



House of Commons

European Scrutiny Committee

---

# The Conclusions of the European Council and the Council of Ministers: Follow up report

---

Twenty-fifth Report of Session 2007–  
08

*Report, together with formal minutes and  
written evidence*

*Ordered by The House of Commons  
to be printed 4 June 2008*

**HC 606**  
Published on 12 June 2008  
by authority of the House of Commons  
London: The Stationery Office Limited  
£0.00

## European Scrutiny Committee

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

- a) to report its opinion on the legal and political importance of each such document and, where it considers appropriate, to report also on the reasons for its opinion and on any matters of principle, policy or law which may be affected;
- b) to make recommendations for the further consideration of any such document pursuant to Standing Order No. 119 (European Standing Committees); and
- c) to consider any issue arising upon any such document or group of documents, or related matters.

The expression “European Union document” covers —

- i) any proposal under the Community Treaties for legislation by the Council or the Council acting jointly with the European Parliament;
- ii) any document which is published for submission to the European Council, the Council or the European Central Bank;
- iii) any proposal for a common strategy, a joint action or a common position under Title V of the Treaty on European Union which is prepared for submission to the Council or to the European Council;
- iv) any proposal for a common position, framework decision, decision or a convention under Title VI of the Treaty on European Union which is prepared for submission to the Council;
- v) any document (not falling within (ii), (iii) or (iv) above) which is published by one Union institution for or with a view to submission to another Union institution and which does not relate exclusively to consideration of any proposal for legislation;
- vi) any other document relating to European Union matters deposited in the House by a Minister of the Crown.

The Committee’s powers are set out in Standing Order No. 143.

The scrutiny reserve resolution, passed by the House, provides that Ministers should not give agreement to EU proposals which have not been cleared by the European Scrutiny Committee, or on which, when they have been recommended by the Committee for debate, the House has not yet agreed a resolution. The scrutiny reserve resolution is printed with the House’s Standing Orders, which are available at [www.parliament.uk](http://www.parliament.uk).

### Staff

The staff of the Committee are Alistair Doherty (Clerk), Emma Webbon (Second Clerk), David Griffiths (Clerk Adviser), Terry Byrne (Clerk Adviser), Sir Edward Osmotherly (Clerk Adviser), Peter Harborne (Clerk Adviser), Michael Carpenter, (Legal Adviser) (Counsel for European Legislation), Dr Gunnar Beck (Assistant Legal Adviser), Anwen Rees (Committee Assistant), Allen Mitchell (Chief Office Clerk), Ian Blair (Chief Office Clerk), Mrs Keely Bishop (Secretary), Dory Royle (Secretary), Sue Panchanathan (Secretary), Estelita Manalo (Office Support Assistant).

### Current membership

Michael Connarty MP (*Labour, Linlithgow and East Falkirk*) (Chairman)  
Mr Adrian Bailey MP (*Labour/Co-op, West Bromwich West*)  
Mr David S. Borrow MP (*Labour, South Ribble*)  
Mr William Cash MP (*Conservative, Stone*)  
Mr James Clappison MP (*Conservative, Hertsmere*)  
Ms Katy Clark MP (*Labour, North Ayrshire and Arran*)  
Jim Dobbin MP (*Labour, Heywood and Middleton*)  
Mr Greg Hands MP (*Conservative, Hammersmith and Fulham*)  
Mr David Heathcoat-Amory MP (*Conservative, Wells*)  
Keith Hill MP (*Labour, Streatham*)  
Kelvin Hopkins MP (*Labour, Luton North*)  
Mr Lindsay Hoyle MP (*Labour, Chorley*)  
Mr Bob Laxton MP (*Labour, Derby North*)  
Angus Robertson MP (*SNP, Moray*)  
Mr Anthony Steen MP (*Conservative, Totnes*)  
Richard Younger-Ross MP (*Liberal Democrat, Teignbridge*)

# Contents

---

<b>Report</b>	<i>Page</i>
Our previous report	3
The Conclusions of the Council of Ministers	3
The Minister's letter of 17 May 2008	4
The Committee's conclusions	5
<b>Formal Minutes</b>	<b>7</b>
<b>List of written evidence</b>	<b>8</b>
<b>List of Reports from the Committee during the current Parliament</b>	<b>9</b>



## Our previous report

1. In February, we published the Report on our inquiry into the arrangements for the preparation, consideration and approval of the Conclusions of the European Council and the Council of Ministers.<sup>1</sup>

### *The European Council's Conclusions*

2. We noted that the Conclusions of the European Council have a powerful influence on the policies of the EU and its priorities. The Member State which holds the Presidency circulates successive drafts of the Conclusions to Member States and the Commission in the weeks before the European Council's meeting with the aim of removing and narrowing differences of opinion. The drafts are classified as *LIMITÉ*.<sup>2</sup> The European Council adopts the final text by consensus at its meeting.

3. Because there are no written minutes of what is actually said by the Heads of State and Government, national parliaments, the public and the press cannot check whether the Presidency's Conclusions faithfully reflect the discussion at the meeting; nor can they understand how the European Council reached its decisions.

4. We concluded that this is unsatisfactory. We recommended that the Government discuss with other Member States the options for improving the process and, in particular, whether a clear, definitive and accessible record of the proceedings of the European Council should be made as a matter of course.

5. We could see no sufficient reason why the Government should not deposit in Parliament the draft of the European Council's Conclusions. We recognised that the text goes through numerous drafts before being presented for adoption; but we did not accept that this would make it impractical to deposit a draft when the process is nearing completion. It seems to us indefensible that the Westminster Parliament is denied access to draft Conclusions when some other national parliaments are provided with them by their governments and have the opportunity to question Ministers about them before the meeting of the European Council. This is all the more unacceptable when the drafts have a wide informal circulation in Brussels and are widely reported in the press.

6. We recommended, therefore, that, as part of the scrutiny process, the Government deposit in Parliament the draft Conclusions of the European Council and that Standing Order No. 143 relating to the European Scrutiny Committee be amended accordingly.

## The Conclusions of the Council of Ministers

7. The current Rules of Procedure of the Council of Ministers are silent about the Conclusions of the Council. But the Rules include provisions about what the minutes of

---

1 HC 86, Tenth Report of Session 2007-08 (4 February 2008).

2 The Council Secretariat describes *LIMITÉ* documents as "Documents whose distribution is internal to the Council, its members, the Commission and certain other EU institutions and bodies".

Council meetings must record and require the minutes about the Council's legislative acts to be made available to the public.

8. During her oral evidence to our inquiry, the then Foreign Secretary, the Rt Hon Margaret Beckett told us that she did not think there were any criteria to determine whether there should be Conclusions of a meeting of the Council of Ministers. It was largely a matter for the Presidency of the day. Sometimes Conclusions are proposed because the issue is of particular importance to the Presidency and sometimes because Member States want to have an output from the Council. Mrs Beckett also told us that, while Council Conclusions are not legally binding, they constitute a political commitment on the part of Member States.<sup>3</sup>

9. We noted that Ministers are currently required to deposit in Parliament the drafts of Council Recommendations. They are not legally binding but their adoption by the Council creates a political commitment by the Member States to act consistently with the Recommendation. It seems to us that the Conclusions of the Council of Ministers are analogous. They are politically but not legally binding. They can affect important matters. We recommended, therefore, that Ministers should either deposit draft Conclusions for scrutiny or, if time is short, write to us enclosing the draft and explaining the Government's position on it.

10. There appeared to us to be no sufficient reason for leaving it largely to the discretion of the Member State which holds the Presidency whether there are Conclusions of a meeting of the Council of Ministers. We recommended, therefore, that the Government press the case with other Member States for establishing criteria to determine when Conclusions of the Council of Ministers are required.

### **The Minister's letter of 17 May 2008**

11. In his response to our Report, the Foreign Secretary, the Rt Hon David Miliband, confirmed the Government's commitment to greater transparency in the conduct of EU business.<sup>4</sup> The Government also recognises that, to be effective, our Committee needs to be able to examine EU proposals at the earliest possible stage.

12. Responding to our recommendations, the Foreign Secretary says:

“We do not see any prospect for consensus among EU partners to change the present system for recording European Council meetings. The benefit of the existing system is that it facilitates frank and open discussion in the European Council. Conversely, experience shows that public records of discussions would obstruct agreement by resulting in more entrenched positions and prudence bordering on immobility.

“Furthermore they would also push real discussion into the corridors — which would be a step away from transparency and democratic accountability.

---

3 HC 86, Tenth Report of Session 2007-08, para 24 (4 February 2008).

4 Ev 1.

“With regard to the deposit of draft European Council Conclusions for scrutiny, I regret that the Government is not at liberty to submit these documents to Parliament. Under Council rules agreed by all 27 Member States, these are ‘internal documents with a limited distribution’ (LIMITÉ) and we are obliged to respect these rules (actions by others do not excuse us this obligation). Furthermore, given that the European Council is not a legislative body and does not take legally-binding decisions, such scrutiny would not be appropriate. European Council Conclusions are working, evolving documents with no formal legal status — they usually give rise to legislative proposal that are themselves subject to Parliamentary scrutiny. Finally, on a practical level, the draft Conclusions are often not finalised until just before the European Council meeting itself, so there are procedural barriers too.

“However, as I set out in my letter to you of 13 September 2007, the Government has agreed to provide the Committee with the draft annotated agendas of European Council meetings in advance, to give your Members early notice of European Council business. These have been submitted for the recent December and Spring European Councils.

“The Committee further recommends that the Government deposits draft Council of Ministers Conclusions for scrutiny or, if time is short, write to the Committee enclosing the draft Conclusions and explaining the Government’s position. As with the European Council Conclusions, draft Council of Ministers Conclusions are similarly classed as ‘LIMITÉ’. I believe the Government already goes to great lengths to ensure that Parliament is fully informed of deliberations at the Council of Ministers. Our Ministers provide Parliament with Written Ministerial Statements before every meeting of the Council of Ministers, setting out the agenda and the UK’s position. After the meetings, Ministers make a further statement reporting the Conclusions.

“I am aware that Government Departments do, of course, keep the Committee informed of developments on issues which will be the subject of Conclusions, particularly where the Committee has asked to be updated. I support Government Departments being as open as possible regarding the context of the Conclusions and the general position that the UK will be taking in the Council — although I recognise this falls short of actually making the text available. In this context, it would be open to the Committee to explore the issues further with the lead Departments.

“Finally, on the issue of criteria for the issuance of Conclusions of the Council of Ministers, I believe it is right that the Presidency of the day continue to decide whether Conclusions are appropriate.”

## The Committee’s conclusions

13. We are grateful to the Foreign Secretary for his courteous letter. We regret to say, however, that we are not persuaded by his arguments. For example:

- We quite understand why the Government considers that it would be dishonourable to breach the LIMITÉ classification. We see no reason, however, why the draft Conclusions of the European Council or of the Council of Ministers

need be classified. It would be open to the Government to propose that classification cease.

- The Foreign Secretary suggests that a public record of the discussion at the European Council would push real discussion into the corridors, “which would be a step away from transparency and democratic accountability”. This implies that the present arrangements are transparent and provide satisfactory accountability. In our opinion, they do not.
- We welcome the Government’s statement that “we recognise that, for scrutiny to be effective, [this] Committee needs to be able to examine the EU policy-making process at the earliest possible stage”. It is inconsistent with that statement to deny the Committee the drafts of European Council Conclusions which, as the Foreign Secretary says, usually give rise to legislative proposals.

14. Moreover, it appears to us that the Foreign Secretary’s letter repeats Government views which were put to us and which we considered before we made our recommendations.

15. For these reasons, we see no need to depart from what we said in our Tenth Report. We recommend that the Government pursues our recommendations in the interests of greater openness and accountability, and that the Government initiates discussions with other Member States and the Commission about the preparations for European Council and Council meetings and the recording of the discussions of those meetings.



# Formal Minutes

---

**Wednesday 4 June 2008**

Members present:

Michael Connarty, in the Chair

Mr Adrian Bailey  
Mr David S Borrow  
Mr William Cash  
Ms Katy Clark  
Mr Greg Hands

Mr David Heathcoat-Amory  
Mr Lindsay Hoyle  
Mr Anthony Steen  
Richard Younger-Ross

\*\*\*

## **2. The Conclusions of the European Council and the Council of Ministers: Follow-up Report**

Draft Report, proposed by the Chairman, brought up and read.

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

Paragraphs 1.1 to 14 read and agreed to.

Paragraph 15 read, amended and agreed to.

*Resolved*, That the Report, as amended, be the Twenty-fifth Report of the Committee to the House.

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

Written evidence was ordered to be reported to the House for printing with the Report.

\*\*\*

[Adjourned till Wednesday 18 June at 2.15 p.m.]

## List of written evidence

---

- |   |  |      |
|---|--|------|
| 1 | Letter from the Rt Hon David Miliband MP, Secretary of State for Foreign and Commonwealth Affairs, Foreign and Commonwealth Office | Ev 1 |
|---|--|------|

# List of Reports from the Committee during the current Parliament

---

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

## Session 2007–08

First Report	Scrutiny of European Documents	HC 16-i
Second Report	Scrutiny of European Documents	HC 16-ii
Third Report	European Union Intergovernmental Conference: Follow-up report	HC 16-iii
Fourth Report	Scrutiny of European Documents	HC 16-iv
Fifth Report	Scrutiny of European Documents	HC 16-v
Sixth Report	Scrutiny of European Documents	HC 16-vi
Seventh Report	Scrutiny of European Documents	HC 16-vii
Eighth Report	Scrutiny of European Documents	HC 16-viii
Ninth Report	Scrutiny of European Documents	HC 16-ix
Tenth Report	The Conclusions of the European Council and the Council of Ministers	HC 86
Eleventh Report	Scrutiny of European Documents	HC 16-x
Twelfth Report	The Work of the Committee	HC 315
Thirteenth Report	Scrutiny of European Documents	HC 16-xi
Fourteenth Report	Scrutiny of European Documents	HC 16-xii
Fifteenth Report	Scrutiny of European Documents	HC 16-xiii
Sixteenth Report	Scrutiny of European Documents	HC 16-xiv
Seventeenth Report	Scrutiny of European Documents	HC 16-xv
Eighteenth Report	Scrutiny of European Documents	HC 16-xvi
Nineteenth Report	Scrutiny of European Documents	HC 16-xvii
Twentieth Report	Scrutiny of European Documents	HC 16-xviii
Twenty-first Report	Scrutiny of European Documents	HC 16-xix
Twenty-second Report	Scrutiny of European Documents	HC 16-xx
Twenty-third	Scrutiny of European Documents	HC 16-xxi
Twenty-fourth	Scrutiny of European Documents	HC 16-xxii

# Written evidence

---

**Letter to the Chairman of the European Scrutiny Committee from the Rt Hon David Miliband MP,  
Secretary of State for Foreign and Commonwealth Affairs, Foreign and Commonwealth Office,  
17 May 2008, containing the Government's response to the Conclusions of the European Council and the  
Council of Ministers**

I would like to thank the European Scrutiny Committee for its report on the Conclusions of the European Council and the Council of Ministers. I note its recommendations with interest.

I should begin by confirming, once again, the Government's commitment to greater transparency in the EU. During our 2005 Presidency, we brokered agreement to open up the Council of Ministers much more than ever before. In June 2006, we and EU partners agreed an "overall policy on transparency", the main effect of which was to open up to the public all deliberations in the Council of Ministers on EU legislation subject to co-decision. The Lisbon Treaty will, for the first time, enshrine in the EU Treaties that commitment that the Council of Ministers deliberate on such draft EU legislation in public.

Our commitment to transparency extends equally to scrutiny. As you know, the Government is committed to the principle of upstream scrutiny. We recognise that, for scrutiny to be effective, your Committee needs to be able to examine the EU policy-making process at the earliest possible stage. In line with this, we recently undertook to engage the Committee on Commission consultation exercises, which would not previously have been subject to scrutiny in the usual way. However, within the constraints posed by the EU policy-making process, the Government believes the current arrangements for draft Council Conclusions, including Written Ministerial Statements and oral statements/evidence sessions by Ministers in Parliament, provide the best possible basis for scrutiny at the present time.

Turning to the report's recommendations the Committee recommends that the Government discuss with EU partners possibilities for improving the system for recording European Council meetings.

We do not see any prospect for consensus among EU partners to change the present system for recording European Council meetings. The benefit of the existing system is that it facilitates frank and open discussion in the European Council. Conversely, experience suggests that public records of discussions would obstruct agreement by resulting in more entrenched positions and prudence bordering on immobility. Furthermore they would also push real discussion into the corridors—which would be a step away from transparency and democratic accountability.

With regard to the deposit of draft European Council Conclusions for scrutiny, I regret that the Government is not at liberty to submit these documents to Parliament. Under Council rules agreed by all 27 Member States, these are "internal documents with a limited distribution" ("LIMITE") and we are obliged to respect these rules (actions by others do not excuse us this obligation). Furthermore, given that the European Council is not a legislative body and does not take legally-binding decisions, such scrutiny would not be appropriate. European Council Conclusions are working, evolving documents with no formal legal status—they usually give rise to legislative proposals that are themselves subject to Parliamentary scrutiny. Finally, on a practical level, the draft Conclusions are often not finalised until just before the European Council meeting itself, so there are real procedural barriers too.

However, as I set out in my letter to you of 13 September 2007, the Government has agreed to provide the Committee with the draft annotated agendas of European Council meetings in advance, to give your Members early notice of European Council business. These have been submitted for the recent December and Spring European Councils.

The Committee further recommends that the Government deposits draft Council of Ministers Conclusions for scrutiny or, if time is short, write to the Committee enclosing the draft Conclusions and explaining the Government's position. As with European Council Conclusions, draft Council of Ministers Conclusions are similarly classed as "LIMITE". I believe the Government already goes to great lengths to ensure that Parliament is fully informed of deliberations at the Council of Ministers. Our Ministers provide Parliament with Written Ministerial Statements before every meeting of the Council of Ministers, setting out the agenda and the UK's position. After meetings, Ministers make a further statement reporting the Conclusions.

I am aware that Government Departments do, of course, keep the Committee informed of developments on issues which will be the subject of Conclusions, particularly where the Committee has asked to be updated. I support Government Departments being as open as possible regarding the context of the

Conclusions and the general position that the UK will be taking in Council—although I recognise this falls short of actually making the text available. In this context, it would be open to the Committee to explore the issues further with lead Government Departments.

Finally, on the issue of criteria for the issuance of Conclusions to Council of Ministers meetings, I believe it is right that the Presidency of the day continue to decide whether Conclusions are appropriate.

*17 May 2008*

---