (Paragraph 54)

The Government takes its parliamentary scrutiny obligations seriously and has put in place a number of training and awareness raising initiatives to promote continuous improvement in the Government's scrutiny performance. These range from the sharing of best practice between designated EU Scrutiny Coordinators in each Government Department to scrutiny seminars for officials, sometimes involving the Committee's Clerks. We will continue to ensure that our training on parliamentary scrutiny is attuned to feedback from the Committees. As confirmed in the correspondence between the Committee and Minister for Europe on 19 June and 30 August 2013, departmental lawyers are routinely engaged in the quality control and oversight of EMs.

Document deposit

6. We would be willing to consider further refinements to the deposit system and requests for particular classes of document to be subject routinely to non-deposit or a shorter EM, but in our view a subjective, document-by-document, real-time triage system would not be appropriate, particularly given the bicameral nature of deposit. We ask each Government Department to set out in the response to this Report specific categories of documents which it seeks to be either subject to non-deposit, or shorter EMs, so that we (and the House of Lords European Union Committee) can consider best how to balance the need

to avoid strictly unnecessary work with our desire to maintain the rigour and the breadth of the scrutiny system. (Paragraph 61)

The Government welcomes this initiative and fully supports the streamlining of parliamentary scrutiny procedures to allow Parliament to concentrate on the most politically and legally significant documents whilst putting in place a lighter touch process for less significant issues. Annex A confirms those categories of document where a flexible approach to deposit already exists and suggests further items which the Government considers should either be exempt from scrutiny or subject to shorter EMs. We look forward to working with the Committee to put improved procedures in place.

Non-papers and limité documents

7. We note the Minister's comments about non-papers and the offer of oral briefings. The number of documents on which we report (often more than twenty a week) means that oral briefings on individual items are rarely feasible. We therefore ask the Government to give us an undertaking that it will use Ministerial correspondence as a way of keeping us informed of the gist of non-papers. We also ask that whenever a non-paper is produced on a document which we have under scrutiny, that there be a presumption that the Government will at the very least provide a summary of its contents in the form of a letter. This could either be in a form which is publishable or made available to us on a confidential basis. We will keep the provision of such information, and the use which we can make of it, under review. (Paragraph 70)

The Government believes that it is important for Parliament to be kept abreast of negotiations as they develop. We are ready to reissue guidance to Departments to ensure that the Committees receive updates on the policy direction for a document subject to scrutiny, drawing on a range of appropriate materials, subject to sensitivity and classification.

The Government does not however think that pursuing this recommendation as presented would be in the UK's national interest, or indeed practical. There is a risk that publicly summarising the content of other Member States' non-papers might discourage others from sharing non-papers with the UK, thereby excluding us from important informal discussions and impacting negatively on our effectiveness in Brussels.

In practical terms, there is no clear definition of what constitutes a 'non-paper'. Non-papers vary significantly in substance and detail. Examples can include "issues papers", "discussion papers", "orientation papers" and "contribution papers". These will not always be germane to a document under scrutiny. Providing a summary of all such papers would add a significant burden to the work of the Committee and

indeed Government, without necessarily adding value to the scrutiny process. This would run counter to the Committee's and Government's commitment to focus and streamline the scrutiny process.

8. We call on the Government to publish details of the day-to-day working arrangements of UKRep and Coreper, the precise way in which, and when, UKRep is given Ministerial instructions on specific matters, and an assessment (with examples) of the discretion given to UKRep officials to come to agreements relating to particular proposals. (Paragraph 82)

The Government provides at Annex B information on the working arrangements of UKRep and Coreper and the way in which ministerial instructions are received.

9. We were told that the UK Parliament is "among a few" national parliaments that do not have regular access to limité documents. We can ask to see such documents, and are supplied with them on an ad hoc basis, but we cannot ask to see documents if we do not know they exist. The current situation therefore leaves control of Parliament's access to these important legislative papers firmly in the grip of the Government. In our view this is wrong. We therefore recommend that the Government sends both Houses a weekly list of the limité documents which have been issued. We also recommend that the Government alerts the Committees whenever a limité document is produced on a document which is still under scrutiny, including a short summary of the limité text. Deposit is—and in our view should remain—a process which is inextricably linked with publication. It is now time to formalise separate mechanisms by which limité documents can be supplied to Parliament, which will assist our scrutiny of deposited documents. We will review how these mechanisms work once introduced, and in particular whether it should be possible in some way to hold limité documents under scrutiny. This links to arguments about the existence of this classification, which we cover below. (Paragraph 91)

The Government is committed to sending significant limité documents to the Committees where they relate to documents held under scrutiny. The Government does not think that providing a weekly list of limité documents would serve Parliament well. There can be many hundreds of documents circulated in any given week, some merely successive iterations of a particular text. Producing such a list would also add a significant resource burden and therefore run counter to efforts to make the scrutiny process more focused.

10. We note that the UK Government intervened in the General Court proceedings to support the request for unredacted disclosure, and we urge the Government to press the EU institutions to cease using the limité classification, particularly to protect Member States' negotiating stances. We

also ask the Government for its opinion on the implications of this case for the limité classification. (Paragraph 95)

The Government appreciates the difficulty of reconciling the Committee's important commitment to transparency and the need to ensure that limité documents are not made public. Documents marked limité are not strictly speaking classified but are limited in their distribution. The Government has agreed to share limité texts with the Committee, in confidence, to help inform consideration of legislation and other issues.

The UK intervened before the General Court in T-233/09 Access Info v Council in support of the Council's decision to withhold the names of the Member States identified in the document relevant to the request and to oppose unredacted disclosure. As the Committee is aware the General Court ruled that the document should be disclosed in full and the CJEU subsequently upheld that ruling.

In summary, the CJEU found that the identities of Member States making particular points or proposals during legislative negotiations will not automatically be so sensitive that they should be withheld under the first indent of Article 4(1) of Regulation 1049/2001[1] on the basis of resultant harm to the decision-making process. The CJEU points out that such information does not form part of a category of documents which the Regulation specifically recognises as meriting a heightened level of protection, such as legal opinions.

However, the CJEU did not rule out the future use of Article 4(1) altogether to protect such proposals, and makes clear that its use may be legitimate on a case-by-case basis where a significant risk of harm exists. It is also clear that other exceptions from disclosure in the Regulation, for example commercial interests or public security, also continue to be available where appropriate on the same case-by-case basis. We understand that the Council Secretariat proposes to continue to disclose records of discussions about legislative files as required under the Regulation, as interpreted by the ECJ judgment in *Council v Access Info Europe*. As above, a decision as to whether to disclose will be taken on the facts of each case and in light of the sensitivity of the material in question.

There are a number of reasons why the Council Secretariat marks a document recording legislative discussions limité. Given that the judgment recognises that such information may be sensitive and merit protection in individual cases, the universal withdrawal of the limité marking would be a disproportionate reaction and, significantly, would remove the limité protection from a much wider type of document than was covered by this particular ruling. We understand that the Council

[1] Regulation (EC) No. 1049/2001 of the European Parliament and of the Council of 30.5.2001 regarding public access to European Parliament, Council and Commission documents [OJ L145 of 31.5.2001, p.43].

Secretariat does not currently plan to alter the way in which the limité document marking system is used. However, the Government will push for the removal of limité markings where they are deemed unnecessary.

Scrutiny of Council meetings

11. We conclude that the current process of Council decision-making and the role of Coreper and UKRep greatly obscures the position of individual Member States, and it is clear that Governments fall back on consensus if they know they are likely to be outvoted. This raises serious questions, given that some of the issues being decided would be the subject of an Act of Parliament if taken through domestic legislation. (Paragraph 99)

While it is not always possible to achieve every single negotiating objective, the Government works hard to promote British interests in each negotiation. There are constantly judgments to be made about what the UK can and cannot support as progress is made in negotiations, and, at each stage, whether overall a particular proposal serves the UK interests or not. Officials negotiating on behalf of the UK, whether in Coreper or at working group level, operate on the basis of a negotiating mandate agreed by Ministers. Ministers always seek to promote the UK's national interest.

12. Turning to consideration of Council meetings in Committee, we see this as a final check as our scrutiny of proposals will have already been completed in the vast majority of cases (the CFSP being a particular exception). We therefore conclude that our current approach is appropriate. However, we believe that there is scope in some cases for Departmental Select Committees to become more involved at this point if there are matters of detailed policy remaining to be negotiated (including possibly holding a pre-Council hearing), and will work with the Liaison Committee to develop suitable mechanisms and guidance to improve practice in this area. Scrutiny of European Council meetings is dealt with later in the Report in the section on the floor of the House. (Paragraph 100)

The Government would welcome a greater role for Departmental Select Committees in the scrutiny of European business, to ensure that expertise, interest and influence across the House are reflected as effectively as possible. The Government sets out further thoughts later in this Response.

Document deposit: overall conclusions

13. We propose changes to Standing Order No. 143 at the end of this chapter, building on a set of proposed Standing Orders and a scrutiny reserve resolution originally published in 2010 by our predecessor Committee. Overall,

we conclude that we should retain our sifting role as it currently stands. (Paragraph 107)

The Government comments on the proposed Standing Order changes later in this Response. The Government agrees with the Committee's conclusion that the current sifting model should be retained. There could, however, be instances where the Committee and Government might benefit from some flexibility in the system to be able to provide for informal briefings to the Committee and to carry out scrutiny during parliamentary recess more effectively. For example, the Committee might wish to consider scrutiny through a written procedure or on the basis of correspondence. This could be particularly helpful for fast-moving Common Foreign and Security Policy proposals which can sometimes otherwise result in overrides.

14. We agree with the points made by our witnesses about the importance of seeking to influence the early gestative stages of the EU policy process, and note that this is a point at which the role of Departmental Select Committees can be highly significant. This is one of the reasons why we recommend enhanced scrutiny of the Commission Work Programme later in this Report, including the contemporaneous setting of priorities by Departmental Select Committees. (Paragraph 108)

The Government agrees that it is important for Parliament to seek to influence the early stages of the EU policy process. The National Parliament Office is particularly well placed to ensure that the THE COMMITTEE and Departmental Select Committees are kept abreast of developments.

Government is also ready to consider whether there are ways in which it can support this early engagement, including through the current practice of writing to the Scrutiny Committees and Departmental Select Committees about each EU Presidency's priorities, and to the Liaison Committee about the Commission's Work Programme. The Government responds to the Committee's proposal on the scrutiny of the Commission Work Programme below.

15. For our part, we will continue to scrutinise Commission Green and White Papers, recommending them for debate/Opinion as appropriate. We will aim to recommend documents for debate at an earlier stage of the legislative process, if possible before the Council adopts a common position or general approach. For this to work we will need as much notice as possible, which must be facilitated both by the UK Government and the Council. We look to the latter in particular to fulfil the commitment made under Article 4 of Protocol (No. 1) to the EU Treaties, which states that an "eight-week period shall elapse between a draft legislative act being made available ... and the date on which it is placed on a provisional agenda for the Council for its adoption or for adoption of a position under a legislative procedure". We urge the

Government to ensure that any information it receives about the timing of Council consideration is passed on to us as quickly as possible, and that debates on such documents take place in a timely fashion. We note that it may be necessary to act at speed, for example if we have reported on the Council's approach just before the trilogues begin. Our consideration of the contents of non-papers will inform this. (Paragraph 109)

The Government agrees that it is important for Parliament to be able to scrutinise documents in a timely fashion. The Government works hard to ensure that the Committee is kept abreast of emerging Council agendas, including through Written Ministerial Statements for sectoral Councils. Where possible officials will also provide an early informal indication to the Committee Clerks of the topics to be discussed. The pre-Presidency priority letters sent to the Committees by Departments every six months also highlight upcoming priorities.

The Government also agrees with the Committee's proposal relating to the commitment made under Article 4 of Protocol (No.1) to the EU Treaties, and has made the same point to the Commission on HM Treasury measures on Credit Transfers and Direct Debits in Euros. We will continue to call for the respect of this eight week period between a draft legislative act being available and it being placed on a provisional Council agenda for adoption.

16. In view of Sir Jon Cunliffe's statements that the Government "should aim to ensure that the Committee is updated on what we think will happen in the trilogue process" and "We will try to find ways to share information" we recommend that if there are substantive changes during trilogue negotiations the Government should provide Supplementary Explanatory Memoranda on documents which have cleared scrutiny (or deposit the new version of the document, with a new Explanatory Memorandum) automatically, rather than on request (thereby re-imposing the scrutiny reserve). The same should apply if there are material changes during negotiations within the Council, for example in the run up to a general approach or common position. (Paragraph 110)

The Government agrees that it should provide a supplementary EM or ministerial letter should significant changes be made to a document subject to formal scrutiny during the progress of negotiations, including trilogue, even if a document has previously cleared scrutiny. The Government agrees that a supplementary EM in these circumstances would re-trigger the Scrutiny Reserve Resolution.

Parliament might also wish to discuss further the arrangements for scrutiny during parliamentary recess. This would help mitigate the risk of important decisions being taken without proper scrutiny or of Ministers expending the UK's negotiating and political capital in Brussels by insisting on delays to decisions to allow the scrutiny

process to take place. The aim would be for discussions in Brussels and our parliamentary scrutiny process to proceed in lockstep.

Recognising that legislative proposals can evolve significantly during the legislative procedure, the Government welcomed the proposals put forward by the Dutch *Tweede Kamer*, under which national parliaments could consider a proposal after co-decision is complete (the so-called “late card”), and would be interested in the Committee’s view.

Transposition

17. We recommend that all Statutory Instruments involving transposition of EU legislation should have a subsidiary "(E)" serial number (in a similar form to the existing subsidiary systems for commencement orders (C), the legal series relating to fees or procedures in Courts in England or Wales (L), or the Scottish, Northern Ireland and National Assembly for Wales series ((S), (NI) and (W) respectively)). They would therefore appear in the form S.I. 1998, No. 2357 (E. 12)). (Paragraph 111)

The Government agrees with the aim of this recommendation. It is in principle desirable that users can tell which statutory instruments transpose EU legislation. The mechanism proposed by the Committee has, on the face of it, the advantage of simplicity, although there might still be grey areas, such as where only a small part of the statutory instrument had this purpose. For example, the Neighbourhood Planning (General) Regulations 2012 (SI 2012/637) are primarily designed to give effect to a purely domestic regime, the Localism Act (2011), but also includes provisions to ensure consistency with the Environmental Impact Assessment Directive and Habitats Directive. The National Archives, which operate the legislation.gov.uk website, are currently working with Government Departments and the European Commission to improve linkages between EU and UK legislation websites. Any proposed improvements would need to be properly tested with end users to ensure that they added clarity and value. The Government will give further consideration to this recommendation in this context.

18. We also recommend that all explanatory memoranda accompanying SIs contain a new section entitled, “Does this statutory instrument implement or supplement an EU obligation?” Although it may be clear from the policy context whether an SI is implementing an EU obligation, we conclude that an unequivocal statement of this nature would be helpful for Members of Parliament and members of the public alike. (Paragraph 112)

The Government shares the Committee’s view that further transparency on this issue is likely to be helpful to users. The Good Law Initiative is currently exploring ways of

improving explanatory material accompanying legislation. The Committee's proposal will be taken forward as part of this work.

19. Under the European Communities Act, the Government is free to make statutory instruments implementing most EU legislation through the negative resolution procedure, which requires no debate on, or positive approval of, the instrument in Parliament. The negative resolution procedure provides the House with minimal scrutiny of the transposition of EU legislation. A possibility that could be considered further is to oblige certain statutory instruments implementing an EU obligation to be approved through the affirmative resolution procedure, which requires a debate and resolution of approval in both Houses. To be effective, this would require a change to the Standing Orders of the JCSI and an amendment of the European Communities Act to define which transposing legislation would require affirmative resolution. (Paragraph 113)

In addition to scrutiny of the relevant dossier and the possibility for debate in the House in that context, it is currently open to any Member of Parliament to pray against a statutory instrument laid under the negative resolution procedure. The Government will continue to use its best endeavours to respond to any legitimate concerns raised by a Member who prays against a statutory instrument.

The Committee's Standing Order:

Non-legislative Acts, CFSP and CSDP

20. In the absence of agreement with the Government to change our Standing Order as requested, we have relied on informal agreement with the Government about depositing non-legislative acts. This is not a satisfactory state of affairs, and so we propose amending Standing Order No. 143 to cover both legislative and non-legislative acts. Classes of non-legislative acts that are routine or trivial will be excluded from deposit by agreement with the Government. (Paragraph 118)

The Government recognises the importance of a Standing Order which defines clearly the scope of documents to be deposited to make interpretation clearer for both the Committee and the Government, building on the existing informal agreement whereby the Government deposits draft non-legislative acts or substantially revised version of such drafts. The Government also welcomes the Committee's commitment to waive the deposit of routine or trivial non-legislative acts.

At the same time, there is a need to maintain flexibility to ensure the already heavily burdened parliamentary scrutiny system does not become unworkable for Parliament

and Government owing to the volume of documents deposited. As such the Government has concerns with the draft Standing Order which seeks to include all documents published by the Commission, and with the amendment that would seek to include documents published by other bodies or office-holders. Whilst a number of documents published by the Commission will be of interest to the Committee, and many are of course already deposited, to deposit all documents published by the Commission - from web-based stakeholder consultation documents to practical guidelines and press releases, amounting to hundreds of new documents - would risk overwhelming the scrutiny system.

The Government has similar concerns with the proposal to extend the Standing Order to documents published by "any other European Union Institution, Body, of office-holder that the European Scrutiny Committee requests to be deposited". Though qualified by the Committee, this formulation remains very broad and could significantly increase the volume of scrutiny business without necessarily adding value.

The Government's response to recommendation 22 outlines the varying significance of, for example, 'action plans' and therefore the range of documents that would be caught by the Committee's proposals.

The Government would therefore welcome further dialogue with the Committee to establish more clearly the type of document envisaged by these two proposed changes. The Government proposes that officials explore these requirements with the Committee Clerks, guided by the principle of streamlining the scrutiny system to focus on those documents which are most legally and/or politically significant.

The Government welcomes the inclusion of the wording proposed to provide the Committee with the formal power to waive the deposit of individual documents or classes of documents, which would bring the Standing Order into line with the House of Lords European Union Committee's Terms of Reference. Recently, such a collaborative approach between the European Union Committee and Government has allowed deposit to be waived in a number of cases, including routine proposals relating to other Members State derogations from the VAT Directive and a range of technical proposals seeking to adapt EU legislation and agreements to reflect Croatia's EU accession. This has eased the burden on Parliament and Government alike, freeing up time to focus on higher priority issues.

21. We conclude, for the reasons we have given, that Standing Order No. 143 needs to be amended to list European Council and Council Decisions under the CFSP as depositable documents. (Paragraph 121)

The Government is content that the proposal formally to reference the deposit of CFSP Council Decisions in Standing Order No. 143 reflects current arrangements,

as they are inter-institutional documents (subject to some existing scrutiny exemptions and limitations on classified documents).

At the same time, the Government suggests that there are instances in which scrutiny of CFSP Council Decisions could sensibly be waived. These include:

- Transposition of UNSCR measures which do no more than transpose measures that have already been agreed;
- Council Regulations to implement a CSDP Decision that has already been through the scrutiny process. Often these add little of value to the scrutiny process, merely presenting information already seen by the Committees;
- Urgent and critical classified sanctions measures where the Committees consider an override would be justified and the information is too sensitive to put into the public domain before adoption.

22. We do not recognise the distinction the Minister makes between "decisions" and "Decisions", and note the Minister appeared to be unaware that all CFSP Decisions are non-legislative. We take the view that action plans, strategies and frameworks form an important part of the CFSP process and should be depositable; we have accordingly added them to the new version of our Standing Order, which is set out at the end of this chapter, to cover situations where they are adopted by Council Conclusions. (Paragraph 128)

The Government is ready to work with Parliament to agree a category-based system which would allow the Committee more systematically to scrutinise action plans, strategies and frameworks of political significance and legal importance which do not fall within the rubric of the current Standing Order.

The term "action plan" covers a wide range of documents and is not defined in the Treaties in any way. Sometimes action plans can be documents that are politically important, defining the EU's approach towards a particular country or region of the world. The Government does try, where that is the case, to submit them for scrutiny. If they are issued as Council Decisions or Commission Communications they are depositable under existing arrangements. For example, the Enlargement Strategy or the Joint Communication of the EEAS and the Commission on the Counter-Terrorism Action Plan for the Horn of Africa and Yemen were caught by these arrangements. There are also documents described as action plans that are much less significant. When a term is not defined in any way in a Treaty or law, the Government would be reluctant to give a blanket commitment to make it subject to scrutiny in all circumstances.

23. We conclude that there is a real problem with current scrutiny of CFSP. First, there are a high number of 'systemic' overrides on measures relating to sanctions and asset-freezing which risk devaluing the scrutiny reserve. Second, the Standing Order is woefully out of date and in the absence of an

agreed definition of 'depositable document' in this area we have had a series of ongoing disputes with the Government about particular categories of papers. It is important to address this because these are high profile and significant measures. (Paragraph 129)

The Government agrees with the Committee that sanctions are high-profile and significant measures. The sensitive nature of negotiations on sanctions and asset-freezing measures is vital to ensuring that these measures are effective once implemented. If this information were to enter the public domain, targeted individuals could take steps to protect their assets, for example by transferring them to banks in countries where sanctions and asset-freezing measures are generally poorly implemented.

The Government would be ready to provide a quarterly update letter on sanctions to the Committees. The Government is also willing to offer informal briefings to the Committee on upcoming sanctions measures and wider work relating to sanctions priorities. Such briefings have been provided to the House of Lords European Union Committee.

24. Dr Huff suggested that Ministers giving evidence to the THE COMMITTEE or other Committees before Council meetings was "absolutely critical in making sure that Parliament has its voice heard in these sorts of discussions". We recommend that not only should our Standing Orders be updated but also that we, the Foreign Affairs Committee and the Defence Committee should liaise to develop a more coherent system of CFSP and Common Security and Defence Policy (CSDP) scrutiny, including a pre-Foreign Affairs Council hearing, in order both to reduce unnecessary overrides and make the scrutiny process in this area more effective. In order to facilitate this we ask the Government to supply the three Committees with relevant limité draft Foreign Affairs Council Conclusions. (Paragraph 130)

The Government welcomes the Committee's intention to include the Foreign Affairs Committee and Defence Committee more systematically in the parliamentary scrutiny of CFSP and CSDP measures, as part of a broader effort to involve Department Select Committees in the scrutiny of European business. The Government sets out its readiness to agree practical measures to mainstream EU scrutiny later in this Response.

The Government does, however, have reservations about the suggestion of a pre-Foreign Affairs Council hearing and doubts that it would reduce the number of overrides in this area. Given that negotiations on measures to be discussed at Foreign Affairs Councils often continue right up to the date of the Council, the Government would be able to provide only very limited information in formal hearings. For the same reasons, including the risk of jeopardising our negotiating

position, the Government would not be willing formally to disclose draft Council Conclusions before a Foreign Affairs Council.

The Government agrees this is an area of scrutiny that often presents difficulties. Whilst the Government welcomes the Committee's commitment to find a solution we consider these proposals would not have the desired outcome, would have an adverse impact on negotiations, and present a significant increase in resources needed by both the Committee and the Government prior to Foreign Affairs Councils.

25. Given the sheer number of documents in this category it is clear that depositing all delegated and implementing acts would swamp the scrutiny system. The existing ad hoc arrangements work reasonably well, but given the weaknesses identified by the Government we ask it to propose a coherent cross-Departmental approach for determining which implementing and delegated acts will be subject to deposit for the consideration of both this Committee and the European Union Committee in the House of Lords. (Paragraph 133)

The Government strongly agrees that depositing all delegated and implementing acts would swamp the scrutiny system. We are ready to formalise the existing practice. The Cabinet Office scrutiny guidance already reflects the principles of the approach proposed by the Committees. Broadly they are that:

- deposit of proposals for delegated acts will be subject to consultation with the Committee Clerks;
- any proposal to revoke a power for the Commission to adopt delegated legislation should be deposited;
- implementing acts should be brought to the attention of the Committee Clerks if they are considered to be sensitive or if they have been referred to the Appeal Committee and deposited by agreement.

Chapter 4: The scrutiny reserve

26. We conclude that the reserve must remain the centre of gravity of the House of Commons scrutiny system. We therefore propose two major changes to reflect the reality of EU decision-making highlighted throughout this Report: first, that an override shall be regarded as having occurred when the Government abstains on a vote on a document held under scrutiny, not just when it votes in favour; and, second, that agreement or acquiescence by Government in reaching a consensus in Coreper on a document held under scrutiny, when the Government does not intend to object to the matter being raised as an A point in Council, should also trigger an override. (Paragraph 143)

The Government agrees that the Scrutiny Reserve Resolution must remain the centre of gravity of the House of Commons scrutiny system. The Government takes its scrutiny responsibilities very seriously and Ministers consider carefully each possible override situation. This is demonstrated clearly in the latest figures on parliamentary scrutiny overrides.

In 2013, there were 48 overrides across Government, nearly 40% below the annual average since 2010 of 79 overrides per annum. Indicative figures for the period January to June 2014 suggest there were 27 overrides. The vast majority of overrides result from restrictive measures, and the slight increase arises from action taken in response to events in Ukraine.

While this is of course regrettable, the Government is pleased to note that the trend in overall numbers has been downward since 2010, as depicted in the table below.

Period	**(1). House of Lords Override**	**(2). House of Commons override**	**(a). No. of overrides in both Houses**	**(b). Total no. of overrides**
July-Dec 13	18	19	17	20
Jan-June 13	25	26	23	28
July-Dec 12	19	28	18	29
Jan-June 12	46	50	39	57
July-Dec 11	41	52	37	56
Jan-June 11	33	32	29	36
July-Dec 10	17	26	11	32
Jan-June 10 (Included the period of the dissolution of Parliament)	54	52	46	60

At the same time, adopting the changes to the Scrutiny Reserve Resolution proposed above could damage the UK's negotiating ability by increasing the number of situations in which Ministers would have to choose between overriding scrutiny to make a decision in the UK's interests, or voting against a desirable measure in order to avoid incurring an override. This in turn would risk the UK's influence in the final stages of the negotiation, and damage our overall credibility as a negotiating partner. There are regularly compelling reasons why a Minister would decide to abstain on a vote.

The Government considers that decisions taken outside a Council of Ministers meeting should not be considered a breach of the Scrutiny Reserve Resolution. As the Minister for Europe has underlined in correspondence with the Committee, it is Ministers who are accountable to Parliament on policy issues and who make the

ultimate decisions on the UK's position on a dossier. Officials act on instruction from Ministers. It is right therefore that it should continue to be the decisions taken by Ministers at a Council of Ministers that the Committee considers for override purposes. From a practical perspective, given the speed at which documents can progress from working groups and with which the COREPER agenda can change, this recommendation would also be practically difficult to fulfil.

The Government also notes the Committee's proposed change to the Scrutiny Reserve Resolution to provide for an override should a document still subject to scrutiny be agreed by Council Conclusions. The Government is willing to consider with the Committee how such a change might work. There are for example important questions about the precise forms of language that would constitute agreement, and the type of conclusions that would be covered by any new working practice.

Scrutiny of overrides

27. The general scrutiny reserve resolution does not cover a Government decision that the UK will participate in an EU justice and home affairs measure, where the UK has discretion over its participation under the EU Treaties. Such discretion exists either under the Title V opt-in or Schengen opt-out arrangements. Under the EU Treaties, a UK decision to participate in such an EU law is irreversible, and by their nature these laws typically concern sensitive matters. When Baroness Ashton, for the previous Government, made a statement on 9 June 2008 on improving Parliamentary scrutiny of these opt-in decisions, she said that these Government undertakings on better scrutiny should be reflected in an amended or new scrutiny reserve resolution. We therefore propose at the end of this Chapter an opt-in scrutiny reserve resolution to cover decisions taken in Whitehall to opt into or out of Title V or Schengen measures. (Paragraph 144)

The Government agrees with the proposal for an opt-in scrutiny reserve resolution to cover the Justice and Home Affairs (JHA) commitments made by both Baroness Ashton and the current Minister for Europe, and to ensure consistency with the similar resolution in the House of Lords.

28. Since our exchange of letters with the Cabinet Office the information we have received on scrutiny overrides has improved and we look forward to continued engagement with the Government with the aim of eliminating unnecessary overrides. To this end we will continue to scrutinise the override statistics closely. As a further measure to increase transparency we will from now on be placing the correspondence on overrides on a special section of our website. (Paragraph 145)

The Government remains committed to providing the additional information on scrutiny overrides, as set out in our exchange of letters, and welcomes the Committee's intention to publicise such information. The Government is keen to agree a mechanism whereby scrutiny can be more effectively carried out during parliamentary recess to reduce the number of overrides which occur during this period. The Government would also like to explore with the Committee whether overrides can be sub-categorised to highlight, for example, when an override has occurred because of the need to agree an urgent sanctions measure.

29. We will also continue to hold oral evidence sessions with Ministers in cases where there are serious breaches of the reserve (as took place in July 2013 with the then Minister for Public Health, Anna Soubry MP; in July 2012 with Crispin Blunt MP, then Parliamentary Under-Secretary at the Ministry of Justice; in February 2012 with Baroness Wilcox, then Parliamentary Under-Secretary at the Department for Business, Innovation and Skills; and in December 2011 with Chris Grayling MP, then Minister for Employment at the Department for Work and Pensions). For particularly serious breaches of the reserve, or repeated serious breaches, we will in future issue a Report censuring the Minister concerned, and if necessary recommend that this be debated on the floor of the House. (Paragraph 146)

The Government respects the right of the Committee to request oral evidence sessions with Ministers where the Committee considers a breach of the scrutiny reserve to be serious and notes the Committee's intention to publish reports in such cases in future. Requests for debates on the floor of the House in respect of particular documents will be given careful consideration on a case-by-case basis.

Chapter 5: European Union business on the floor of the House

Debates on EU documents on the floor of the House

30. We have reflected carefully on consideration of European Union business in the Chamber, as it is the most high-profile aspect of the House's scrutiny process. We therefore propose a set of recommendations in order to make time on the floor of the House better-used, and to make Ministers more accountable for their decisions.
(Paragraph 157)

31. Firstly, there is a strong case for adopting some of the procedures used for opt-in debates—namely a prior commitment by the Government to arrange a floor debate for measures which attract particularly strong Parliamentary interest (without prejudice to any recommendations we may make) across all types of EU business. The measures likely to be subject to these commitments could be announced by way of a Statement following

consultation with this Committee, and could tie into the more systematic consideration of the Commission Work Programme we propose later in this Report. (Paragraph 158)

The Government welcomes the Committee's proposal to use the Commission Work Programme as a tool to prioritise the consideration of upcoming measures. The Government remains committed to the provision of time on the floor of the House for the consideration of EU business and believes that existing procedures are broadly adequate for this purpose. As the Committee notes and captured in the table below, the number of debates on European documents has increased under this Government, with 12 Floor debates in 2012-13 - more than double the number in 2007-08 (3) and 2008-09 (5).

Financial Year	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13
EU Documents scrutinised	1045	1044	941	915	1013	1138	980
Reported as legally/politically important	484	472	443	416	454	643	506
Debates in European Committee	42	34	32	33	40	35	39
Debates on the floor of the House	6	3	5	1	6	10	12

In considering the overall amount of time provided for European business in Government time, the requirements of the European scrutiny process have to be balanced against other business and the strength of interest in the House. The Government notes that the Committee assesses that the low response rate to its survey of Members is "perhaps indicative of the lack of interest in the details of EU policy-making within the House". This view is supported by figures on attendance at debates on European documents in this Parliament.

Whilst some debates have been over-subscribed, the majority finished early, with few other Members attending. For example, of the 20 European Committee debates which took place between 27 September 2013 and 20 February 2014, the longest debate lasted 1 hour and 56 minutes (Overseas Countries and Territories – 23 October 2013), and the shortest debates lasted just 24 minutes (Climate and Energy Policies 2030 – 8 October 2013; Financial Service Benchmarks – 28 November 2013). The average length of debates was 54 minutes, far short of the 2 hours and 30 minutes scheduled for such debates. The Government is committed to assisting

the House in improving its scrutiny of European business, but equally, it is important that issues which are of interest to the whole House are prioritised in the Chamber, and that business managers have the flexibility they need in order to ensure that the House's business, including its programme of domestic legislation, can be programmed.

32. We propose that the Government should undertake to make time available in the House within four sitting weeks of a Committee recommendation for a floor debate (unless the Committee has for any reason waived this requirement or has recommended a more urgent timescale). (Paragraph 159)

The Government is committed to helping the House reach decisions in a timely manner, and will use its best endeavours to do so promptly. The pressures of Government business mean that it is not possible to give an absolute guarantee. In such cases, it is open to the Committee, or to other backbenchers, to take advantage of the opportunities that now exist for securing time on the floor or in Westminster Hall in order to debate a particular issue of interest to Members of the House.

33. We further recommend that the format of House debates should follow that of a European Committee—the debate should begin with a short explanatory speech by the Chairman or a nominated member of the THE COMMITTEE, before the Minister first makes a statement and responds to questions, and then moves the motion; the total length of such a debate would be no more than two and a half hours. (Paragraph 160)

The Government believes that the longstanding practice of the House for debates to be led by those responsible for the business under consideration, should be maintained. Where the Government has provided time for a debate, it is right that Ministers have the opportunity to set out the Government's position on the document in question by moving the motion. Procedures that work well in Committee may not necessarily translate effectively to the floor of the House. Given the pressures on Government time, and the available evidence regarding levels of participation in debates, the Government does not consider there to be sufficient demand for the proposal to extend the time available for routine debates on European documents.

34. In the case of a Reasoned Opinion we note that the Procedure Committee recommended in 2011 (with particular reference to European Committees) that: "It is evident that the present situation, in which a Minister must move a motion for a reasoned opinion whether or not the Government supports that motion, is confusing and misleading for Members and for the public. Since it is the European Scrutiny Committee which recommends that the House should consider a motion for a reasoned opinion, it would be logical for that motion to appear in the name of the Chair of the European Scrutiny Committee or in the name of another member of the Committee acting on its behalf. The difficulty

at present is that Standing Order No. 119 refers, in paragraph 9, to a motion 'of which a Minister shall have given notice'. We recommend that paragraph 9 of Standing Order No. 119 be amended by inserting, after 'Minister', 'or, in the case of a motion for a reasoned opinion under Protocol (No. 2) to the Lisbon Treaty, a member of the European Scrutiny Committee'." We fully agree with this recommendation, and take the view that it should apply, modified as necessary, to debates on Reasoned Opinions on the floor of the House. (Paragraph 162)

Under the existing arrangements the House has an opportunity to debate the motion and reach a decision, as it would do under the arrangement proposed by the Committee. The Government has not seen evidence of any practical difficulties arising from the current procedures relating to reasoned opinions. The process whereby a Minister moves a motion is in line with the Government's commitment to facilitate European business, even if the Government does not support the motion.

35. We also support the introduction of a procedure "for an appropriate number of MPs to table a motion challenging the [European Scrutiny] Committee's decision [not to refer a document for debate] and force a vote on the floor of the House" originally made in a 2007 paper by the think-tank Politeia written by Theresa May MP. We note that the paper commented that "the procedure should be a last resort and be limited to serious issues that are in the national interest". In our view the threshold for such a procedure should be reasonably high. Where such a motion is tabled, it should impose the scrutiny reserve on the relevant EU document until the House has come to a resolution on the matter. (Paragraph 163)

The House has given the European Scrutiny Committee the lead responsibility for scrutinising European documents and reporting to the House on their legal and political importance, so as to enable the House to further consider them where the Committee considers it appropriate. The Government has confidence that the Committee has the ability to recognise serious issues that are in the national interest in order to recommend them for debate. The Government would nonetheless be willing to consider a mechanism whereby a number of MPs could challenge the European Scrutiny Committee's decision not to refer a document for debate, as a last resort on serious issues in the national interest.

A national veto and disapplication of EU law

36. We conclude that there should be a mechanism whereby the House of Commons can decide that a particular EU legislative proposal should not apply to the United Kingdom. The House's view could only be expressed prior to the adoption of the measure at EU level: but if such a motion was passed

the UK Government would be expected to express opposition to the proposal in the strongest possible terms, including voting against it. (Paragraph 170)

The Government attaches great weight to the views of Parliament on EU legislative proposals. The Committee's proposal raises interesting questions on whether procedures could be established to make Parliament's views binding without undermining Ministers' ability to negotiate the best possible deal for Britain.

Because EU legislation involves negotiations which may require tradeoffs - not just within a specific proposal but between different dossiers - any mandating system inevitably raises two issues. First, how can Parliament give ministerial negotiators the scope to obtain the best overall outcome for the UK? Second, how could Ministers obtain parliamentary assent for their negotiating position without our strategy becoming known to our EU Partners, thereby undermining Britain's negotiating position?

Existing mandate systems, such as those that apply in Sweden and Finland, are predominantly closed systems. They rest upon a Minister being able to discuss the government's negotiating position with a parliamentary committee (not usually the whole of Parliament) in private, and rely on that privacy to be effective. They are also based upon a consensual political system.

By contrast the United Kingdom system of scrutiny of legislation has always been open and transparent and the Committee itself attaches great importance to openness. This proposal would involve decisions being made by the whole of Parliament. Moreover, our system of holding governments to account is adversarial not consensual. In addition, there is the question of how this proposal would apply in practice to negotiating procedures in the Council. At points negotiations can be fast and fluid. It is often not clear from the outset at what stage it will become apparent whether a proposal the United Kingdom has difficulties with in terms of the national interest, will end up in a good or acceptable compromise or become fundamentally objectionable. In the last case Ministers representing the United Kingdom do vote against legislative proposals. We would also need to consider the relationship between the proposed mandate and Parliament's existing right to call for debates on documents of particular interest to the House.

The Committee's proposal would therefore present significant difficulties.

That said, the Government wholly agrees with the Committee in finding a greater role for national parliaments in the EU legislative process highly desirable. The Government would welcome greater use of the existing 'yellow card' procedure, under which national parliaments can together object to EU proposals. The Government has also advocated a 'red card' to allow national parliaments across the EU to coordinate with one another to block proposals from the European

Commission, as well as other proposals put forward by the Dutch Government to increase national parliaments' powers. If such reforms were agreed and implemented the Government believes that a system would be in place which would meet the goal the Committee is seeking to achieve in a truly effective way: giving national parliaments a decisive role in policing the acceptable limits of EU legislation.

37. We further conclude that parallel provision should be made to enable a decision of the House of Commons to disapply parts of the existing acquis. This, we acknowledge, would require an Act of Parliament to disapply the European Communities Act 1972 in relation to specific EU legislation. There have been several Private Members' Bills over recent years endorsing the principle of disapplication which have sought to achieve this, and amendments to the same effect were proposed in both Houses to the Legislative and Regulatory Reform Bill in 2006, which were whipped by the then official opposition. Such a development would be much more legally complex and controversial, but we were taken by the logic of the arguments of Professor Chalmers questioning the supremacy of EU law, and we look forward to the Government's detailed response to this proposal. (Paragraph 171)

The Government does not support this recommendation. It is in the UK's national interest to have a strong and coherent single market. Indeed the single market was in many respects a British initiative from its launch in the 1980s and has been a British success story over the past 30 years. Any such market relies on common rules (though those rules should of course be as few and as light touch as possible). If national parliaments around the EU were regularly and unilaterally able to choose which parts of EU law they would apply and which parts they would not, the European single market would not work. Indeed, any set of arrangements based on common rules, in or out of the EU, would be unworkable under such a system.

In enacting the European Communities Act 1972, Parliament decided that the United Kingdom should accept the rights and obligations associated with EU membership. These obligations include the requirement to ensure the respect of EU law in the United Kingdom.

As outlined above, the Government agrees with the Committee that the role of national parliaments in EU decision-making needs to be strengthened. The current system of yellow and orange cards has proven insufficient as a means both of securing national parliaments' involvement in EU business and of policing the important principle of subsidiarity. That is why we have suggested that the time period for parliaments to raise concerns about Commission proposals should be extended to allow for more detailed consideration, and that the basis for noting such concerns should be widened to include 'proportionality' as well as subsidiarity.

We have advocated going beyond those mechanisms and bringing in a red card system to allow national parliaments across the EU to coordinate with one another to block proposals from the European Commission. Parliament might also wish to consider the Dutch Parliament's proposal for a "green card" which would effectively give national parliaments a power to propose new European legislation, including, implicitly, the power to propose repeal of legislation.

Domestically this Government has taken important steps to strengthen the role of Parliament and the British people in respect of the UK's policy towards the EU. The EU Act 2011 ensures that if in the future there is a proposed treaty change or decision, including passerelles or 'ratchet clauses' in the existing Treaties, that moves a power or an area of policy from the UK to the EU, the Government will require the British people's consent in a referendum before it can be agreed: a 'referendum lock' to which only the British people hold the key.

The EU Act has also increased Parliament's control over a range of EU decision-making. Under the Act, all types of treaty change require approval by an Act of Parliament. Parliament also needs to approve any agreement to use passerelle provisions in the EU Treaties, when the 'referendum lock' is not triggered, which allow for changes in the scope of EU action or changes to ways in which measures are agreed in specific areas, but without formal treaty change.

The EU Act also makes clear that directly effective and directly applicable EU law only takes effect in the UK legal order by virtue of the will of Parliament – through the European Communities Act 1972 and other Acts of Parliament.

Whilst the UK Parliament is sovereign in the UK, because the UK Parliament has chosen to enter into EU and international legal obligations, selective disapplication of the acquis would violate EU and international law. In addition to infringement procedures which the Commission can bring against the UK in the European Court of Justice, individuals can also bring claims in national courts for damages caused by a failure to implement EU obligations.

Nevertheless, it remains open to Parliament, as sovereign, to use primary legislation to disapply any or all of the *acquis*. Aside from the legal consequences above, the unilateral use of such legislation would have very serious diplomatic consequences and, under any set of arrangements based on common rules, would call into question the basis of the United Kingdom's relationship with the European Union

38. More recently the Committee Chairman was granted an Urgent Question in the House on 19 November. We hold a related document—the Report on the Commission's 2012 Annual Report on the Charter on Fundamental Rights—under scrutiny. We have noted as part of the scrutiny process on that Report that to date the Government has expressed a very general view that the

Charter only applies when the Member State is implementing EU law and also only to the extent that the rights under the Charter already apply as a matter of ECJ fundamental rights case law. But it has said little of detail on the impact of ECJ preliminary rulings on the Charter on UK law. Given these recent profound developments we will hold an oral evidence session with the Justice Secretary on the implications of this judgment.
(Paragraph 177)

The Government welcomes the Committee's inquiry and report into the application of the Charter, to which the Secretary of State for Justice provided evidence on 29 January. This is a useful addition to the Government's own research into the impact of the Charter, which is currently taking place as part of our wider Review of the Balance of Competences between the EU and the UK.

39. Our predecessor's suggestion for reinforcing the Protocol was not followed by the then Government. As a consequence, the Protocol appears to offer little safeguard from the application of the entirety of the Charter to the UK when applying EU law, as confirmed by the ECJ in the judgment above. This, we argue, is a direct consequence of Sections 2 and 3 of the European Communities Act 1972, shows some of the potential weaknesses of the European scrutiny system in the House of Commons and might be said to provide support for the suggestion that there should be a Parliamentary power to disapply EU legislation. (Paragraph 178)

The Justice Secretary welcomed the opportunity to discuss this proposal with the Committee when he gave evidence on 29 January.

European Council meetings

40. We recommend that there should be an opportunity for Members in the Chamber to air issues in advance relating to forthcoming European Council meetings, and rather than a debate, we recommend that this should be timed to coincide with a session of Oral Questions on European Union matters (see later in this Report chapter). (Paragraph 180)

The Government agrees that EU matters are of central importance to the work of many Government Departments and is supportive of efforts to ensure that this is reflected in the work of the House. Members already have the opportunity to question Ministers on EU matters during departmental oral questions, including topical questions. The Government would be open to exploring ways in which EU matters might be given more prominence in these existing sessions, subject to demand from the House.

41. We will monitor the provision of Oral Statements following European Councils closely. While we note that the three European Councils since the

Prime Minister's letter have been the subject of an oral statement by the Prime Minister, in two cases the statement also included another subject (on 3 June 2013, events in Woolwich; on 2 July 2013, Afghanistan). Given that the dates of the European Councils are known well in advance, we recommend that the dates of European Council oral statements should also be set well ahead and given to the House by means of a Written Ministerial Statement three times a year. The statement on the European Council should be self-standing. (Paragraph 182)

As set out in the Prime Minister's letter to the THE COMMITTEE Chairman on 22 January, the Government is committed to providing Parliament with oral statements on important matters such as European Councils. It remains the Government's intention usually to update the House by oral statement following formal European Councils. Since taking office, the Prime Minister has given 21 oral statements following formal European Councils – more than double the number of his immediate predecessor.

Turning to the question of content, there remains however a need to maintain flexibility on post-European Council statements to be able to respond to events of such seriousness that they merit a statement by the Prime Minister to the House of Commons. The Government considers, for example, that it was entirely appropriate for the Prime Minister to cover the tragic attack in Woolwich last year in his oral statement on the Monday thereafter. Indeed, we believe that the House would have considered it remiss if he had not done so.

The Government would be willing to consider laying a pre-European Council Written Ministerial Statement before the House, as is already done for sectoral Councils.

Oral questions on EU matters

42. Given the profound increase in the transfer of competences to the EU and the pressure for greater integration it is now time to give all Members of the House a regular opportunity to question Ministers specifically on European Union matters. We conclude that a session of oral questions (including a session of topical questions) to the Minister for Europe on EU matters, including other Ministers in a cross-cutting form, should be introduced, and that this should take place on the floor of the House, timed to coincide with the run-up to a European Council meeting. We note the comments by the Minister for Europe about the range of issues which could be covered, but see no reason why Ministers from other Departments could not accompany the Minister for Europe during these sessions. If necessary, the Questions for each session could be themed depending on the matters to be discussed at the European Council. (Paragraph 187)

Members are free to ask questions on EU business at the relevant departmental oral questions, or indeed during post-European Council Oral Statements. To establish a new oral questions slot for EU matters in the rota would run counter to efforts to make European scrutiny in the work of the House a mainstream part of departmental scrutiny and risk this activity being left to a minority of enthusiasts for EU issues *per se*. There would also be considerable practical difficulties in re-arranging the oral questions rota to fit around European Council meetings and ensuring the right Ministers were available to answer questions on the given day, even if questions were themed to some degree.

Notwithstanding the Government's preference for EU matters to be treated as part of regular departmental scrutiny activities, there is already flexibility in the existing Standing Orders for oral questions to be taken in Westminster Hall. The Committee may wish to explore with the Procedure Committee and the Backbench Business Committee whether there is demand to use this forum for additional opportunities to scrutinise EU matters.

Chapter 6: Departmental Select Committees

43. We recognise that much of the strength of Departmental Select Committees comes from their autonomy and the independence they have to set their agenda. We are aware that our colleagues on Departmental Select Committees already have busy work programmes and it is also right to acknowledge that for some Committees EU matters may prove divisive. For all these reasons there appears to be no appetite for full mainstreaming of EU legislative scrutiny to Departmental Select Committees, but in our view the current situation is not sustainable. It is 15 years since our predecessor Committee wrote to the Modernisation Committee concluding that "There has been wide agreement that DSCs 'should do more about Europe', but in practice nothing much has happened." The fact that the debate still has a similar tone, given all that has happened in the EU over those 15 years, is disappointing. (Paragraph 204)

The Government believes that the Committee makes a powerful argument. The Government would welcome more intensive and earlier engagement by Departmental Select Committees in the formulation of EU proposals and greater engagement from Departmental Select Committees in the scrutiny of EU business.

The way in which Departmental Select Committees engage with the European Scrutiny Committee on EU matters is of course a matter for Parliament; and as the Committee notes, much of the strength of Departmental Select Committees comes from their autonomy and the independence that they have to set their agenda. While fully respecting Parliament's independence, the Government sees this Response as the beginning of an important discussion with the Committee and other interested

parties in Parliament, including Departmental Select Committees, about how Government can support greater engagement by Departmental Select Committees in European business.

The Government would be ready to consider offering a six-monthly evidence session with the Minister for Europe to relevant Departmental Select Committee chairs, perhaps aligned with the rotating EU Presidency. This would provide a means of considering cross-cutting issues. It would also help Department Select Committees identify and consider priorities more systematically, enabling stronger upstream engagement.

The Government will of course also continue to respond to Departmental Select Committees' requests for evidence, including in relation to proposals in the Commission Work Programme and business at Council, to ensure that Committees are able to keep abreast of important developments in Brussels. The Government also stands ready to offer informal briefings by officials from Whitehall and senior experts from UKREP where appropriate, to help committees understand the detail of Government policy and the situation in Brussels.

44. We have already concluded that we should retain our sifting, overarching remit: we provide a crucially-important mechanism for the House to focus on the most important proposals on the basis of a judgement made by elected politicians, with expert support. But it is clear to us that without broader analysis conducted across the Departmental Select Committee system the scrutiny process is incomplete. As Dr Julie Smith put it "you need to find a way of making select committees feel there is a reason for looking at Europe": the question is, how can this be done in a way which is effective, but also manageable at individual Departmental Select Committee level? We therefore seek to propose changes which introduce more coherence across the House, building on significant recent activity at official level, for example by the re-establishment of the network of Departmental Select Committee staff 'contact points' and regular meetings between these staff and those of the European Scrutiny Committee and the NPO. (Paragraph 205)

The Government welcomes this suggestion and stands ready to consider how it might support greater engagement by Departmental Select Committees in European business, but internal procedural questions such as these are of course ultimately for the House to decide.

45. We recommend that the House, through the European Scrutiny Committee and Departmental Select Committees, produces a document along the lines of the Netherlands model. All Departmental Select Committees would be expected to set out which of the proposals in the Commission Work Programme they will aim to scrutinise, forming the basis for a debate which

takes place in the House at the beginning of the Work Programme period. Should a Departmental Select Committee indicate to us that it saw a document as particularly worthy of debate, we would take account of that. We as a Committee would also continue to review the Work Programme. The Government would then use this information as a basis for making commitments to hold debates on particular documents, following discussions with this Committee (and without prejudice to our right to refer documents for debate). The Work Programme for the coming year is usually published in the autumn and comes into effect in January, so the timeframe for doing this would typically be November and December. We would publish a Report for debate on the floor of the House setting out our priorities and those of the Departmental Select Committees. (Paragraph 209)

The Government welcomes the use of the Commission Work Programme and the early engagement of Departmental Select Committees in considering priorities. In addition to the regular annual debate which the Committee calls for on the Work Programme, the Government has made it a practice to write to the Liaison Committee drawing its attention to the document, and many Departments do the same with their respective Departmental Select Committees. We would welcome exploring options to strengthen this process of prioritisation further and to guide not only the scrutiny process, but also the Government and Parliament's upstream engagement in EU business.

The Government can therefore see the attraction of using such a system of prioritisation to inform decisions about the use of parliamentary time. Whilst the Scrutiny Reserve Resolution generally requires a decision by the House on European proposals, there is some flexibility in the way in which other forms of scrutiny may be exercised. The European Scrutiny Committee may wish to discuss further with the Procedure Committee, the Liaison Committee, and the Backbench Business Committee whether there are innovative ways in which the existing procedures can be used to meet any unmet demand for debates, without departing from the requirements of the Scrutiny Reserve Resolution. For example, a certain proportion of Backbench Business Committee days could be reserved informally for debates on European business or reports. Ultimately, whilst the Government can help promote and facilitate engagement in European business, it is up to Members of the House to determine the extent to which they wish to prioritise this ahead of other policy interests.

Committee Reporters

46. We take the view that, Committee autonomy notwithstanding, it is clear that the existing approach to EU scrutiny within Departmental Select Committees needs improvement. We see engagement with the Work Programme as a way of setting priorities, and in order for this to work during the year it also

requires ongoing engagement at Member level. We therefore recommend that the requirement to appoint a European Reporter on each Departmental Select Committee should be written into Standing Orders. This could be reviewed after the system has operated for two years. (Paragraph 216)

The Government would welcome greater engagement in EU business by Departmental Select Committees. Requiring Select Committees to appoint a European Reporter would be a matter for the House. However, the Government would support efforts to encourage increased engagement and stands ready to assist with the establishment and operation of such a system, should the House so decide. We would be ready to consider with Reporters, Committee Chairs and other Members how best to respond to the particular interests of Departmental Select Committees.

47. If this is agreed to, we note that a number of practical questions remain to be resolved through discussion in the Liaison Committee: How would Reporters be chosen by Departmental Select Committees? Could there be more than one per Committee? Would there need to be some kind of co-ordination across the House of which political party they were from? What resources, if any, would they need to do their job effectively? What precisely should their role be? Could Members seeking election for membership of Select Committees within their parties, for example, publicise that they would seek to take on this role? Should Reporters be required to sit on European Committees? (Paragraph 217)

48. We think that the combination of European Reporters, and a more systematic approach to the Commission Work Programme, could mark a significant shift in the way the House as a whole approaches EU business. We hope that the Liaison Committee will take these recommendations forward. (Paragraph 218)

These are matters for Select Committees themselves. The Government strongly supports efforts to encourage greater engagement on EU matters. We are keen to explore ways in which existing co-operation with committees can be enhanced, for example with any European Reporter on the Work Programme, subject to resource constraints. Select Committees may wish to develop such arrangements on an informal basis in the first instance, with a view to assessing whether it is necessary to enshrine new requirements in the Standing Orders. The Government has written to Departmental Select Committees about Presidency priorities and has offered to provide further information or informal briefing by officials, though to date this has not been taken up.

Chapter 7: European Committees

49. We remain of the opinion that the best solution would be to revert to the previous system of permanent membership. Moreover, giving European Committees a permanent membership, with a permanent Chair, would enable them to make decisions about their business and timetabling, as well as developing expertise among their members and potentially making them more independent from the Whips. It would also give interest groups the opportunity to make their views known in advance to members of the relevant Committee. Given the impact of EU legislation on the voter, and the fact that many matters which come before European Committees would be the equivalent of an Act of Parliament—and have not necessarily originated from Government policy—we recommend that European Committees should not be whipped. (Paragraph 234)

The Committee traces the history of the previous system of committees and illustrates the problems of poor attendance and lack of engagement which led to the change to the current system. The Government agrees with the Committee that EU business is important and that we should consider how best to match the structure of European Committees with members' interest.

Current attendance at, and duration of, European Committees does not suggest that there is sufficient demand for permanent membership of European Committees. The Government would be willing to revisit that judgement if there were significant demand for the idea from across the House and clear evidence that enough Members were willing to serve on such Committees. In making any such a change, it would be important not to undermine parallel efforts to strengthen the engagement of Departmental Select Committees.

50. The role of these Committees is questioning the Government about its negotiating approach on particular documents, and considering the wording of the motion to be considered on the floor of the House about the Government's position on those documents. We therefore recommend that they should be renamed as EU Document Debate Committees. (Paragraph 236)

The Government recognises the scope for improving clarity on the roles of different committees. This is a matter for the House.

51. Our new EU Document Debate Committees should also have permanent Chairs. We see considerable merit in these Chairs being elected, and possibly the Committee Members too. We also believe that Members of the House who are not members of the Committee should be permitted not just to attend and move amendments, but also—crucially—to vote. In this way the independence of the Committees would be guaranteed and it would enable all Members of

the House to determine, not merely suggest, the form of the motion which goes to the floor of the House (on the assumption that the Government accepts our recommendation later in this chapter that it should commit to tabling in the House the motion agreed to by the Committee). (Paragraph 237)

The Government supports the present arrangements under which appointment of Chairs of European Committees are made by the Chairman of Ways and Means. It would be for him to determine whether to develop a cadre of European Committee expert Chairs if that were considered desirable.

As a matter of principle, it cannot be right for all other Members of the House to be able to vote on matters being considered by the appropriate committee. Such a provision would undermine the role and the concept of a committee working on behalf of the House, leaving it vulnerable to co-ordinated attempts to affect its business, by Government, opposition, and backbenchers alike.

52. We further recommend that EU Document Debate Committees should be given power to vary the way they conduct their business, for example: to dispense with the Ministerial statement, and proceed straight after the explanatory statement by the THE COMMITTEE Member to the debate on the Motion; to agree to reduce the length of the sitting of the Committee from two and a half hours to an hour and a half; to debate certain documents together; or to permit a member other than the Minister to move the motion (for example, in the case of a Reasoned Opinion, to allow this to be moved by a member of the European Scrutiny Committee). In order to do this the Committee would deliberate in public in exactly the same way as a Public Bill Committee
considering a Programme Motion. (Paragraph 238)

The Government is prepared to examine further ways in which the procedures of European Committees can be improved, in consultation also with the Procedure Committee. In particular, there may be scope for greater flexibility in debating documents together and in the time allotted to committee meetings. However, the Government believes that the principle of Government business commencing by a Minister moving a motion should be maintained.

53. We recommend that similar provisions on timing should apply to EU Document Debate Committees as we have recommended for debates on the floor of the House: that the Government should undertake to ensure that the debate takes place within four sitting weeks of a Committee recommendation (unless the Committee has for any reason waived this requirement, or—indeed—has suggested a tighter timescale).
(Paragraph 239)

The Government acknowledges the desirability of ensuring that debates on EU documents should take place in a timely fashion. Whilst it is not possible to provide guarantees, the Government will use its best endeavours to ensure that where possible debates take place promptly.

54. Finally, we recommend that delegated legislation introduced under the European Communities Act which requires affirmative resolution (and would therefore normally fall to be considered by a Delegated Legislation Committee) should also be taken in the relevant EU Document Debate Committee. This would be one way of accommodating the recommendations from the Chair of the EFRA Committee about introducing amendable motions in Delegated Legislation Committees cited earlier in this Report. (Paragraph 240)

The Government's support for the existing system of European Committees and Delegated Legislation Committees allows for Members with a specific interest in the subject matter to be nominated to serve, and therefore promotes engagement and participation. Members of Delegated Legislation Committees already have the opportunity to raise concerns about a proposal directly with the Minister concerned, without the need to table an amendment in advance. Such a procedure would not increase the effectiveness of the existing scrutiny system for delegated legislation.

There would be undesirable duplication if delegated legislation were considered in two separate committees. We also believe there would be insufficient demand amongst Members to support such a system.

55. The then Deputy Leader of the House noted in 2008 that the then Government "recognise[d] the long running view expressed by previous Committees, including by the Modernisation Committee in 2005, that the motion tabled [in the House] should be the one agreed by the [European] Committee." We recommend that the Government should set out a commitment that the motion tabled in the House should be the motion agreed by the EU Document Debate Committee. (Paragraph 243)

This Government has always tabled the same motion in the House as the one agreed by the European Committee and there is no reason why this should change. In the absence of any evidence of a problem in this respect, the Government sees no need for a formal commitment of this kind.

56. A particular issue has arisen with Reasoned Opinions, where there have been cases where a Minister has had to move a motion relating to a Reasoned Opinion proposed by the THE COMMITTEE, even when the Government did not agree with it. As we have already noted, the Procedure Committee reported in 2011 and recommended that in these cases the "motion [should] appear in the name of the Chair of the European Scrutiny Committee or in the name of

another member of the Committee acting on its behalf." The Government's response rejected this. We ask the Government to reconsider its opposition to this change. (Paragraph 244)

This recommendation has been addressed in response to the recommendation in paragraph 162 (No. 34 above).

57. We recommend that a new resolution of the House provide that any motion tabled following a debate in EU Document Debate Committee for consideration without debate on the floor of the House should appear in the European Business section of the Order Paper for at least one sitting day before it is put on the main Order Paper for decision, so that Members have the opportunity to consider whether or not to table amendments. (Paragraph 245)

The Government supports the aim of this recommendation so as to provide notice for Members who may wish to table amendments. In the vast majority of cases such notice is possible and should continue to be provided. However, on rare occasions there may be practical difficulties relating to the timing of the publication of documents which means that this would not be possible. In these circumstances, the House may prefer to have the flexibility to debate documents without such notice. In an alternative situation proposed by the Committee the Government could always table a motion to notwithstand any resolution of the House, in order to permit Members to reach a decision on a document without the benefit of prior notice.

58. It is noteworthy that on a number of recent occasions there has been confusion about the procedures involved in European Committee sessions. We therefore intend to work with the House authorities to produce further guidance on this process. (Paragraph 246)

The Government supports the Committee's work in this area.

Chapter 8: The visibility of scrutiny and the media

59. We conclude that given the possibility of some form of EU referendum—either on membership or following treaty change—over the next ten years, the media, particularly (given its role) the BBC, needs to ask itself difficult questions about how it deals with EU issues. We are not convinced that the Prebble Review and the responses from the BBC Executive and BBC Trust have sufficiently asked, let alone answered, these questions. Some issues highlighted in the review (such as apathy, which is described in the Prebble review as "the main enemy") are not, in our view, best addressed by measures such as the "cross-promotion of BBC services"; something more profound and strategic is necessary. We are disappointed, in this respect, that the section at the back of the BBC Trust's response which lists the areas in which

an update is required from the BBC's Editorial Director in summer 2014 makes two specific references to religion and ethics but no specific mention of EU coverage. It is unacceptable that we have not had the opportunity to resolve these outstanding points because the Chairman of the BBC Trust, which commissioned the Prebble Report, has refused to appear before us for a public oral evidence session.
(Paragraph 259)

60. We reject the assertion in Lord Patten's letter that our invitation to him to give oral evidence was "inappropriate". We fully respect the editorial independence of the BBC. But that does not mean that the BBC Trust is above Parliament, and should pick and choose its interlocutors here. (Paragraph 260)

61. We publish our exchanges of letters with Lord Patten alongside this Report. We do not see why it is "inappropriate" to question—in public—a publicly-funded organisation on a review it has conducted, and what it will be doing to follow up that review. The BBC Trust's defensiveness on this point is deeply disappointing and the broad-brush nature of the refusal will be of interest to all Select Committees. We invite, as part of the follow-up to this inquiry, the BBC (including the Chairman of the BBC Trust), to give oral evidence in the spring of 2014, to set out what follow-up actions have been taken in the light of the Prebble Review, and to take forward the points raised in correspondence and in our supplementary questions, on such key matters as broadcasting decisions, complexity and explanation, the Prebble Review and Charter Obligations. (Paragraph 262)

This is a matter for the Committee to pursue with the BBC as an independent public broadcasting body.

62. Since the beginning of the 2013–14 Session we have produced public meeting summaries, which are usually on our website the day of or the day after the meeting. These have been widely welcomed. We recognise that more could be done to develop our communications and our website—particularly by making it easier to navigate—and we will be taking this forward over the coming year. Until 2010 most Select Committees (including the European Scrutiny Committee) produced an Annual Report. This practice has now ceased, but it has become clear during the course of this inquiry that so many of the issues we consider recur over time that we should re-establish this practice with effect from the end of the 2013–14 Session.
(Paragraph 270)

The Government welcomes the Committee's efforts to keep the public informed on parliamentary scrutiny and the business of this Committee. The Government agrees that it is important for this information to be accessible to the public and recently re-

launched the Cabinet Office website making all Explanatory Memorandums and correspondence sent by Ministers to the Committees publicly available. We would also support the simplification of subheadings in Explanatory Memorandums to ensure the wider public can more easily understand the consideration and principle of subsidiarity for example.

63. We agree with the evidence of Professor Simon Hix that the legislative nature of the UKRep position makes it different in nature to other Ambassadorial appointments. While we note the position of the Government, we believe that prospective holders of this post should make themselves available to give oral evidence to Committees of this House. We deeply regret the fact that the Government did not permit this in the case of the new Head of UKRep, and will take this forward through the Liaison Committee. (Paragraph 277)

In line with correspondence from the former Secretary of State for Foreign and Commonwealth Affairs to the Committee last year, the Government attaches great importance to the longstanding constitutional distinction that Ministers are accountable to Parliament on policy issues and that officials act on the instructions of Ministers.

The UK Permanent Representative has in the past given evidence alongside a Minister at the Minister's discretion, and Ministers will continue to invite officials to support them during evidence sessions as appropriate.

Chapter 9: Conclusion

64. We noted at the beginning of this Report that our influence must be focused on the UK Government. This is the key purpose of scrutiny; reflecting the primacy of the UK Parliament. As we pointed out in the introduction, the context of the Prime Minister's Bloomberg speech is highly relevant, in particular the 'fourth principle'— "It is national parliaments, which are, and will remain, the true source of real democratic legitimacy and accountability in the EU". The collective influence of national parliaments in the light of the Lisbon Treaty, for example through the Reasoned Opinion process, must also be considered to be part of the scrutiny process. (Paragraph 278)

The Government is clear that national parliaments and national governments are the main sources of democratic legitimacy and accountability in the EU and the most effective way that the voices of people across the EU can be heard. Most people across Europe identify with their national parliaments more than with EU institutions. They understand how to make their voice heard through national parliaments. National parliaments are closer to, and understand better, the concerns of citizens. The British Parliament, like others, has significant expertise to bring to bear.

National parliaments play a key role in scrutinising EU decision-making. In addition to this role, parliaments can play a direct role in EU decision-making – which Government strongly supports. Parliaments submit written opinions as part of their political dialogue with the Commission. The total number of opinions received from national parliaments in 2012 rose to 663, an increase of 7 percent compared with 2011 (622). The Government would encourage Parliament in making further use of opportunities for upstream engagement. In addition, parliaments have Treaty based powers to police the compliance of draft legislative proposals with the subsidiarity principle through the so-called yellow and orange card mechanisms set out in Protocol 2 of the Treaty on the Functioning of the European Union.

The Government supports enhancing this role further. We want to make more effective use of the existing yellow and orange cards and identify Commission proposals which raise subsidiarity concerns earlier. In addition, we want to make it easier for national parliaments to challenge EU legislation. For example, we should consider strengthening the existing yellow card process (giving parliaments more time, lowering the threshold of the number of parliaments required to trigger a yellow card, and extending the scope of the card for example to cover proportionality), and consider proposals to give national parliaments working together the power to force the Commission to withdraw a proposal (a "red card" procedure). We should explore whether such cards might be issued at any point during the legislative process and indeed whether they could be exercised in relation to existing legislation. The Government would also support a number of COSAC's recommendations, including that the Commission should make a political commitment that it will respond to opinions or requests issued by more than a third of chambers (a "green card").

65. There are two reasons why a system of Parliamentary scrutiny of EU proposals was first established in 1972. First, by joining the EU the UK agreed to be legally bound by directly effective EU legislation; such legislation became automatically binding on UK citizens without the rigorous scrutiny which accompanies the enactment of a Bill. This was a very significant shift away from full Parliamentary scrutiny of legislation which is, in effect, the same as national legislation but without Acts of Parliament—and, because of Qualified Majority Voting, does not necessarily originate in Government policy. Secondly, if not directly effective, EU obligations were to be implemented by secondary legislation by virtue of section 2(2) of the European Communities Act 1972. Parliamentary scrutiny of secondary legislation implementing EU obligations is limited in scope—it cannot question the policy being implemented, but simply whether it has been done so correctly. Hence the preeminent importance of Parliamentary scrutiny of EU documents: it is the only means Parliament has of influencing EU policy before it becomes binding legislation. The reforms we recommend in this Report should be viewed in that light. (Paragraph 279)

The Government shares the Committee's assessment of the importance of European scrutiny and welcomes the Committee's thorough consideration of the existing system. We look forward to discussing further with the Committee how to take forward improvements to the system where appropriate.

66. Our conclusions and recommendations are set out in full in the following section of this Report. They represent an agenda for radical reform of the scrutiny system. On the primacy question, we make a set of recommendations to improve the way in which debates are scheduled and conducted, but also conclude that there must be a strengthening of the scrutiny reserve to reflect the reality of decision-making in Coreper and by Qualified Majority Voting. We ask that more use is made of Supplementary Explanatory Memoranda to re-impose the scrutiny reserve when documents change during negotiations. More fundamentally, we see no reason why the idea of a national veto should not be urgently developed and decided, given the emerging discussions about collective 'red cards'. (Paragraph 280)

The Government has addressed these points in the course of this Response.

67. The Modernisation Committee's 2005 Report on the scrutiny of European business was not debated by the House until three years after its publication, which was completely unacceptable. In the context of the current tone of debate at EU level, the moves towards deeper EU integration highlighted in successive Commission publications and the prospect of an EU in/out referendum in or before 2017 there is evidently an urgent need for the House and its Committees to address our conclusions and recommendations. (Paragraph 281)

The Government agrees that this issue merits timely consideration.

68. We ask the Government to ensure that it responds to our Report within the customary two-month deadline, and the Procedure Committee and the Liaison Committee to consider those recommendations relevant to them, alongside the Government's response, so that this matter is brought to the floor of the House no later than Easter 2014. (Paragraph 282)

The Government agrees with the Committee about the importance of parliamentary scrutiny and takes its obligations to Parliament seriously. The Committee can be commended for its thorough and robust work in fully scrutinising EU business, holding the Government to account, and the thorough consideration it has given to this important matter. The Government thought it was important to give the report due consideration, even if this meant a delay, and now looks forward to working together where appropriate to improve the scrutiny system.

ANNEX A - STREAMLINING THE SCRUTINY PROCESS: HMG PROPOSALS

This Annex outlines the Government's proposals for measures to be exempt from scrutiny, or subject to a shorter Explanatory Memorandum (EM). As with the current excluded categories, officials would consult the Clerks in each case to seek their agreement that a document is correctly identified as falling within an excluded category.

Under current arrangements a short form of EM is used for BIS anti-Dumping EMs (example below). The Government would like to see this shorter EM used for a number of other documents as outlined.

The Government proposes three categories of EMs:

1. Full EM: which requires substantive commentary against all the established headings and mainly used for proposals for legal instruments. In line with the current template;

2. Shorter adapted EM: This allows for the full template to be adjusted accordingly for example on documents other than proposals for legal instruments (Commission Communications and Reports to the Council) where the full template, including legal and procedural issues, is not applicable;

3. Short-Form unsigned EM: as proposed below, for issues that raise limited policy implications for the UK.

Categories of Documents currently excluded from systematic deposit for scrutiny (where non deposit is agreed by consultation with the Committee Clerks)

- Certain Documents under the Ordinary Legislative Procedure (previously codecision process) e.g. Commission opinions on Council and EP amendments.
- EU positions on rules of procedure for various Councils and Committees, including those established under Association Agreements.
- Draft Council Decisions relating to decisions already taken in Association Councils or Committees.
- Proposals to extend sanctions decisions (without making substantive changes) in pursuit of UNSCRs.
- Commission proposals for appointments/reappointments to EU organisations.
- Proposals for budget transfers of appropriations (quarterly EMs are provided).
- Resolutions (unless they commit the EU to a course of action including new legislation, have potential implications for EU competence or would indicate a change in Government policy).

- Framework participation agreements for third country personnel contributions to EU crisis management operations.
- Annual Council decisions on European City of Culture.
- Commission Decisions establishing the Commission's proposals to the Ministerial Council of the Energy Community.
- VAT Derogation requests relating to other countries.
- Proposals for technical adaptations of existing EU legislation and Third Country Agreements as a consequence of Croatia's accession.
- Free-standing Commission Staff Working Papers (ie not appended to Commission proposals for Council Acts).
- Commission delegated and Implementing acts; deposited on a case by case approach following consultation with the Committees.

Government proposals for categories of document for non-deposit or shorter unsigned EMs

Category	**Comment**	**Department(s) affected**	**Impact Annually**
Anti-Dumping proposals	Already provided as short unsigned EMs. Could deposit be waived or a new approach agreed where quarterly EMs list proposals adopted?	BIS	Approx. 45
Factual Commission reports where no policy implications arise	For example reports on the implementation of individual legislative instruments and/or reports on EU programmes where no significant issues arise.	All	50-100
Court of Auditors' Special Reports	Where no irregularities have been raised	All	Up to 15
Annual reports on the EU's Executive Agencies and other Bodies and Undertakings	Where no irregularities have been raised	All	Approx. 45
Quarterly transfers of EU Budget appropriations	Quarterly EMs provided covering all annual transfers. Waive these EMs or submit without Ministerial signature.	HMT	4 EMs annually
Proposals impacting only on	For example tax arrangements in other	All	10+

other Member States	Member States/OCTs.		
Customs Tariff Duties/Tariff Quotas proposals		BIS	Approx. 15
Extending or amending proposals on economic measures (tax breaks, tariff quotas, etc) for the EU local island economies.	These proposals have no effect on the UK	BIS	
Proposals for Council decisions on positions to be adopted by the EU in EU/Third Country Association Committees, EEA Joint Committees and other international organisations and bodies (UN/WTO etc.)	Where these are routine or technical in nature and often do no more than amend annexes and protocols attached to Agreements	All	Approx. 30
Short EM for Schengen measures from which the UK is excluded	Examples would include the First Progress Report on the Implementation by Russia of the Common Steps towards visa free short-term travel of Russian and EU citizens under the EU-Russia Visa Dialogue. Regulation amending listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement. Fourth bi-annual report on	HO	

	the functioning of the Schengen Area.		
Financial proposals affecting the Eurozone in which we do not participate	Council Recommendations/Decisions on excessive deficit regarding euro-zone Member States	HMT	20+ documents
Financing documents affecting the Eurozone in which we do not participate	Commission Communications on action taken post-EDP for euro 'ins'. Commission Opinions on Draft Budgetary Plans. Council Opinion on Economic Partnership Programmes. Two-pack Council Decisions on macro-economic adjustment (following EFSM reviews exactly).	HMT	
Proposals to conclude aviation agreements with third countries	Where they follow a model format and raise no important policy implications	DFT	<5
Proposals for agreements with third countries on sharing classified information	These usually follow a model format and raise no significant policy implications	FCO	<5
Technical updates to CFSP decisions	Principally in the CFSP field but not exclusively	FCO	Approx. 15
Annual decisions evaluating the EU Capitals of Culture	Proposals to designate capitals of culture already exempted from scrutiny	DCMS	1
ECB Opinions on Commission Proposals	Council request the ECB provide an opinion on legislative proposals. Where these may have implications they can be captured in post-EM follow-up.	All	5-10
Proposals on mobilisation of European Global Adjustment Fund	Proposals could be included for information, like with Transfers of Appropriations. Full scrutiny for proposals on	HMT	

	management of EGF.		
Annual Budget Commission Reports (excluding Fight Against Fraud Report and ECA Report)	Commission report on discharge follow-up, Evaluation of Union's finances, Hercule programme, EU Solidarity Fund and Internal Audits. Many of these follow on from, and restate the major findings in ECA Report on Annual Budget Implementation or Fight Against Fraud Report, and as such any policy implications are consistent. Many rarely discussed.	HMT	5-10 Annually
Financial Assistance Commission Reports	Borrowing and Lending, Budget Guarantees (x2) and Guarantee Fund and Management. All effectively summarise actions captured in EMs on EUBoP and MFA with largely out-of-date reporting.	HMT	4 Annually
GNI Adjustment to MFF Programme	Commission communication on EU GNI adjustments to agreed MFF ceilings.	HMT	1 Annually
Macroeconomic Imbalances Procedure	Where Member States enters the corrective Arm, could generate 4 EMs per process.	HMT	

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Council No, eg 12345/11
COM/SEC No.

Proposed Draft Template for:

"SHORT-FORM" UNSIGNED EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGAL INSTRUMENT OR DOCUMENT

Title of Document

Submitted by [insert Department name] Date:

Subject Matter or Purpose

Explanation of the purpose of the document or proposal

Devolved Administrations Interest

Policy Implications

Confirmation that no policy implications arise or that there are very limited policy implications for the UK

Timetable for further action

Relevant if to be agreed by the Council as documents or proposals to be agreed are subject to the Scrutiny Reserve Resolution

EXAMPLE OF AN ANTI-DUMPING EM

13141/13
COM(2013)

604 final

EXPLANATORY MEMORANDUM ON EUROPEAN UNION LEGISLATION

Proposal for a Council Implementing Regulation amending Implementing Regulation (EU) No 857/2010 imposing a definitive countervailing duty and collecting definitively the provisional duty imposed on imports of certain polyethylene terephthalate originating, inter alia, in Pakistan

Submitted by the Department for Business, Innovation & Skills on October 2013

SUBJECT MATTER

1. On 17 May 2013, the Commission initiated the partial reopening of the anti-subsidy investigation concerning imports of certain polyethylene terephthalate (PET) originating, inter alia, in Pakistan.

2. This reopening was triggered by the partial annulment by the General Court of Article 1 of Council Implementing Regulation No 857/2010 in relation to the Pakistani exporting producer Novatex Ltd (Novatex). The Regulation was partially annulled because the Commission and the Council failed to take account of the fact that Novatex's 2008 tax return had been revised during the original investigation, resulting in a definitive countervailing duty (44.02 euro/tonne) that exceeded that applicable in the absence of the error.

3. In line with Article 266 of Treaty on the Functioning of the European Union, the institutions of the European Union are obliged to comply with the judgment of the General Court.

4. The recalculation of Novatex's subsidy duty rate, taking account of Novatex's modified tax return, resulted in a corrected amount of 35.39 euro/tonne. As Novatex was the sole exporting producer of the product concerned in Pakistan during the investigation period, this revised duty rate applies to all imports from Pakistan.

5. Therefore the Council Implementing Regulation that is the subject of this explanatory memorandum amends the definitive countervailing duty applicable to imports of PET originating in Pakistan to 35.39 euro/tonne.

POLICY IMPLICATIONS

6. None.

TIMETABLE

7. The Council adopted the proposal as Council Implementing Regulation (EU) No 917/2013 of 23 September 2013. It came into force on the day following its publication in the Official Journal on 25 September 2013.

Annex B - Working Arrangements of UKREP and Coreper

Role of UKREP in the legislative process

As the THE COMMITTEE report notes, decision-making within the Council operates at a series of levels. A new legislative proposal from the Commission will often first be presented to the relevant Council of Ministers, offering Ministers an opportunity to steer the forthcoming negotiation and set out their political priorities. The proposal then passes to a working group which will undertake a detailed, technical examination. UKREP officials (desk officers) and/or departmental policy experts attend and intervene for the UK at these working group discussions. The Government's approach in the working group is set by:

- The status of parliamentary scrutiny;
- The terms of the clearance letter from the European Affairs Cabinet Committee (EAC);
- Instructions, often on a line by line basis, provided by the lead Whitehall Department or Agency, where appropriate in consultation with other interested departments and Devolved Administrations.

There is no fixed number of working group discussions – a Presidency, or successive Presidencies, will hold as many as deemed necessary to come to a common view on as much of the detail as possible, and identify the main areas of disagreement, before it passes to Coreper. The most contentious issues – or those with wider implications - can go to Coreper without any substantive working group discussion.

The Presidency decides when a proposal should move to Coreper for discussion, normally either to try to unblock disagreement on a specific issue, or - in the case of dossiers decided by co-decision - if they believe it is possible to agree a mandate to enter trilogue negotiations with the European Parliament. UKREP's approach to Coreper is determined by:

- The status of parliamentary scrutiny;
- The terms of the EAC clearance letter;
- Pre-Coreper instructions from the lead Department, in line with ministerial agreement;
- Regular consultation with Whitehall Departments and Ministers including, where necessary, during Coreper meetings.

The Council's agreed position on a legislative proposal will formally be decided upon at the relevant Council of Ministers. It is important to remember that, in EU processes, "nothing is agreed until everything is agreed". The Council of Ministers always has the final say on the Council position. Under the Ordinary Legislative Procedure – or co-decision with the European Parliament – this process of working group, Coreper and Council can be repeated a number of times in an attempt to reach agreement between the institutions.

UKRep negotiates within the terms of instructions from Whitehall. At the start of a negotiation the lead Department seeks EAC clearance for the UK negotiating position and overall approach. Before working groups, where UKRep represents the UK, the relevant UKRep desk officer seeks instructions from the lead Department. These instructions are provided in line with the negotiating mandate agreed by EAC Ministers. Following these working groups, UKRep provide a record for the lead Department and seek instructions for the next working group.

UKRep plays an active role in advising Departments on how to approach negotiations, taking into account information about other Member States' positions and priorities, and the deliverability of UK priorities. UKRep is well placed – particularly in advance of Coreper – to judge which UK aims are deliverable. Policy ownership, however, firmly rests in Whitehall. UKRep needs to determine in advance with the relevant Departments the margins of its negotiating discretion. UKRep would not support agreement if it were judged to go beyond existing clearance. If changes made to a legislative proposal during the negotiation render the EAC clearance inadequate or irrelevant, the relevant Department will revert for further guidance.

A legislative proposal will almost always (except on very technical dossiers where there is broad agreement) be subject to at least one substantive discussion at Coreper, and normally several more. Indeed, the UK and other Member States would object if a Presidency tried to bounce through agreement on an issue without at least one detailed consideration at Coreper. Of course, the Council of Ministers may have several discussions of the more contentious and political issues (e.g. CAP and CFP reform, financial services).

Case study: Clinical Trials Regulation (2013) 12751/12, COM(2012) 369

- Following extensive UK engagement, the Commission published a proposal for a Regulation on Clinical Trials in July 2012. This aimed to make the EU a more attractive place to do clinical research. This proposal was deposited for scrutiny and the Department of Health submitted an Explanatory Memorandum on 6 August 2012.

- The European Affairs Committee agreed the UK Government's objectives at the start of the negotiations, and at each stage of the negotiation UKRep officials sought detailed instructions from London on the approach they should take at working groups. There was regular discussion between UKRep officials and those in the Department of Health and the Cabinet Office. The Department of Health also liaised closely with the Department for Business, Innovation and Skills.

- Ministers were regularly updated on the progress of negotiations following working group discussions, and in turn sent five update letters to the parliamentary scrutiny Committees informing them of developments. The Government was able to use the Committee's views to strengthen the UK's position in negotiations.

- The working group and Coreper discussions proceeded relatively quickly. The Lithuanian Presidency was given a mandate to start trilogue negotiations with the European Parliament in October 2013. The UK supported the package presented subsequently to Coreper in December 2013, which was in line with the original EAC-agreed negotiating aims.

- The proposal cleared scrutiny in the House of Commons on 29 January 2014 and House of Lords on 5 February 2014. The final Regulation was adopted in April by the Council of Ministers.

Case study: Fluorinated Greenhouse Gases Regulation (2012-2013): Reference 15984/12, COM (2012) 643

- Following a review of the existing controls on fluorinated greenhouse gas (F gas) emissions, the Commission published a proposal for a new Regulation on 7 November 2012. This sought to impose a 79% reduction, by 2030, in the total amount of hydrofluorcarbons (HFCs) – the most important F-gases - that can be sold in the EU, alongside bans on certain uses of F gases. This proposal was deposited for scrutiny and DEFRA submitted an Explanatory Memorandum on 26 November 2012.

- The EAC cleared the UK Government's negotiating objectives at the start of negotiations. During the negotiations, UKRep officials sought instructions from London on the approach they should take at working groups, directed by the agreed EAC objectives.

- The Lithuanian Presidency of the Council secured a mandate from Member States to start trilogue negotiations with the European Parliament in October 2013. Trilogue negotiations took some time to complete because the Council and the European Parliament did not agree on a number of key issues. Most importantly, the European Parliament wanted a number of very broad product bans, a price on the allocation of HFC quotas and more ambitious HFC targets. In response, DEFRA developed counter-proposals consistent with the EAC mandate. This helped UKRep, working with like-minded Member States, to defend the UK's position. Following significant compromise by the European Parliament and some concessions by the Council, informal agreement was reached on a number of amendments to the European Commission's original proposal. The amended proposal was fully in line with the UK Government's agreed position.

- The Government EM cleared scrutiny in the House of Commons following a debate on 21 January 2013. After correspondence between DEFRA and the Chair of the House of Lords European Union Committee, the proposal cleared scrutiny in the House of Lords in October 2013.

- The amended Commission proposal was agreed by the EP in a vote at First Reading on 12 March 2014, and was adopted by Ministers in Council on 14 April 2014. The new Regulation will apply from 1 January 2015.

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