



House of Commons

European Scrutiny Committee

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# The Conclusions of the European Council and the Council of Ministers

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Tenth Report of Session 2007–08

*Report, together with formal minutes, oral and  
written evidence*

*Ordered by The House of Commons  
to be printed 23 January 2008*

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## 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).

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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), James Clarke (Chief Office Clerk), Mrs Keely Bishop (Secretary), Dory Royle (Secretary), Sue Panchanathan (Secretary), Estelita Manalo (Office Support Assistant).

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Mr David S. Borrow MP (*Labour, South Ribble*)

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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*)

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Keith Hill MP (*Labour, Streatham*)

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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)

Mr Wayne David MP and Nia Griffith MP were Members of the Committee during the Inquiry

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# 1 Introduction

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1. The Conclusions of the European Council are politically binding on the Member States and have a major influence on the direction of EC and EU business. The process of preparing the Conclusions is secretive. Parliament has no opportunity to scrutinise the Conclusions before the Prime Minister commits the UK to them.

2. The Council of Ministers sometimes has Conclusions and sometimes does not.<sup>1</sup> There are no criteria which determine when the Council should or should not have Conclusions.

3. It seemed to the Committee that clarification of the Conclusions-process was needed. We decided, therefore, to conduct an inquiry with the following terms of reference:

*“To inquire into the arrangements for the preparation, consideration and approval of the Conclusions of the European Council and the Council of Ministers.*

*The part played in the preparation, consideration and approval of the Conclusions, by:*

*the Commission*

*the Presidency of the Council*

*the Council Secretariat*

*the European Parliament*

*COREPER*

*Ministers (for the Council of Ministers’ Conclusions)*

*Foreign Ministers (for GAERC and European Council Conclusions)*

*Heads of State and Government (for European Council Conclusions).*

*The intended purpose of the Conclusions.*

*The actual effect of the Conclusions.*

*The merits of the Conclusions system and the extent to which there are appropriate opportunities for democratic scrutiny of the Conclusion-making process.”*

4. We heard oral evidence from: Sir Stephen Wall GCMG, LVO, the United Kingdom’s Ambassador and Permanent Representative to the EU 1995-2000, and Head of the Cabinet Office European Secretariat 2000-2004; the Rt Hon Margaret Beckett MP, then Foreign and Commonwealth Secretary, and Ms Shan Morgan and Mr Anthony Smith of the Foreign and Commonwealth Office; Commissioner Margot Wallström, Vice President of the European Commission, and Mr Christian Leffler, *Chef de Cabinet*; and Lord Williamson of Horton GCMG, CB, Secretary General of the European Commission 1987-

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<sup>1</sup> In practice, there is not one Council of Ministers but several, each dealing with a separate policy area. So, for example, there is a Transport Council, a Competitiveness Council and a General Affairs and External Relations Council.

1997. We also received eight memoranda. We are grateful to everyone who contributed to the Inquiry.

## 2 Legal Background

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### The European Council

5. The European Council developed from informal “summit meetings” of the leaders of the Member States in the early 1970s. It was given a legal existence in 1992 by the Maastricht Treaty. What is now Article 4 of the EU Treaty provides that:

“The European Council shall provide the Union with the necessary impetus for its development and shall define the general political guidelines thereof.

“The European Council shall bring together the Heads of State or Government of the Member States and the President of the [European] Commission. They shall be assisted by the Ministers for Foreign Affairs of the Member States and by a Member of the Commission. The European Council shall meet at least twice a year, under the chairmanship of the Head of State or Government of the Member State which holds the Presidency of the Council.

“The European Council shall submit to the European Parliament a report after each of its meetings and a yearly written report on the progress achieved by the [European] Union.”

The European Council usually meets four times a year, at roughly quarterly intervals.

6. Annex I of the Presidency Conclusions of the Seville European Council (21-22 June 2002) set out “rules for organising the proceedings of the European Council”. Paragraphs 12 and 13 say:

*“The conclusions, which shall be as concise as possible, shall set out the policy guidelines and decisions reached by the European Council, placing them briefly in their context and indicating the stages of the procedure to follow on from them.*

*“An outline of the conclusions shall be distributed on the day of the European Council meeting in good time for the start of the proceedings. The outline shall distinguish between those parts of the text which have previously been approved and which are not in principle subject to discussion and those parts of the text which the European Council is to discuss with a view to reaching final conclusions at the meeting.”*

### The Council of Ministers

7. Article 202 of the EC Treaty provides that, to ensure the attainment of the Treaty’s objectives, the Council of Ministers is to:

- ensure coordination of the general economic policies of the Member States;
- have power to take decisions; and
- confer on the Commission powers to implement rules laid down by the Council.

Article 203 provides that the Council of Ministers is to consist of a Minister of each Member State who is authorised to commit the government of the Member State. Member States take it in turn to hold the Presidency of the Council for six months. Under Article 204, the Council of Ministers meets when convened by its President on his or her own initiative or at the request of a Member State or the Commission.

8. The Council of Ministers meets in “formations” which reflect the main policy areas. So, for example, there is a Transport Council, a Competitiveness Council, an Economic and Finance Council, and so on. In addition to its responsibilities for the EU’s external affairs, the General Affairs and External Relations Council plays an important part in the preparations for European Council meetings and the follow-up action.

9. The current Rules of Procedure of the Council of Ministers are silent about the Conclusions of the Council of Ministers. But the Rules include provisions about what the minutes of Council meetings must record and require the minutes about the Council’s legislative acts to be made available to the public.

## 3 The Evidence

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### The preparation, consideration and approval of the European Council's Conclusions

10. The Rt Hon Margaret Beckett MP told us that:

“The rules governing the preparation of the European Council Conclusions were regularised in the Annex to the Seville European Council Conclusions. The established practice, building on those rules, is as follows:

- The Presidency produces a draft annotated agenda giving the headline topics for discussion approximately six weeks ahead of the European Council. This draft is discussed at COREPER<sup>2</sup> and then adopted by consensus at a General Affairs and External Relations Council (GAERC) about 4 weeks ahead of the European Council. Normally the Presidency draft is changed to take into account the priorities of other Member States. The draft-annotated agenda is classified as a LIMITÉ document, but the final agenda is made public at the GAERC. The General Secretariat has described LIMITÉ documents as: ‘Documents whose distribution is internal to the Council, its members, the Commission and certain other EU institutions and bodies.’
- The Presidency then produces successive drafts of the European Council Conclusions (ie about 3-4 weeks before a European Council) aiming to narrow the differences between Member State views. These are discussed at successive COREPER meetings before being put to the GAERC which meets at the beginning of the week in which the European Council is held. These drafts are all classified LIMITÉ.
- Taking into account the debate amongst Foreign and Europe Ministers at the GAERC, the Presidency produces a final draft of the European Council Conclusions at the European Council itself. These are discussed in detail by Heads of State and Government. Foreign Ministers are present and contribute to the debate. The final text is adopted by consensus and normally published on the Council Secretariat website the same day.”<sup>3</sup>

11. Sir Stephen Wall told us that the Heads of State and Government are accompanied at meetings of the European Council by only one adviser each, their Foreign Affairs Minister. He said that:

“There are representatives of the Council Secretariat who ... sit in the room and who take notes and every 20 minutes or so come out of the Council room where the Heads are meeting. They go to a separate room where officials from each of the

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2 COREPER is the Committee of the Permanent Representatives of the Member States.

3 Ev. 36

Member States, who are known as the Antici group<sup>4</sup> ... and the person concerned from the Council Secretariat says ‘This is what has gone on in the last 20 minutes’ and on the basis of his or her notes gives an account, which is obviously not a verbatim account ... of what has transpired. The representatives of the national delegations sitting in the Antici room ... write down what the representative of the Council Secretariat tells them. That is transmitted up to the delegation office ... There are a few members of each delegation ... who have a red pass which enables them to get into the room where the Heads are meeting. You go down to the room and if it is not too late you say to your Head of Government or Foreign Secretary ‘They are trying to slip one past us, this is what they are trying to do’ and then they can stop it happening; or occasionally it will be too late because by the time you know what has happened at least 20 minutes, probably more, have passed between what was discussed and you all knowing that it was discussed.”<sup>5</sup>

12. Mr Julian Priestley (the Secretary-General of the European Parliament) told us that the notes taken by national delegations in the Antici room are:

“the only record — a kind of summary in broad outline — of the debates at the Summits of the Heads of State and Government”.<sup>6</sup>

Mr Priestley also told us that the European Parliament does not play a direct part in the preparation of the Conclusions. Before a meeting of the European Council, the European Parliament holds a debate about the preparations for the summit with a Minister who represents the Member State which holds the Presidency of the Council. At the beginning of meetings of the European Council, it is traditional for the President of the European Parliament to address the Council about matters on the Council’s agenda. This is followed by an exchange of views, the substance of which is not reflected in the European Council’s Conclusions.

13. In answer to a question about the European Council having minutes like those of the Cabinet, Sir Stephen Wall said:

“It was always alleged that the Council Secretariat made a tape of the proceeding. I cannot put my hand on my heart and say that this tape exists because no Member State was ever allowed access to it”.<sup>7</sup>

In his oral evidence to us, Lord Williamson said that, during the ten years when he was Secretary-General of the Commission, there were no minutes of the European Council. But, like Sir Stephen Wall, he believed the Council Secretariat kept a tape of the

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4 The Antici group gets its name from an Italian diplomat, Paolo Massimo Antici, who, during the Italian Presidency in 1975, institutionalised the meetings of the assistants of the Permanent Representatives of the Member States in order to prepare COREPER’s agenda.

5 Q 8

6 Ev. 27, footnote 1

7 Q 9

discussions, although he never saw one.<sup>8</sup> Mrs Beckett told us, however, that there are no tape recordings of the European Council's meetings.<sup>9</sup>

14. All the evidence we received testified to the political importance of the European Council's Conclusions. Dr Javier Solana, Secretary-General and High Representative of the Council, told us that the conclusions fulfil their intended purpose in several ways:

- they can reflect the outcome of an agreement at the level of the European Council on substantive issues, such as the EU budget for 2007-13;
- they can be used to define a position on a policy area, such as enlargement;
- they can set out agreed action plans;
- they can include the outcome of negotiations on issues which have become blocked in the Council of Ministers; and
- they can give an assessment of progress towards achieving agreed objectives.<sup>10</sup>

15. In answer to a question about the relationship between the Presidency and the Commission in the preparation of the European Council's Conclusions, the Vice-President of the European Commission, Commissioner Margot Walström, told us that the Commission works closely with the Presidency. In some cases, the Presidency asks the Commission to do a lot of the work, especially if the Presidency is held by a small Member State. But in other cases, the Presidency "will hold their cards very close to their chest until the very last minute."<sup>11</sup>

## Parliamentary scrutiny

16. We asked all those who gave oral evidence for their views on whether the draft of the European Council's Conclusions should be deposited in Parliament for scrutiny so that there would be the opportunity to question the Prime Minister and the Foreign Secretary about their views on the draft before the European Council meets. Mrs Beckett told us that the Conclusions are not legally binding:

"They are not legal proposals or do not have legislative effect so, therefore, they do not come in the same category as documents which of course should quite properly go to national parliaments and be scrutinised and so on. First of all, these are documents of a category, which means that they are internal, in effect confidential documents, not for circulation. Secondly, it would really be completely impractical, especially now that we are 27. To say it is a fast moving target is to put it mildly, these

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8 Qq 81 & 82

9 Q 31

10 Ev. 30

11 Q 49

things are always changing, being amended, *et cetera*. Even if there were not the confidentiality issue, it simply would not work.”<sup>12</sup>

17. In her written evidence, Mrs Beckett said:

“The UK Government addresses the general issues of scrutiny of policy making in the Council of Ministers and the European Council in the following way.

Before each Council of Ministers meeting, the UK Minister responsible provides a written Ministerial statement, to inform Parliament about the business of each Council and the UK’s position on agenda items. ... Departments have recently been reminded of the importance of providing comprehensive statements;

After each Council of Ministers meeting, and after informal meetings, the UK Minister responsible again makes a statement, setting out the outcome, the nature of the discussion and our role in it. These written replies normally cover the adoption of Council Conclusions where these are dealt with as substantive points for discussion on the agenda;

Separately the Prime Minister makes an oral statement to the House after each European Council, reporting the outcome. In addition, the Government frequently holds full debates in the House in the run up to the European Council;

The Government presents a Command Paper to Parliament setting out the prospects for the EU each year;

The Government deposits the Commission’s Annual Policy Strategy and Work Programme in Parliament, together with Explanatory Memoranda;

The Foreign Secretary gives evidence to the Foreign Affairs Committee prior to the European Council, the Minister for Europe gives evidence to the Lords Select EU Committee and Lords Sub-Committee C after the European Council;

The text of European Council Conclusions is deposited in the House of Commons Library immediately after each meeting;

Conclusions often build on policy documents and subsequently give rise to – or are at least cited by – new policy documents that are themselves subject to scrutiny. Parliament therefore has an opportunity to scrutinise input and output.

“At this point in time it is not evident to the Government that there are any areas where greater scrutiny is required. The Government has an obligation to respect the rules and practices of the Council about the disclosure of documents produced by

the Presidency and the Council Secretariat, designed to facilitate discussions in the Council.”<sup>13</sup>

18. Commissioner Wallström confirmed that the Swedish Government gives the Rikstag the draft of European Council’s Conclusions.<sup>14</sup>

19. Sir Stephen Wall told us that he could see no reason why the draft of the Conclusions of the European Council could not be deposited for scrutiny in the normal way by this Committee. He also said that he thought the drafts should be scrutinised.<sup>15</sup>

20. Mrs Beckett told us during her oral evidence that she was aware that:

“Sir Stephen Wall is reported to have said that there is no reason why the draft Conclusions should not be put forward and I am frankly astonished that he has said so. ... if Sir Stephen were doing the job today that he was doing on the basis on which he gave you evidence he would definitely not be saying it.”<sup>16</sup>

21. We drew the transcript of Mrs Beckett’s evidence to Sir Stephen Wall’s attention. He replied as follows:

“She is of course right: if I had appeared before you as a civil servant I should have spoken as instructed by ministers. As it is, I am free to speak the truth. I do not find her arguments against scrutiny at all convincing firstly because there is no way a document seen by 27 member states can be considered confidential and secondly because all negotiating documents change and that did not prevent, for example, the successive drafts of the constitution produced by the convention from being sent to the House.”

22. We decided to ask the National Parliament Office (NPO) to use its network of contacts in Brussels to find out whether the draft Conclusions are made available to other national parliaments. It appears from the NPO’s report that some national parliaments do have access to them. The final paragraph of the report says:

“Draft Council Conclusions are known to have a wide informal circulation in Brussels, and are reported in the press: since the documents have such a wide formal circulation in Brussels, it is fruitless to speculate on the means whereby the press may obtain them”.<sup>17</sup>

23. We sent a copy of the NPO’s report to Mrs Beckett on 27 June and asked if she wished to add to the evidence she had previously given us. The Foreign Secretary, the Rt Hon David Miliband MP, replied on 13 September. He noted the findings of the report. He confirmed that the drafts of the Conclusions of the European Council are classified as confidential and said that the UK Government has always respected the classification. If

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13 Ev. 38

14 Q 70

15 Q 26

16 Q 39

17 Appendix, para 22.

any Member State were to make the draft public, it would be acting in direct contradiction of the instructions of the Council Secretariat. The Foreign Secretary went on to remind us of the description in paragraph 24 of Mrs Beckett's written evidence of the Government's present arrangements for the scrutiny of European business. He said that, in addition to those arrangements, he would be happy to offer the Committee the draft-annotated agendas of European Councils for information. "This would give the Committee an early heads-up on European Council business enabling you to feed in your views and enhance Parliament's engagement on EU matters".<sup>18</sup>

## Conclusions of the Council of Ministers

24. Mrs Beckett told us that Conclusions of the Council of Ministers:

"set out the policy position of the Council of Ministers on a particular point. A draft is drawn up by the Presidency, with the help of the Council Secretariat and sometimes in consultation with the Commission. This is normally presented to a Council Working Party between two and four weeks ahead of the meeting of the Council at which the Presidency wishes the Conclusions to be adopted. The text is then the subject of detailed negotiation between delegations in the Working Party and in COREPER. Many sets of Conclusions, particularly in the area of external relations, are agreed at this level and passed to the Council as 'A' points (ie they are adopted without discussion because they have been pre-agreed). However, where agreement on one or more points of substance cannot be found at this level, negotiations on the text will continue at Council. Council Conclusions are adopted by consensus between the Member States.

"Council Conclusions are not legally binding but constitute a political commitment on the part of Member States. The initial drafts of the Conclusions are not systematically shared outside the Council, and the UK is bound by rules and obligations to respect confidentiality. They are not normally released to the public until after the final text, which is made public, has been adopted. ...

"The Council is generally cautious about adopting Conclusions on issues where a Commission legislative proposal is already being discussed."<sup>19</sup>

25. Mrs Beckett also told us that Council Conclusions are often used to prepare the ground for European Council Conclusions:

"both to ensure that the Ministers responsible for a particular policy area have an opportunity to consider the issues before Heads [of State or Government] are asked to opine and to identify potential areas of conflict and disagreement with a view to finding solutions. This is particularly true of the Spring European Council, where a range of different Council formations make a contribution to reviewing progress on the Lisbon Agenda."<sup>20</sup>

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18 Ev. 46

19 Ev. 35

20 Ev. 36

26. In response to a question during her oral evidence to the Committee, Mrs Beckett said 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.<sup>21</sup>

27. Annexes A and B of Mrs Beckett's written evidence contain two useful case studies: one on the Conclusions of the Justice and Home Affairs Committee on 4-5 December 2006 and the subsequent European Council Conclusions of 14-15 December 2006; and the other on the German Presidency's Conclusions of the Employment Council on 18-19 January 2007.

## 4 Conclusions and Recommendations

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28. Two well-informed former officials of great distinction — Sir Stephen Wall and Lord Williamson of Horton — believe that the European Council’s discussions are tape recorded, although neither has seen the tape and Member States do not have access to it. But a former Foreign Secretary — Mrs Beckett — flatly asserts that there are no such tape recordings. We think this confusion provides a good illustration of the secretive and bizarre process of preparing and approving the Conclusions of the European Council.

29. The Conclusions of the European Council have an important influence — sometimes, a decisive one — on the future of the EU and the 500 million people who live in it. Yet there is no written record of what is actually said by the Heads of State and Government. If there really are no tape recordings, the only records are those cobbled together in the Antici room by officials of the national delegations on the basis of what members of the Council Secretariat tell them at 20 minute intervals throughout the meeting. So national parliaments, the public, the press and everyone else is denied any possibility of checking the accuracy of the Presidency’s Conclusions or understanding how the meeting reached its decisions.

30. In our view, this is unsatisfactory and **we recommend that the Government discuss with other Member States the options for improving the process and removing its present inefficiencies and eccentricities; 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.**

31. We can see no sufficient reason why the Government should not deposit the draft of Council Conclusions in Parliament. Of course, the text goes through numerous drafts before being presented to the European Council; but we do not accept that this makes it impractical to deposit a draft when it is nearing completion. It seems to us indefensible that the Westminster Parliament is denied access to the draft Conclusions when some other national parliaments are provided with the draft Conclusions 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, as the National Parliament Office’s report says, the drafts have a wide informal circulation in Brussels and are widely reported in the press.

32. **We recommend, therefore, that the Government deposit within the scrutiny process in Parliament the draft Conclusions of the European Council and that Standing Order No. 143 relating to the European Scrutiny Committee be amended accordingly.**

33. 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 recommend, therefore, that Ministers should either deposit the draft Conclusions for scrutiny or, if time is short, write to us enclosing the draft and explaining the Government’s position on it.**

34. There appears to be no sufficient reason for leaving it largely to the whim of the Member State which holds the Presidency whether there are Conclusions of a meeting of the Council of Ministers. **We recommend, therefore, that the Government presses the case with other Member States for establishing criteria to determine when Conclusions of the Council of Ministers are required.**

# Formal Minutes

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**Wednesday 23 January 2008**

Members present:

Michael Connarty, in the Chair

Mr Adrian Bailey	Mr David Heathcoat-Amory
Mr David S Borrow	Mr Keith Hill
Mr William Cash	Kelvin Hopkins
Ms Katy Clark	Angus Robertson
Jim Dobbin	Mr Anthony Steen
Mr Greg Hands	Richard Younger Ross

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## **2. Draft Report on The Conclusions of the European Council and the Council of Ministers**

Motion made, and Question put, That the draft Report be read a second time, paragraph by paragraph. — (*The Chairman.*)

The Committee divided.

Ayes, 7	Noes, 2
Ms Katy Clark	Mr Adrian Bailey
Jim Dobbin	Mr Keith Hill
Mr Greg Hands	
Mr David Heathcoat-Amory	
Kelvin Hopkins	
Mr Anthony Steen	
Richard Younger-Ross	

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

Paragraph 1 read.

Amendment proposed, in line 3, to leave out "secretive" and to insert "carried out in conditions of confidentiality." — (*Mr Keith Hill.*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 3

Mr Adrian Bailey  
Ms Katy Clark  
Mr Keith Hill

Noes, 6

Jim Dobbin  
Mr Greg Hands  
Mr David Heathcoat-Amory  
Kelvin Hopkins  
Mr Anthony Steen  
Richard Younger-Ross

Paragraph agreed to.

Paragraphs 2 to 12 read and agreed to.

Paragraph 13 read.

Question put, That the paragraph stand part of the Report.

The Committee divided.

Ayes, 6

Ms Katy Clark  
Jim Dobbin  
Mr Greg Hands  
Mr David Heathcoat-Amory  
Kelvin Hopkins  
Richard Younger-Ross

Noes, 2

Mr Adrian Bailey  
Mr Keith Hill

Paragraph agreed to.

Paragraphs 14 to 21 read and agreed to.

Paragraph 22 read.

Amendment proposed, in line 3, to leave out “many” and to insert “some”. — (*Mr Keith Hill.*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 6

Mr Adrian Bailey  
Ms Katy Clark  
Jim Dobbin  
Mr Keith Hill  
Kelvin Hopkins  
Richard Younger-Ross

Noes, 2

Mr Greg Hands  
Mr David Heathcoat-Amory

Another Amendment proposed, in line 3, after “have” to insert “varying levels of”. — (Mr Keith Hill.)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 3

Mr Adrian Bailey  
Ms Katy Clark  
Mr Keith Hill

Noes, 5

Jim Dobbin  
Mr Greg Hands  
Mr David Heathcoat-Amory  
Kelvin Hopkins  
Richard Younger-Ross

Paragraph, as amended, agreed to.

Paragraphs 23 to 27 read and agreed to.

Paragraph 28 read.

Amendment proposed, in line 1, to leave out “well-informed”. — (Mr Keith Hill.)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 2

Mr Adrian Bailey  
Mr Keith Hill

Noes, 6

Ms Katy Clark  
Jim Dobbin  
Mr Greg Hands  
Mr David Heathcoat-Amory  
Kelvin Hopkins  
Richard Younger-Ross

Another Amendment proposed, in line 5, to leave out “and bizarre”. — (Mr Keith Hill.)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 3

Mr Adrian Bailey  
Mr Keith Hill  
Richard Younger-Ross

Noes, 5

Ms Katy Clark  
Jim Dobbin  
Mr Greg Hands  
Mr David Heathcoat-Amory  
Kelvin Hopkins

Paragraph agreed to.

Paragraph 29 read.

Amendment proposed, in line 9, at the end, to add “This defect will be all the more serious if the Lisbon Treaty is ratified, since the European Council will become an institution of the EU, obliged to practice ‘mutual sincere co-operation’ with the other official EU institutions, and will have additional responsibilities for the Common Foreign and Security Policy.” — (Mr David Heathcoat-Amory.)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 4	Noes, 4
Mr Greg Hands	Mr Adrian Bailey
Mr David Heathcoat-Amory	Ms Katy Clark
Kelvin Hopkins	Jim Dobbin
Richard Younger-Ross	Mr Keith Hill

Whereupon the Chairman declared himself with the Noes.

Paragraph agreed to.

Paragraph 30 read.

Amendment proposed, in line 2, to leave out “and removing its present inefficiencies and eccentricities”. — (*Mr Adrian Bailey.*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 3	Noes, 5
Mr Adrian Bailey	Jim Dobbin
Ms Katy Clark	Mr Greg Hands
Mr Keith Hill	Mr David Heathcoat-Amory
	Kelvin Hopkins
	Richard Younger-Ross

Another Amendment made.

Paragraph read, amended, and agreed to.

Paragraph 31 read.

Amendment proposed, in line 4, to leave out “indefensible” and insert “unacceptable”. — (Mr Keith Hill.)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 3

Mr Adrian Bailey  
Ms Katy Clark  
Mr Keith Hill

Noes, 5

Jim Dobbin  
Mr Greg Hands  
Mr David Heathcoat-Amory  
Kelvin Hopkins  
Richard Younger-Ross

Another Amendment made.

Paragraph read, amended and agreed to.

Paragraph 32 read.

Amendment proposed, in line 1, to leave out “in Parliament” and insert “with the European Scrutiny Committee”. — (Mr Keith Hill.)

Question put, That the Amendment be made

The Committee divided.

Ayes, 2

Mr Adrian Bailey  
Mr Keith Hill

Noes, 7

Mr William Cash  
Ms Katy Clark  
Jim Dobbin  
Mr Greg Hands  
Mr David Heathcoat-Amory  
Kelvin Hopkins  
Richard Younger-Ross

Another Amendment proposed, in line 1, to leave out “in Parliament” and insert “within the scrutiny process in Parliament”. — (Richard Younger-Ross.)

Question put, That the Amendment be made

The Committee divided.

Ayes, 7

Mr Adrian Bailey  
Mr William Cash  
Ms Katy Clark  
Jim Dobbin  
Mr David Heathcoat-Amory  
Kelvin Hopkins  
Richard Younger-Ross

Noes, 2

Mr Greg Hands  
Mr Keith Hill

Paragraph, as amended, agreed to.

Paragraphs 33 and 34 read and agreed to.

A Paper was appended to the Report as an Appendix.

*Resolved*, That the Report, as amended, be the Tenth Report of the Committee to the House.

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

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

Written evidence was ordered to be reported to the House for printing with the Report [together with written evidence reported and ordered to be published on 16 May 2007 and 7 June 2007].

[Adjourned till Wednesday 30 January at 2.30 p.m.]

# Appendix

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## Note by the UK National Parliament Office<sup>22</sup>

### ***Provision of draft Council Conclusions to national parliaments of Member States***

#### ***Summary***

National parliaments which undertake systematic scrutiny of EU affairs invariably monitor the actions of their governments in the Council of Ministers and the European Council.

National parliaments rely on national governments formally to provide them with information on the issues to be discussed at meetings of the Council of Ministers and the European Council, and the positions which governmental delegations will be taking. The method whereby this information is provided varies from Member State to Member State, and depends on the scrutiny model which is followed.

One potential source of information for national parliaments are draft Conclusions of Council and European Council meetings. These are drafted by the Presidency and discussed in the Committee of Permanent Representatives (COREPER) and its preparatory working groups. Presidency texts will often go through several iterations before a final draft is adopted in COREPER for submission to the relevant Council or European Council.

National parliaments which operate scrutiny systems based on a mandate (e.g. Denmark, Finland, Sweden) base their scrutiny on their Government's stated position before each Council, rather than on specific documents to be considered there. Nevertheless, they are as a rule formally supplied with draft Council conclusions before the relevant mandating meeting prior to each Council.

Some other national parliaments (German Bundestag, Italy) have also developed formal arrangements whereby governments will provide draft Council conclusions to the national parliament as a whole, or the relevant parliamentary body, before relevant Council meetings.

In addition, a number of other national parliaments have developed arrangements for informal access to draft Council conclusions in advance of Council or European Council meetings.

In some Member States, parliamentary officials are allowed access either to a national governmental database of EU documents which contains draft Council conclusions, or to the Council Secretariat's own database.

The Council Secretariat generally classifies draft Conclusions as *limité*, thereby restricting their availability. The interpretation of these restrictions by national governments when it

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<sup>22</sup> The UK National Parliament Office (NPO) represents both Houses of the UK Parliament to the EU. Its offices are located on the European Parliament premises in Brussels.

comes to the provision of draft Conclusions to national parliaments is not uniform. In a number of Member States it appears that constitutional or other requirements on the provision of information to the national parliament, or legislation on the availability of official documents, take precedence over the regulations of the Council Secretariat, although in others the Secretariat classification is respected.

In cases where national governments have not made arrangements for formal or informal access to draft Council conclusions, parliamentary officials may still be able to gain access to draft texts, since, despite the formal restrictions imposed by the Council Secretariat, such documents appear to have a wide informal circulation in Brussels.

1. This memorandum describes some of the practices which the governments of other Member States are known to follow in providing draft texts of conclusions of the Council of Ministers and of the European Council (“Council Conclusions”) to national parliaments once they have been circulated to permanent representations in Brussels by the Council Presidency. It is based on information received directly from the administrations of national parliaments in the Member States, and is not exhaustive.

2. Arrangements for examination of draft Council Conclusions vary between national parliaments, reflecting the differences in constitutional arrangements for scrutiny of the executive by the legislature and differences between the types of scrutiny system which are operated.

3. Broadly speaking, national parliament scrutiny of executive actions in the Council of Ministers and the European Council follows one of two models:

- a document-based model, where scrutiny of the executive’s actions in Council is carried out at an early stage on documents deposited by the executive
- a mandate-based model, where the executive presents its negotiating position to the legislature before each meeting of the Council and seeks a parliamentary mandate for its actions

4. Whichever scrutiny model they follow, national parliaments wishing to examine the actions of their governments in European matters generally focus on the activities of European Council and the Council of Ministers. Many therefore have an interest in obtaining sight of any drafts of texts which are to be agreed and promulgated by those bodies.

### *A. Availability of draft Council Conclusions*

5. Draft Council Conclusions are generally circulated by the Presidency to permanent representations in Brussels several days before the relevant meeting of the Committee of Permanent Representatives (COREPER) for discussion.

6. They are circulated via the Council Secretariat, which generally gives them a classification which restricts their availability to the general public.

7. In the case of draft European Council conclusions, a draft text may begin to circulate several weeks before the relevant meeting, with a structure reflecting the main areas the Presidency has chosen for discussion. The draft may be recirculated a number of times as further text is added. The Presidency may choose not to provide text under some of the headings in early drafts, preferring to negotiate informally with other delegations on its proposed language.

### *B. Formal provision of draft Conclusions to national parliaments*

8. In some Member States there is a constitutional or statutory requirement on the executive to inform the legislature about EU matters. This may be interpreted to include the provision of draft Council Conclusions.

9. In Denmark, draft conclusions are routinely sent to the European Affairs Committee from the Foreign Ministry as official parliamentary documents in advance of the European Affairs Committee's regular pre-Council meetings with the Prime Minister or with Danish Ministers.

— In these meetings the European Affairs Committee examines the Danish Government's proposed participation in the relevant Council meeting, including its representation of the Kingdom of Denmark in negotiations over any draft Conclusions.

— In advance of each meeting, the Danish Government is obliged to send all relevant documents concerning the Council meeting (i.e. Commission proposals and Council and Presidency documents) to the committee. All documents thus provided are uploaded to the website of the Folketing's EU Information Centre on receipt and are thus also directly available to the public.

10. In Finland, the Constitution requires the Government to keep Parliament informed on "the preparation of EU matters".

— The Grand Committee, or, in the case of 2nd and 3rd pillar issues, the Foreign Affairs Committee, can request information from the Government, though the Government also has a responsibility to report on its own initiative.

— Before each meeting of the European Council or the Council of Ministers, the Prime Minister or the relevant Ministers inform the Grand Committee of the items on the agenda and the positions the Government intends to take. In this context, draft Conclusions may be made available to the Grand Committee, though they may not necessarily be published.

11. In Sweden, the Government is obliged to consult the EU Affairs Committee in advance of each Council meeting, generally on the Friday before the meeting takes place. The consultative meeting takes place in camera.

— Background documentation is sent to the Committee in advance of its meetings with Ministers: this documentation generally includes the latest version of any draft Conclusions. If draft Conclusions are not included in the package, they are, as a rule, requested separately.

- The Government is now obliged to consult the sectoral committees in the Riksdag more frequently: when they are consulted in advance of sectoral Councils, it is assumed that the same procedures as for the EU Affairs Committee will apply.
- Draft Conclusions are not formally presented to Parliament, though they may be referred to in plenary debates.
- In Sweden, all documents received by the Government, Parliament and other public authorities are deemed to be available to the public unless the provisions of the Swedish law on secrecy of official documents is applied. Public authorities are required to maintain registers of the documents they have received.
- The recipient of a document (in this case, the relevant parliamentary committee) is required to decide whether the provisions of the secrecy law apply to it. As the supplier of the document in this case, the Government may offer its view as to whether the secrecy law should apply.
- The committee may also resolve that the contents of any document considered secret, or the content of any discussion based on such documents, should not be made public orally by Members, though this provision is rarely applied.
- The Riksdag's Constitutional Affairs Committee has stated, in a report approved by the Chamber, that the fact that a document is labelled "limité", "restreint", or similar by a third party, is not per se sufficient justification to keep it secret: application of the secrecy law is judged on a case by case basis depending on the circumstances.

12. In Italy, the Government is obliged to transmit all relevant Council documents to both houses of the Italian Parliament. This includes draft Conclusions of the European Council and the Council of Ministers. Once transmitted, these documents are referred to the competent committees.

- Law 11/2005 on Italian participation in the EU expressly enables the Committee on Foreign Affairs and the Committee on European Policies in the House of Representatives and the Senate to hold a hearing with the Government before any European Council meeting. Sectoral committees may also hold hearings with relevant Ministers before meetings of the Council of Ministers.
- Both Houses are required to respect the restrictions which the Council Secretariat places on public access to the documents.

13. In Germany, the September 2006 agreement between the Bundestag and the Federal Government, implementing Section 6 of the Act of Cooperation between the Bundestag and the Federal Government on EU matters, makes specific provision about the information to be provided to the Bundestag.

- Documents to be provided by the Federal Government to the Bundestag include documents of the European Council, the Council of Ministers, informal ministerial meetings and "other Council bodies"; the Government must also supply reports and communications from EU Institutions for and about meetings of the European Council, the Council of Ministers and other ministerial meetings.

- Before each meeting of the European Council and the Council of Ministers, the relevant Bundestag Committees are to receive “comprehensive notification” of the agenda, including a briefing on the relevant facts, the state of negotiations and the Government’s negotiating line.
- Bundestag officials in Brussels are also given access to the databases of EU Institutions which are available to Member State representations to the EU. The database of the General Secretariat of the Council contains drafts of Council Conclusions prepared by the Presidency and circulated to permanent representations.
- The agreement provides that documents of EU institutions shall be forwarded unclassified as a general rule, though the Bundestag is obliged to “take heed of” communications from the EU Institutions regarding “special confidentiality”. The Federal Government is responsible for applying classifications to any documents relating to national security matters.
- The Council Secretariat is not thought to have raised any objection to these provisions.

### *C. Informal provision of draft Council Conclusions*

14. A number of parliaments receive copies of draft Council Conclusions on a less formal basis, typically at official level. For instance, texts may be sent on an informal basis in preparation for formal scrutiny sessions before and after European Council meetings.

15. Officials of the joint EU Advisory Committee of the Belgian Parliament receive draft Conclusions in advance of the committee’s meetings with the Prime Minister before European Council meetings, and relevant departmental ministers before Council meetings, and will circulate them to members of that Committee if the Committee Chairman agrees.

16. Officials of the Portuguese Parliament’s European Affairs Committee may receive draft Conclusions in advance of the statutory meetings held between the Committee and Ministers before and after the dates of European Council meetings, in order to assist preparations for these meetings. The draft Conclusions, when available, are circulated to members and staff of the European Affairs Committee. No restrictions are placed on their use.

17. Other parliaments may receive briefing on the likely content of Council Conclusions in advance of relevant scrutiny sessions.

18. The Irish Department of Foreign Affairs generally provides background briefing material to the Oireachtas Joint Committee on European Affairs in advance of the Foreign Minister’s attendance at the Committee before each General Affairs and External Relations Council (GAERC). In the case of General Affairs Council meetings immediately before a European Council, this briefing material generally includes the likely focus of the draft European Council Conclusions to be discussed at the GAERC.

19. The Slovenian EU Affairs Committee holds in camera meetings to examine the position of the Slovenian Government before European Councils and Council meetings. It routinely requests the Government to submit reports of COREPER meetings held to prepare Councils.

20. In two cases, parliamentary administrations are known to have direct informal access to the Government's internal database of EU documents.

- The Lithuanian Government's LINESIS online database contains EU documents transmitted to the Lithuanian Government and related government documents, including national positions on EU proposals. Draft European Council and Council Conclusions are generally made available on LINESIS soon after the draft text has been circulated by the Presidency. Selected officials in the Lithuanian Seimas have access to LINESIS, at the discretion of the LINESIS administrator. They are obliged to respect the conditions which the originators of documents (for instance, the Council Secretariat) have placed on their distribution.
- The Government of Cyprus has linked the House of Representatives to the extranet database of Council of Ministers documents. The vast majority of draft European Council or Council of Ministers Conclusions are examined by the House of Representatives Standing Committee on European Affairs. They may also be examined during joint meetings of the Standing Committee with other sectoral committees.

#### *D. Other means of transmission*

21. The practice of permanent representations regarding informal provision and circulation of texts appears to vary widely. Some permanent representations may make draft Conclusions available to the representative of their national parliament in Brussels either on request or as a matter of course, on the same basis as to a counsellor within the permanent representation. Other permanent representations may provide texts to national parliament officials on an informal basis on request.

22. Draft Council Conclusions are known to have a wide informal circulation in Brussels, and are reported widely in the press: since the documents have such a wide formal distribution in Brussels, it is fruitless to speculate on the means whereby the press may obtain them.

National Parliament Office, Brussels  
June 2007

## Witnesses

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### Wednesday 16 May 2007

Page

**Sir Stephen Wall**, GCMG, LVO

Ev 1

### Thursday 7 June 2007

**Rt Hon Margaret Beckett MP**, Secretary of State for Foreign and Commonwealth Affairs, **Ms Shan Morgan**, Director, European Union and **Mr Anthony Smith**, Director, European Political Affairs, Foreign and Commonwealth Office

Ev 10

### Thursday 12 July 2007

**Commissioner Margot Wallström**, Vice-President of the European Commission, **Mr Christian Leffler**, Chef de Cabinet and **Mr Tomas Niklasson**, Secretariat General, European Commission

Ev 14

### Wednesday 14 November 2007

**Rt Hon Lord Williamson of Horton**, GCMG, CB

Ev 20

## List of written evidence

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1	Julian Priestley, Secretary-General of the European Parliament	Ev 27
2	Catherine Day, Secretary-General of the European Commission	Ev 28
3	Sir Stephen Wall, GCMG, CVO	Ev 28
4	Dr Javier Solana, Secretary-General/High Representative of the Council of the European Union	Ev 29
5	Andrew Duff MEP	Ev 31
6	Brendon Donnelly, Director, Federal Trust	Ev 33
7	Rt Hon Margaret Beckett MP, Secretary of State for Foreign and Commonwealth Affairs, Foreign and Commonwealth Office	Ev 34
8	Letter from the Chairman to Rt Hon Margaret Beckett MP, Secretary of State for Foreign and Commonwealth Affairs, Foreign and Commonwealth Office	Ev 45
9	Letter to the Chairman from Rt Hon David Miliband MP, Secretary of State for Foreign and Commonwealth Affairs, Foreign and Commonwealth Office	Ev 45

# Oral evidence

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## Taken before the European Scrutiny Committee on Wednesday 16 May 2007

Members present

Michael Connarty, in the Chair

Mr David S Borrow  
Mr William Cash  
Mr James Clappison  
Mr Wayne David  
Nia Griffith  
Mr Greg Hands

Mr David Heathcoat-Amory  
Kelvin Hopkins  
Mr Lindsay Hoyle  
Mr Bob Laxton  
Mr Anthony Steen  
Richard Younger-Ross

*Witness:* **Sir Stephen Wall, GCMG, LVO**, gave evidence.

**Chairman:** Sir Stephen, welcome back, in a sense, because you did us a great service in your previous government incarnation in helping us with European scrutiny and I recall your evidence at that time. We are very grateful to you for coming along. It has been suggested, and we have agreed, that I will try to introduce this session by saying a bit more about what the inquiry is about so that we start off the proceedings by giving people a little knowledge. Those who come from the public, they may wish to also know a little about yourself, so I will slightly embarrass you by telling people about some of your outstanding career. As I know, you had an outstandingly distinguished career in the Diplomatic Service. In addition to the senior post Sir Stephen Wall held in our embassies around the world, he was the Private Secretary to the Prime Minister between 1991 and 1993. Sir Stephen was the United Kingdom Ambassador and Permanent Representative to the EU from 1995 to 2000 and Head of the Cabinet Office European Secretariat from 2000 to 2004 where, as I remarked, I thought he did sterling work in making people conscious of their duties in the departments on scrutiny of European business. Now a word about our inquiry. The European Council is made up of the Heads of Government or Heads of State of all 27 Member States, together with the President of the European Commission. The European Council must meet at least twice a year and its purpose is, in the words of the EU Treaty, to “provide the Union with the necessary impetus for its development and to define general political guidelines for the EU”. In addition to the European Council there are the Councils of Ministers. It meets in what are known as various “formations” reflecting the main policy areas. For example there is an Agricultural Council, a Justice and Home Affairs Council and so on. The members of these Councils are the Member States’ ministers for the particular policy area, for example the Transport Secretary represents the UK on the Transport Council. After every meeting of the European Council the Head of Government or State who holds the Presidency issues the Council’s conclusions. These are often long and they always

deal with major issues. Though conclusions do not have legislative force, they are politically binding on all the Member States and play an important part in shaping the direction of future action by the EU. Despite the importance of the European Council’s conclusions, this Committee, and the House of Commons more widely, does not see a draft of the conclusions and has no opportunity to question the Prime Minister about the draft before he commits the UK to those conclusions. Similarly, we do not see and have no opportunity to question the government about the draft of the conclusions of the Council of Ministers, so we decided to conduct this inquiry into the arrangements for the preparation, consideration and approval of the conclusions of the European Council and the Council of Ministers. Can I start off by asking Wayne David to lead off with a question to you, Sir Stephen.

**Q1 Mr David:** Thank you, Chairman. Sir Stephen, I wonder if I could begin by also welcoming you here to this Committee and to thank you for your extremely helpful written evidence. The evidence concentrates on the significance of the European Council’s conclusions, and I am sure there will be ample opportunity to enlarge upon that, but I was wondering if we could begin by asking some other questions. To begin with, I am wondering if you could tell us whether the European Council has always had conclusions. Secondly, why did it decide to have conclusions rather than, say, policy statements, why specifically conclusions? Thirdly, do you believe that having conclusions, as we do have, is entirely appropriate when we have a European Union of 27 Member States? Certainly the argument was much clearer when there were just six Member States but, given the size of the Union now, is it still appropriate in your opinion?

**Sir Stephen Wall:** Thank you, and thank you, Chairman, for your welcome. I think I am right in saying that the European Council has always had conclusions. Certainly Ted Heath, as Prime Minister, attended one of the very early meetings of the European Council because it was President Pompidou who invented the European Council. Up

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until that point there had been no format really for the Heads of Government of the six, later the nine, to meet and, indeed, it was considered very controversial because the European Council had no standing at that stage as one of the European institutions. But certainly in 1972 when Ted Heath went to Paris, before Britain even joined the European Community, there were conclusions. I am not sure whether they were called conclusions but they were effectively conclusions in an agreed statement of the Heads of Government, which was the first time that the term “European Union” was used in a European document agreed at that level. The idea at that stage, of course, was the European Council was entirely informal and the conclusions, therefore, although they were agreed, were issued on the Presidency’s responsibility, but very quickly, and certainly from the time I was more intimately involved in the 1980s, the European Council conclusions were agreed by all the Heads of Government by consensus or they were not agreed at all. There was a meeting, I think, under the Greek Presidency in the 1980s where no conclusions were agreed because of disagreement on the substantive issues. I do not think, therefore, there is magic in the term in that conclusions represent the agreement, the agreed view, of the Heads of Government on the particular issues which they debate, and in that sense the conclusions are a valid instrument. I think it is still right that the Heads of Government should meet because there is no other court of appeal from lower councils, as it were, if there is disagreement. It is also right that the Heads of Government should set the strategic goals of the European Union and that has to be recorded in some form and the conclusions basically are the way in which those views are recorded either as agreements or as the view about what should happen next in the European Union, because quite often that is what the European Council is doing; it is calling on the Commission and the Member States to do certain things. That is the way in which those views are formulated.

**Q2 Mr David:** If I can ask something and elaborate upon that. In your written evidence you seem to focus on 2002 as being quite an important year in which the process developed, how significant would you see that?

**Sir Stephen Wall:** I think it is very significant. Up until that point the whole process was a very bizarre one because the preparation of the conclusions was done entirely in secret by the Presidency country and, as I said in my written evidence, unless you could get a bootleg copy from a friendly soul in the Council Secretariat, no delegation, other than the Presidency delegation, saw them before 5 o’clock or 6 o’clock in the morning on the second day of a two-day European Council. Then as officials we used to meet around a table in whichever hotel the Prime Minister was staying and we would go through the conclusions, we would mark a copy with the things we liked and the things we did not like and then we would meet the Prime Minister at 8 o’clock in the morning and go through it and the Prime Minister with the Foreign Secretary would agree, “These are

the points we need to raise”. Therefore, quite often every Head of Government was going into a meeting where quite important elements of agreement were being set out in the draft conclusions with heads of government having had copies with one hour, if that, to look at them. It benefited the Presidency, it benefited the European Commission working with the Presidency and it benefited the Council Secretariat. It was not to the advantage of the Member States, it was pretty unprofessional and the 2002 changes were part of quite a long process of pressure for reform from a number of countries, including the United Kingdom, to try and get something which was more transparent and more workable.

**Q3 Mr Cash:** Sir Stephen, good afternoon. Between 1990 and 1993 I hope that some of the discussions between yourself and the Prime Minister when these things were being mulled over before conclusions were published would not in any way, I am sure, have referred to the reaction of the British Parliament by certain Euro-sceptics as to what the outcome might be. Leaving that aside, I am interested in the constitutional hierarchy between the European Council and the Council of Ministers because, as you point out in your most interesting evidence, which I think will become quite an important document as the first time we have actually had an insight into this from within, you say that the conclusions bind the Member States politically, you then go on to say there is room for dispute over how the conclusions are translated into European law, which I am very interested in, as you know, and also you say the European Council conclusions are not themselves legislative documents. I know that you understand very well that this can present certain problems because inevitably, I suppose, the impact of a Presidency conclusion can either interfere with or invade or override decisions which otherwise would have been presented to the Council of Ministers within the constitutional/institutional framework of the European Union. I do not want to ask a detailed question but simply to ask you to react to that, because I think there is a kind of, shall we call it, an opaque situation there which is not really in the interest of the transparency which most people would demand in a democracy which is giving effect to legislation affecting so many people, 400 million I think.

**Sir Stephen Wall:** Broadly speaking, I think you have got two kinds of discussions at European Council, Head of Government level. One is where the Heads of Government are themselves negotiating in detail on the terms of an agreement, say a change to the treaties or an agreement, as was done under the last British Presidency, on the UK rebate where effectively they are negotiating the treaty changes or, in the case of a budget agreement, they are negotiating the detail of it, the figures they negotiate down to the last euro. In the case of a budget deal, if so reached, it still has to be translated into legal form and therefore people can try and—

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**Q4 Mr Cash:** Which it has not been yet and I put a question down on this only today. When are we going to see it?

**Sir Stephen Wall:** I do not know but obviously there is room for some argument between the European Council and final adoption. The other area is where the European Council is looking at an issue which has already been debated somewhere else. For example, in the context of the various European Councils on economic reform, the whole question of energy liberalisation came up time and again and the European Council was able to agree on formulations which basically said, "We must make progress on energy", but there was never sufficient agreement at that level to do more than that and in the end the detail had to be thrashed out in the Council of Ministers at lower level before agreement could be reached. What I am arguing is that, although the European Council can be prescriptive to an extent, in my experience it does not overlay or take the place of the work of the substantive functional Councils. There was one particular occasion in October 2002 when President Chirac sought to do that and he sought to get the European Council to agree that the Agricultural Reform Package, which was due to be decided in 2003 in the Agricultural Council by Qualified Majority Voting, should be postponed, taken as part of the overall negotiations on future financing at a later date and, therefore, agreed by unanimity. It was a way of ensuring that reform happened on terms acceptable to the French Government rather than the French Government potentially being overruled by Qualified Majority Voting. In that meeting of the European Council Prime Minister Blair opposed Chirac and he was the only person to successfully oppose him, but I do recall, I think accurately, that when the Conclusions appeared the following morning, they were still slightly closer to the Chirac view than to the Blair view, so there had to be a further argument in which Tony Blair got the Conclusions changed to reflect the fact that these were decisions on agriculture that were to remain the prerogative of the Agriculture Council. As it happened, in the following year we did succeed, with German support, in getting a very significant reform package through by a majority vote.

**Q5 Mr Clappison:** We get a statement from the Prime Minister to the House of Commons when this has all been discussed when he comes from the European Council. In the process which you have described to us which is rather involved, I will put it that way, what chance is there for parliamentary scrutiny at any point in that before these decisions are reached?

**Sir Stephen Wall:** As far as I am aware there is none in terms of any opportunity for parliamentary scrutiny of the document itself because, as I understand it, the document is regarded as being a confidential document between governments. It is a question of whether, now that the document appears three or four weeks before the European Council and is distributed among 27 Member States, that is sustainable. As things stand you are right, there is no

opportunity for the scrutiny. I guess it is open to Parliament where there is a big issue which is known to be up for discussion at the European Council to call on the Government to set out to the House what its stance is going to be at the European Council. That was done before Maastricht when, as I recall, the Government set out pretty clearly what its stance on the negotiations was.

**Q6 Mr Cash:** Not very clearly.

**Sir Stephen Wall:** Set it out anyway, fully. There is not, as I am aware, either any tabling of the council conclusions or opportunity for scrutiny.

**Q7 Kelvin Hopkins:** I too read your paper with great interest and some astonishment, I might say. It offers an extreme contrast with the turgid verbiage of European documentation.

**Sir Stephen Wall:** Oh dear!

**Q8 Kelvin Hopkins:** That is meant as a compliment. Why does the European Council have Conclusions rather than minutes of what is said at the meeting and, indeed, are there any minutes at all?

**Sir Stephen Wall:** This goes back to the original idea of the European Council, which was that it would be a fireside chat, it would be informal. Certainly from the 1980s onwards that became impossible and the Conclusions therefore became much more formal in terms of being agreed by everybody. The system is still structured to try and preserve two things. One is the ability of Heads of Government to talk pretty freely, including in the case once of President Chirac using a rather rude word to Margaret Thatcher, without that being instantly known to the world. Also, it is constructed so that the Heads of Government are enabled to take decisions because the only adviser that they have sitting in the room is the Foreign Secretary. They do not have lots of officials who say, "Do not agree to this, do not agree to the other", so the idea is if you lock these men and women in a room at that level they will be able to take decisions rather than, as sometimes happens in other councils, getting the issues referred back for further debate. That is also why the system was devised, and I think again pretty much from the word go, of having a rather indirect method of note taking. There are representatives of the Council Secretariat who do sit in the room and who take notes and every 20 minutes or so come out of the Council room where the Heads are meeting. They go to a separate room where officials from each of the Member States, who are known as the Antici group, after Mr Antici, who was the first of the breed, go into that room and the person concerned from the Council Secretariat says, "This is what has gone on in the last 20 minutes" and on the basis of his or her notes gives an account, which is already obviously not a verbatim account, because it is based on the notes that have been taken, of what has transpired. The representatives of the national delegations sitting in the Antici room as it is called, in the old days on pen and paper, now with their laptops, write down what the representative of the Council Secretariat tells them. That is transmitted up to the

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delegation office where people like me in a previous incarnation would have said, "Oh God, the French have slipped one past us on X or Y". There are a few members of each delegation—I am sorry this is very important, this is how it works—who have a red pass which enables them to get into the room where the Heads are meeting. You go down to the room and if it is not too late you say to your head of Government or Foreign Secretary, "They are trying to slip one past us, this is what they are trying to do" and then they can stop it happening; or occasionally it will be too late because by the time you know what has happened at least 20 minutes, probably more, have passed between what was discussed and you all knowing that it was discussed.

**Q9 Kelvin Hopkins:** Could there be some system like the Cabinet where minutes are taken, there is a 30-year rule so they feel confident that they can speak freely?

**Sir Stephen Wall:** It was always alleged that the Council Secretariat made a tape of the proceedings. I cannot put my hand on my heart and say that this tape exists because no Member State was ever allowed access to it, but if there was ever a dispute about what had happened, and sometimes there is a dispute about what has actually happened in the European Council, because quite often the final version of the Conclusions produced on the basis of the last morning's discussion does not appear until everybody has gone home, then the Secretary-General of the Council, now it tends to be the Deputy Secretary-General (Solana is the Secretary-General), will come to the Committee of Permanent Representatives where these issues are raised and say, "I have consulted the tape and I can tell you that this is what was decided". In my experience that is always accepted because the alternative is to take it back, if you really dispute what was decided, to the Head of Government level and on the whole people do not want to do that.

**Q10 Mr Steen:** Can I say, Sir Stephen, I remember you in your different incarnation and you always treated us with very great respect and provided tremendously helpful information and today is also another example of it. Also I want to thank you for your hospitality, which I remember very well. Can I ask you whether it is correct, and it may be that it is publicly known but I do not know if it is, as far as you know, has there ever been a vote in the Council of Ministers, and am I right in thinking if there has not been it has always been by agreement?

**Sir Stephen Wall:** In the Council of Ministers at lower levels than the European Council votes are taken. The European Council operates by consensus, but in 1985 when Margaret Thatcher as Prime Minister was opposed to the establishment of an intergovernmental conference on treaty change, the then Italian Prime Minister in the chair of the European Council did use the voting procedure to get agreement that an intergovernmental conference could be called because that was a matter for simple majority and none of us officials had seen this coming. We should have done, but we did not see it

coming. If I remember rightly, Margaret Thatcher, and I think the Irish and the Greeks, maybe the Danes, were out-voted by the rest. I think I am right in saying that is the only example of a vote being taken and it was a procedural vote rather than a substantive vote. They could not pass the substantive treaty changes except by unanimity.

**Q11 Mr Laxton:** Just coming to the Council of Ministers, you said a moment ago that below European Council level minutes are kept. Are they minutes or are they Conclusions from the meetings of the Council of Ministers? Also, how are those Conclusions or minutes arrived at or is it almost a replica of the up at 4.30 or 5.30 in the morning meetings in a hotel and looking at notes and Conclusions? Is it a quite separate arrangement?

**Sir Stephen Wall:** It is, because generally speaking even the European Council itself is now better prepared in the sense that the draft Conclusions are presented by the Presidency several weeks in advance and are debated at official level and, if necessary, at ministerial level and therefore on the whole the government is not taken by surprise by a last minute bounce. In the Council at ordinary ministerial level, as it were, the whole of the Council is prepared by officials over a period of months and with discussion by ministers during that period because most of what the Councils are doing (the foreign affairs ministers and the General Affairs Council is slightly different) is basically legislating and they are debating and adopting legislation. There is no question of a bounce because the legislation would have been under discussion for months, if not longer. If it is agreed effectively, if it has all gone through without disagreement, then it goes to the Council of Ministers as an A point, in other words it simply goes through without discussion. If it still needs to be discussed and negotiated by ministers, it goes as a B point until they reach agreement. Insofar as the Conclusions appear, those Conclusions reflect an extended process of negotiation. The minutes themselves do come out, but from my recollection several months, if not longer, after the event and do not really have much bearing except as a kind of record. The way Member States vote is made public, I think I am right in saying, pretty much straight away, but the actual to-ing and fro-ing of discussion does not appear until later and in my experience nobody, including successive British governments, took much interest in the minutes therefore because by the time they appeared it was very much ancient history. The General Affairs Council is a bit different.

**Q12 Mr Laxton:** The general affairs and the foreign affairs.

**Sir Stephen Wall:** The Foreign Affairs Council being foreign ministers, but it is called the General Affairs Council because in theory it is supposed to have overall responsibility for the co-ordination of EU policy, something which in practice it cannot really now do. Very often the foreign ministers in the General Affairs Council are saying things about the

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state of the world, there are making a statement about the Middle East, say, and therefore their Conclusions, which are political documents, do appear straight away and, again, they will have been discussed in advance, they would have been discussed particularly, let us say, on the Middle East in the Political and Security Committee where all the officials from all the Member States are represented, all of them acting on instructions from their ministers. Nobody freelances on this, no representative of any national government goes in except on instructions sent from their capital. Insofar as agreement may be reached in advance of the meeting with ministers, it is only reached *ad referendum* to the ministers and on the basis of instructions from ministers.

**Q13 Mr Heathcoat-Amory:** Sir Stephen, you have been describing from a position of immense personal experience a process of bargaining between Heads of Government with consequences which are very great for all of us. We know that the European Council meetings are politically binding on Member States, so although technically it is still subject to directives and regulations which must be debated and passed, nevertheless the thrust of European policy is decided by this process of bargaining and negotiating in private. To the outside public this is exactly what is wrong with the European Union. How do you reconcile this with a democracy? Do you know of any other democratic, or supposedly democratic, organisation that reaches decisions in this way? How do you think this can be improved because, of course, the European Convention had as its aim to ventilate the system and bring it closer to the people and make it more democratic and that clearly has not happened. How would you reform it?

**Sir Stephen Wall:** One of the reforms that was discussed at the time of the convention was the idea of first of all having the last stage of negotiation of Council meetings other than the European Heads of Government in the open and voting taking place with members of the public present. I was personally in favour of it but I never thought it was more than demonstrative because the bulk of the negotiations would still have taken place in private. I think there is a real issue here because there are real negotiations on matters of national interest between governments and, at the end of the day, there are winners and losers in that. Obviously it is harder to negotiate in some respects if you are doing it in public than if you are doing it in private. Therefore, there is some merit in having a private negotiating system, rather as in the United Nations. Although the Security Council meets in public, very often the real negotiation on the text of a resolution in the Security Council has been done behind closed doors beforehand. I do not think there is an easy answer to that. If you imagine Margaret Thatcher negotiating in public on the Fontainebleau deal on the British rebate rather than behind closed doors, it obviously becomes harder to get an agreement because everybody's position is publicly exposed and can you make that last minute manoeuvre in either direction which you may need to clinch the deal?

*The Committee suspended from 3:01pm to 3:18pm for a division in the House*

**Q14 Mr Heathcoat-Amory:** Just a supplementary, if I may. Sir Stephen, you just now drew a parallel with the United Nations where negotiations are often done behind closed doors, but the United Nations is an inter-governmental body founded on the principle of the sovereignty of nation states, whereas the European Union is a supra-national law-making body whose directives and regulations are binding on citizens in all Member States, so it is a completely different animal, therefore the Conclusions reached by the European Council in private have immense legal consequences and the public feel entirely disconnected from that. It is just not open and democratic and I know it worries the Member States, I am not sure it worried Brussels quite so much. Do you have any ideas of how this could be changed, about how the public can be involved, how it can be opened up and, therefore, people can have more confidence in open decisions openly arrived at which they feel some ownership of?

**Sir Stephen Wall:** I think there is a distinction between those Councils that do legislate and the European Council which does not legislate, although it does take important policy decisions. I certainly think it would be possible to open up the business of the Council of Ministers so that members of the public are present when negotiations are taking place. It would be an inhibition on member governments concerned for the reason that sometimes it is easier to make compromises by not having to do it in the full air of publicity, but I agree with you, there are obvious gains, one of which I think would be that it would demystify the process. I often felt when I was sitting in the Committee of the Permanent Representatives, which likes to surround itself with a lot of mystery because it makes the members of it seem more important than we really were, but if people were present they would see that this is not very mystifying, that this is the kind of process of negotiation which most people in one form or another are quite familiar with, people making trade-offs between various interests in order to try and reach an agreement acceptable to everybody. You could do the same thing at European Council level, but quite a lot of the time the discussion is about future policy and where it is not about future policy but is about the nitty-gritty of negotiation it is not strictly legislative, although I accept that the outcome very often does translate into law. You could do the same thing on the basis that the original concept of the European Council, that this is the fireside chat, has long since disappeared because you self-evidently cannot have a fireside chat among 27 people sitting around a table, larger than this table, with interpreters and so on.

**Q15 Mr Hoyle:** I think we have already touched on this, Sir Stephen, but just to push it a little bit further. Could the Commission or the Presidency manipulate the preparation of the European Council's Conclusion to get binding commitments

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to a policy, for example on the environment, before it has been properly considered by the Environmental Council? I know you have hinted about these meetings in smoke filled rooms where officials are kept out and we get red cards to bring people in, but what really goes on, and have you got a hard example of where this has happened?

**Sir Stephen Wall:** I think it is harder now because the Conclusions of the European Council are put on the table by the Presidency and are negotiated on in advance and, therefore, the Head of Government knows what is going to hit him or her when they go to the meeting. I can think of one example from the time when I worked for John Major where the French and the European Commission put into the European Council Conclusions money for Algeria which had not been discussed at all, and we were opposed to it because we thought at the time it was not the right way to help Algeria. I cannot remember the details, but that was certainly an attempt to put something in at the last minute which hopefully nobody would notice and it would go through, or even if they did not like it, it would be quite hard in the atmosphere of the European Council for one person to say, "I won't go along with this". I am afraid I cannot remember now whether John Major did or did not, but it is obviously much easier if something is being discussed at official level to raise various objections than if it is being done at the higher level. It is much harder for a Presidency in cahoots with the Commission to do that now. Presidencies will, of course, keep some things in reserve. I think I am right in saying that in 2005 the British Presidency did not put some of the figures into the draft Conclusions until the very last minute, in other words they were keeping their own room for manoeuvre open, both as Presidency and in terms of the British interest. On the whole, I would say it is much harder now for the Commission, in particular, working with a Member State, to try and put forward and put through some pet project.

**Q16 Mr Hoyle:** You mentioned one that nearly slipped through and it was interesting how it was picked up on. Is there one which you can think of that went through and it was too late?

**Sir Stephen Wall:** Not precisely of the kind but it is a slightly different example and, again, it would not happen now. In the negotiation of the Amsterdam Treaty, a few weeks after the Labour Government came into power, Government negotiated at Amsterdam the British opt-out on frontier controls but also the right to opt-in when we wanted to do so, and the Spanish argued for a kind of veto for Gibraltar reasons and Robin Cook, in particular, argued the British case from the British seat and we believed had won the point, but the Dutch Presidency did not sum up very clearly and when the European Council Conclusions appeared subsequently the Spanish point rather than the British point was in the Conclusions. We fought it and tried to get it overturned but were not able to do so and the British Government faced a situation of was it prepared to take this all the way back to the European Council? In the end the Foreign Secretary

decided not to do so. I think it was an example born as much of rather unusual inefficiency on the part of the Dutch Presidency rather than skulduggery on their part, but nonetheless.

**Mr Hoyle:** That just gives an example, does it not, that it was a British/Dutch force that took Gibraltar and it took the Dutch and the Spanish to stop us getting the Conclusion through, so maybe there is some irony in that after all.

**Mr Clappison:** I am tempted to suggest that it was a good job we had the Foreign Secretary to replace the place of Admiral Beamish, which I think was at about the same time.

**Mr Cash:** That was Menorca, I think.

**Q17 Mr Clappison:** Menorca, but that was the same war, I think, the war of Spanish succession. You have been asked about the European Council doing things off its own bat, can you think of occasions when the Council of Ministers has reached a decision and then the European Council has overturned it?

**Sir Stephen Wall:** Off the top of my head I cannot think of such a case, no, but more often in the preparation of a European Council, and this applies particularly where a treaty is being negotiated, the General Affairs Council, the foreign ministers, will only be able to take things so far, in other words that there are a number of gaps, areas which are not agreed which can only be agreed at Head of Government level. As I say, off the top of my head I cannot think of an occasion where the General Affairs Council has thought it has reached an agreement and then to find the Heads of Government take a different view because in their case also the foreign ministers are not going to go to a meeting without having the position of their government in their minds. Each foreign minister is going to be putting forward the position of their government, so it would be unusual then for the Heads to take a wholly different view.

**Q18 Mr Clappison:** Perhaps, Chairman, if I could enlarge on that a bit as well because we are now coming up to what we understand will be very important discussions in June at a European Council there and there is a slight element of mystery as to what the position is going to be as far as the UK Government is concerned and what would amount to significant constitutional change. I wonder if you have any views which you would share with us about what you would regard as significant constitutional change taking place in June?

**Sir Stephen Wall:** I am no longer in a position to know what is in the mind of the—

**Q19 Mr Clappison:** From your experience?

**Sir Stephen Wall:** I think the issue for the European Union, including obviously for the British Government, is how much of the Constitutional Treaty to keep and how much not to keep, and within that is the question of what was it about the original deal that made people think this was something which was constitutionally significant, ie qualitatively different from the traditional treaty

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change which we had seen before in the Single European Act, Amsterdam, Maastricht and Nice. My own view is that much of what was agreed in terms of the actual significant changes, ie things like those increases which were made in majority voting, things like legal personality, the decisions to go along with those things were taken on a thorough appraisal of the British interest and that if a mistake was made, the mistake was one of misleading people. I think two things happened. People who were sceptical about the European Union thought, "Here is something which is a real constitution and something we should be nervous of". People who wanted a genuine constitution disliked it because they could see that this was kind of smoke and mirrors and it was not a real constitution. But the actual things we agreed to, I believe, were taken on the basis of a thorough appraisal and, therefore, I still believe those things represent something which is in our national interest. Obviously it would be for the government to take a decision as to what is both in the national interest and what is politically sustainable and sellable in this country, and I am not qualified to make that judgment.

**Q20 Mr Clappison:** Obviously we are familiar with the constitution which was lost as a result of the French and the Dutch votes but, as far as this country was concerned, we were promised a referendum on the basis of the constitutional changes which were taking place then. We are being told now the constitutional changes may be less than those changes so they can be dealt with on the basis of a treaty which will not require a referendum. What are the essential points that you think would be the ones which would trigger the need for a referendum?

**Chairman:** It is a very interesting question. I am not quite sure that it is part of the scope of our inquiry, but very bravely done, James. I think we can leave that one for another debate, maybe when we have the Foreign Secretary here, we will ask her nearer the time.

**Mr Cash:** It was a good try.

**Q21 Mr Borrow:** Just to go back, Sir Stephen, we have got copies here of Conclusions from various European Councils and they are quite weighty, quite detailed. It has been suggested that is one of the demerits of the system, that they are too long and do include too much detail and do perhaps allow things to be slipped in that should not be slipped in. What is your opinion of that?

**Sir Stephen Wall:** I agree with that. There has been a not very successful effort to cut them down in size and one or two Presidencies have been more determined and more successful than others in that. Traditionally, one of the problems about European Council Conclusions is that there is a lot in them which has not been discussed by the Heads of Government, except when they come to discuss the Conclusions and one obvious thing that is supposed now to happen, but does not always happen, is that the Conclusions ought to be a reflection of what is discussed and not of the things that are not

discussed, in other words, you have a debate on day one, Conclusions agreed on day two and the Conclusions ought to reflect what was discussed on day one, whereas a lot of stuff that is in them has not been debated in that way. There are times when the Heads of Government will want to say something about, let us say, the situation in Chechnya, or the situation in the Middle East where they personally will not have had the discussion, but the discussion will have been had by foreign ministers or officials, or both, but nonetheless they want to give it the weight of it being a statement by the Heads of Government rather than some lower body, in which case you can make the case for the statement being made even though the Heads have not discussed it. The problem is that once you have breached the principle then it is very easy to tack things on and unless somebody has a substantive objection, they tend to go through. It requires real discipline on the part of the Presidency of the day. They are the ones who set the agenda in that sense.

**Q22 Mr Borrow:** What you are really saying is that officials, before the European Council meets, will come up with a lot of "Would it not be good if we made a statement on this and a statement on that", they are all non-controversial so they are all nodded through at official level and then the Heads of State meet and discuss a few controversial things which should be the basis of the Conclusions and then tack on this big list of stuff which has all been agreed beforehand.

**Sir Stephen Wall:** Yes.

**Chairman:** I am becoming more attracted to minutes every minute.

**Mr Cash:** We have dealt with some aspects of the lack of transparency and some of the opaqueness of the European Council and you have made a very compelling illustration of what goes on, certainly speaking for myself, I am sure the Committee were very grateful for this, it has never been heard of in this detail before. I think the word secretive comes to mind in this context for reasons that it can be to do with enormous issues which crash around the different interests of 27 Member States and some very, very important decisions get taken. In particular, first of all, do you agree that the process could be described as secretive, and I think you have more or less conceded that already? In particular, I mentioned that I put down a question today relating to the own resources decision which you mentioned in your evidence and also again this afternoon because we have not got the legislation for that yet and I have asked if the Prime Minister will provide it for us. The own resources decision taken in September 2005 which changed the rebate arrangement, as I argued at the time, and so did many others, as being significantly disadvantageous to the United Kingdom was decided by the Prime Minister at that meeting. That would be an example of something which I would have described as being within the framework of the European Council type discussions but, of course, it has direct bearing on the role of the Chancellor of the Exchequer. I wondered whether you would think that first of all

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the way in which this process operates gives the Prime Minister an overarching advantage as against members of the Cabinet and also the Chancellor of the Exchequer in matters within his purview, and in the light of your comments on Channel 4 in the last few days I wonder whether you have got any thoughts as to how Gordon Brown would be likely to react to the fact that this decision was clearly not taken with his full knowledge because everything it vindicated demonstrates that the advantage is 40-love to the Prime Minister in a situation of this kind.

**Chairman:** I think at the kernel of that there was a question about the secretive nature over there.

**Q23 Mr Cash:** It was also a highly interesting significant illustration.

**Sir Stephen Wall:** It is a secret or confidential, therefore secretive, if you like, process. But I do not think there has been a European Council in my experience where a British Prime Minister of whatever party has taken a decision without other members of the government knowing the decision that was to be taken. Coming back to the Fontainebleau deal on the British rebate, Margaret Thatcher decided the moment to settle. There were Treasury officials in her delegation who did not like the decision that she took and it would have been open to them if they had wanted to telephone Nigel Lawson and get Nigel Lawson to telephone the Prime Minister and try and stop her from doing so. But she was not taking a decision which other members of the delegation were not privy to. I was not part of the negotiation, I was no longer a civil servant, in 2005, but I would be surprised if the parameters of the negotiation which Tony Blair as Prime Minister was conducting were not known to other members of the government. They were certainly known to the Foreign Secretary who participates as of treaty right in meetings of the European Council. Yes, the Prime Minister is the person on whom it falls to take the decision at the moment of settling, but I do not think it is secret from other members of the government.

**Q24 Mr Cash:** It is pretty odd that we have not got the legislation yet. That was 18 months ago or something.

**Sir Stephen Wall:** That is a slightly separate issue. It works both ways of course. It can be quite convenient quite often for people to know that ultimately the buck will stop with the Prime Minister and the Prime Minister is the person who ultimately will take the responsibility for the decision.

**Q25 Kelvin Hopkins:** If the whole arrangement was set up on a much more sensible basis, a British basis if you like, with perhaps officials in the room sitting behind the prime ministers with a verbatim note taking recording and the meeting would break from time to time for formal agreements on the wording of Conclusions between the prime ministers, first of all, would that reach much more satisfactory Conclusions, and who would object most strongly to that?

**Sir Stephen Wall:** Some of what you said does happen. What I described as happening at Amsterdam where the Dutch produced an inaccurate version of the Conclusions after the event is pretty unusual and now where there is a really disagreed point, generally speaking Heads of Government would insist on seeing the final version in writing before they leave the room, partly based on previous experience. The only significant disadvantage of having officials in the room is the danger that you get a lot of people like myself whispering in the ears of our bosses with all of the reasons not to do something rather than the reasons to do it. There comes a point where decisions have to be taken and the assumption behind the European Council is that you have got 27 men and women who are the people ultimately responsible who have briefed themselves on the issues and are capable of taking those decisions. I think in a Union of 27 what you would lose by having people in the room in the sense I have described is probably not overwhelming. You could have a more transparent system that still preserved quite a lot of the privacy; you would not necessarily have to have officials in the room, you could, if you like, have a sound relay. The Anticis can sit in their room with a sound relay from the European Council so that you would know immediately what was going on, you do not have to have this time lag system of reporting that now goes on. There are various ways in which you could change it. Who would object? I think that people are quite attached to the old system. During our Presidency of the EU in 1998 when I was in Brussels, there was a move in London to try and have a note taker in the room because at informal meetings of the European Council of which there is at least one every Presidency, often there is a note taker allowed, so it was an idea that we would try and put that as part of the regular system for the future so that there would be a note taker for each delegation and maybe some more rigorous form of record than now exists. I was required as the Chairman of the Committee of Permanent Representatives to put it to our partners and there was a lot of resistance to it. Part of that was based on dislike of change, part of it, I have to acknowledge, was based on not wanting to encourage a system whereby authority in these matters eked away from the Committee of Permanent Representatives on the one hand and the Foreign Affairs Council on the other and to prime ministers' offices and sherpas. As we know from the present discussions that are going on about the constitutional treaty, the sherpa system is already there in a form in the European Union. We are in an evolving situation in which, frankly, change is bound to happen.

**Q26 Chairman:** May I conclude with one final question because obviously we are interested in the process and we thank you greatly for your submission. We intend, when we put the draft of this interview on the website, we will also put your written evidence on the website. We would normally put that on the website with our final report, but I think it is such a splendid document and, as people

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have said, it is such an insight, I am sure everyone would be interested in seeing it on the website as soon as possible. One final question, can you see any reason why draft Conclusions, particularly those general Conclusions that go to the European Council, should not be deposited for scrutiny by this Committee in the normal way since we are acting often as the gatekeepers for many other interests in Parliament? Do you think the draft Conclusions could be scrutinised by this Committee in the same way that we consider other proposals for legislation and other European documents?

**Sir Stephen Wall:** Chairman, my answer to your first question is no, I see no reason why they should not be deposited and the second answer is yes, given the

way the European Union now works at 27, I do not myself see a distinction between the classical form of scrutiny and scrutiny that could apply here given that there is time in the system, which there was not under the old regime, for scrutiny to happen and I cannot myself see any reason why it should not happen.

**Q27 Chairman:** Thank you very much. Thank you for both your submission and coming along today, it has been very, very enlightening.

**Sir Stephen Wall:** Thank you, Chairman.

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**Thursday 7 June 2007**

Members present

Michael Connarty, in the Chair

Mr William Cash  
Mr James Clappison  
Ms Katy Clark  
Jim Dobbin  
Nia Griffith

Kelvin Hopkins  
Mr Bob Laxton  
Mr Anthony Steen  
Richard Younger-Ross

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*Witnesses:* **Rt Hon Margaret Beckett MP**, Secretary of State for Foreign and Commonwealth Affairs, **Ms Shan Morgan**, Director, European Union and **Mr Anthony Smith**, Director, European Political Affairs, Foreign and Commonwealth Office, gave evidence.

**Q28 Chairman:** Can I move to the second part of our inquiry, on which you have been good enough to send us a written submission, which is our inquiry into the preparation of European Council Conclusions. We have decided to try to find out how these mysterious documents are put together and we have already had some written evidence and some oral evidence on this. Thank you for your written submission, it was very, very useful. I am sure all Members have read it. We have some outstanding questions on that which we would like to put to you. In the last paragraph of paragraph nine of your written evidence, if you would like to seek it out for yourself so you know what I am referring to, you say that the final draft of the European Council Conclusions is discussed “in detail” by the Heads of State and Government but that appears to us, from the evidence we have already, to be contrary to the European Council’s rules of procedure. Could you confirm for us, as a matter of fact, that the European Council discusses only parts of the draft Conclusions which have not been previously agreed in Coreper or in the General Council, the GAERC, and not all of the final draft “in detail” as you said in your written submission?

**Margaret Beckett:** I think this is a misunderstanding, Chairman, because what comes to the European Council, by way of Conclusions, as you say, contains sections which are non-controversial which had been agreed at an earlier stage through Coreper or whatever, but it comes forward as a whole text. There is no way in which parts which have been pre-agreed or which are thought to have been agreed are singled out, it is just one whole text and the Council goes through the text paragraph by paragraph. Maybe it is slightly misleading to say “in detail” because of course people do not raise all the detail on every issue that is in the Council Conclusions but it is open to Heads or to the Foreign Ministers who are there to raise any point on any of the paragraphs and, indeed, to re-raise something which was previously thought to be agreed in that text. For example, I did so at the last Council, I think I am right in saying, when I suggested a small but, I am informed, extremely significant strengthening of the text on climate change, on carbon capture and storage, because once we looked with more care the text was absolutely fine as it stood but we realised it

could be significantly strengthened by quite a small addition, so I proposed that. That is what is meant by saying that it is considered “in detail”, it is that any part of the text can be discussed and is occasionally reopened.

**Q29 Jim Dobbin:** The European Council’s Conclusions are often very long and detailed. Just to give you an example, one meeting on 4–5 November 2004 ran to around 47 pages. Do you not think that the Conclusions should be shorter and less detailed so that they do not interfere with matters which are up for consideration by the Council of Ministers?

**Margaret Beckett:** Definitely. We strongly agree with that and we have tried very hard to persuade colleagues that is the case. I believe, indeed, that at one of our Councils we managed to get the Presidency Conclusions down to nine pages, which was probably an all-time record of shortness. It is absolutely in the hands of the Presidency of the day and the Council Secretariat and there is a tendency, as you say, I am afraid, to be somewhat discursive. It is a tendency that we deplore and which we constantly urge colleagues to change.

**Q30 Mr Laxton:** Sometimes the meetings of the Council of Ministers have some Conclusions produced, sometimes they do not. Is there any criteria which determines whether there are going to be Conclusions or not and, if so, perhaps you could illuminate as to the criteria that are used?

**Margaret Beckett:** Not really. Again, it is very much a matter for the Presidency of the day to propose and to decide. I cannot honestly say that I think there are any particular criteria or necessarily even any particular consistency. Sometimes it will be decided to issue Conclusions because there is agreement; sometimes it will be because it is thought to be of particular importance to a Presidency; sometimes it is because people want to have an output from the Council. It is absolutely in the hands of the Presidency of the day. Of course if there is consensus then it can be Council Conclusions, if not then the Presidency can still issue Presidency Conclusions of their own and, of course, from time to time Presidencies do.

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**Q31 Mr Cash:** We had some very interesting evidence, in fact I think it was rather unique, from Sir Stephen Wall the other day. I do not know whether you have had the chance to see it but it is a very interesting analysis of the procedures that were followed from his own personal experience. It appears that every 20 minutes an official from the Council Secretariat who has been sitting in pops out and he then gives an oral briefing to the officials for the Member States about what has been going on. It is called the *Antici* procedure, which seems a little bit bizarre but that is how it appears to operate. Would you not agree that it is a bit peculiar that there are no minutes of discussions which, if we are to quote Article 4 of the EU Treaty, “. . . define the general political guidelines” of the European Union? Do you not feel that really those arrangements are pretty obsolete? There was another point which he also mentioned which was that he understood, and I think I am right in saying this, there were almost certainly tape recordings taken of the proceedings. I notice that your adviser, Shan Morgan, says no because actually I got an answer from Mr Hoon the other day which quite categorically stated that there were no recordings. I just wanted to ask you, because you are his boss, as it were, if you could confirm that is the case? I gather from what Shan Morgan is saying, who seems to know, that the advice she will give you is that there are no such tape recordings.

**Margaret Beckett:** Yes, that is certainly what Shan is saying and, what is more, I am inclined to think that it is absolutely so from my own experience. Occasionally when someone has said something that I find particularly interesting or they have used a particular word and I think it is of significance I have asked people to check and said, “Wait a minute, I am nearly sure that in the last Council so and so said this”. The answer is invariably that nobody knows and the chances of the Council Secretariat having spotted the political significance are about as close to zero as makes no difference. In terms of the general point, I appreciate it does seem a somewhat arcane procedure but there are not real minutes of any Council, not even sectoral councils never mind the European Council. In a sense that is partly the answer to Mr Laxton’s question I suppose, that to a certain extent for particular issues the Conclusions, which record the discussion in a broad general sense, or at least record whatever the consensus was, are as close to minutes as we get but there are not minutes. Of course, particularly for the European Council and, indeed, even for the General Affairs Council, some of the discussions are extremely sensitive, especially as they touch on foreign affairs, so that is why you would not have them.

**Q32 Mr Cash:** Can I ask one supplementary which is simply this. Of course there is some dispute about the legal nature of the European Council meetings and I think by the time we had finished with Sir Stephen Wall we had pretty well established that it can have legal implications. Of course we are having a discussion now, this is now being recorded, this will be made available to people at large. Can you think of any very good reason, despite the point you make

about sensitivity, when you are legislating and deals are being done and things of that kind, why it should not be possible for tape recordings to be made and for them to be made available to the Library, for example, of the House of Commons? We would love to read them.

**Margaret Beckett:** Yes, I can think of lots of reasons provided that you actually want the European Union ever to reach agreement on anything. I appreciate, Mr Cash, from your point of view the notion of something which would impede any agreement ever being reached might be highly desirable but, having spent eight out of the last nine or 10 years in negotiating Councils where mostly, in fact, legal texts were being discussed, can I just say to you that of course it is right that as much as possible should be in public, I agree with that, I support that and that indeed is what the British Presidency proposed, but if you had to have all the legislative deliberations and all the negotiations in public you would either never agree anything or there would never be real negotiations in those meetings, all the negotiations would take place in the corridors.

**Chairman:** I was just thinking when you were talking about asking who said what or trying to confirm, it is like my constituents coming to me and telling me about the conversations they had with the Child Support Agency or the Working Families Tax Credit Office, no-one ever said anything when they went back to check it.

**Q33 Ms Clark:** Thank you very much, Foreign Secretary, for your written evidence. I was quite interested that you seemed to be suggesting that strenuous efforts were required to make sure that the Conclusions of the European Council of December 2006 excluded references particularly to the *passerelle* and to the Constitutional Treaty. My understanding is that the Presidency kept trying to insert these provisions which, of course, would have been contrary to the majority view of the Justice and Home Affairs Council. I just wondered what your view was of how that was handled but also your view in terms of where you think the power should lie on these kinds of issues.

**Margaret Beckett:** I think there are two things there. It was difficult for the Finnish Presidency, they had decided this was something they believed so passionately was right that it should be one of the achievements of the Finnish Presidency, and that is always a difficult position for a Presidency to find itself in. I think they had confidently assumed, they must have because no politician, especially not contemplating an early general election, as the Finns were at that time, if I recall correctly, would knowingly commit themselves to something that they thought was just not going to happen. They committed themselves to this and then, I think, to their considerable surprise, they discovered that it was really quite strongly opposed on a quite widespread basis. As you say, the Presidency does have a good deal of role and powers and they sought to see whether it could be considered in another way, and unsuccessfully so because people like ourselves were determined that would not happen. You also

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asked me about where the powers should lie. I think it is important to draw the distinction here between an episode of that kind and the issue of the powers because of course it is right that sectoral councils, where a lot of the expertise lies, have the right to express an opinion but it must always be the case that ultimately the European Council, where there are Heads of State and Government, may take a different view because ultimately it is the Heads who decide and not someone in a specific government department who drives through a policy, whatever the view of the government of the day as a whole. That is the balance, I think.

**Q34 Kelvin Hopkins:** Following what Katy Clark has just said, surely some simple procedural changes could overcome those problems without damaging the need for confidentiality of discussion, minuting for a 30 year rule, so nothing is exposed in the short-term, but if nothing is written down does this not give the power not to the Presidency but actually to the Commission and the Commission officials who do all the drafting and write all the words? Is that not one of the reasons why we are so suspicious that possibly the most senior body in the whole European Union arrangement, the European Council, is being given the run-around by officials?

**Margaret Beckett:** Do not forget Council Conclusions are not legally binding. The most that will happen is perhaps it will reflect a policy issue and it may ultimately lead to consideration of a new policy, but if that were so then that would lead to the kinds of proposals, instruments, documents and so on which then would be subject to scrutiny. I think more weight is being put on the content of Conclusions than perhaps they merit.

**Q35 Chairman:** Before I call Mr Clappison, why then do you think Sir Stephen Wall, who was a very senior member of the British team in the EU, said that they could be legally founded upon although they were not legally binding?

**Margaret Beckett:** I am sorry, I have not had the opportunity to read Sir Stephen's evidence. What he might have meant is exactly what I have just said, that sometimes what is said in Council Conclusions leads to formulation of policy but, of course, that then goes through all the proper procedures that policy does go through, including parliamentary scrutiny.

**Q36 Mr Clappison:** Foreign Secretary, you have just given us the practical reasons why the process with regard to the conclusions is carried out in the way that it is but it is not exactly synonymous with openness to the public or with the role for national parliaments which the Community says that it aspires to. One suggestion which has been made is that the draft Conclusions be deposited like any other European document for MPs to be able to consider them and hold the government to account in so far as they are able to do so.

**Margaret Beckett:** I repeat that conclusions are not legally binding. They are not legal proposals or do not have legislative effective so, therefore, they do

not come in the same category as documents which of course should quite properly go to national parliaments and be scrutinised and so on. First of all, these are documents of a category, which means that they are internal, in effect confidential documents, not for circulation. Secondly, it would really be completely impractical, especially now that we are 27. To say it is a fast moving target is to put it mildly, these things are always changing, being amended, et cetera. Even if there were not the confidentiality issue it simply would not work. As I say, I do not think it is as worrying—I understand it is a perfectly proper and legitimate concern—because Conclusions are not of such importance because they are not legally binding and because of their results in policy that would come in exactly the way that you wish.

**Q37 Chairman:** Can I say I do find that rather puzzling. I wish to commend you particularly for the reports that you put into Parliament after Council meetings, I think they are very thorough. Our Committee considers each one of the post-Council reports which are now documents that are placed in the House and in the library and are put in the public domain. We read them in detail in this Committee every week and we would commend you for the detail which you give us.

**Margaret Beckett:** Thank you.

**Q38 Chairman:** What is the difference between giving us that and giving us the draft Council Conclusions? You will see if you look at his evidence that Sir Stephen Wall supported the idea and he could see no reason whatsoever, particularly since we do get the statement to the House, an open public statement to the House, on the Conclusions which, if they do their job, tell us the positions taken by our Government on an issue, the positions taken by other governments in the debate, and the Conclusions reached by the Council. Why not give us the full document?

**Margaret Beckett:** There is not a sort of full document. At best—

**Q39 Chairman:** There are 49 pages of the one referred to by Mr Dobbin. We are so focused on Europe we would read every page.

**Margaret Beckett:** At best there is a draft which will change many, many, many times, possibly 27 times or more as every Member State puts in their point of view at least once. If we were, which would be a breach of the confidentiality of the Council's proceedings, to give you the first draft that appeared, frankly it would be neither use nor ornament to the Committee because the chances of it resembling very much what is the final document are really not very high. That is why one has that process. I am aware, although I have not had a chance to read his full evidence, that Sir Stephen Wall is reported to have said that he thinks there is no reason why the draft Conclusions should not be put forward and I am frankly astonished that he has said so. I cannot recall, I meant to ask before we came in, but I think it is possible that during the period in which Sir

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Stephen had the more detailed responsibility for this, Conclusions were produced at a much later stage even than they are now and without the extent of involvement that there is now, and he may have assumed that because drafts are now produced earlier that it would be easier to put them in in draft form, but I can only speculate. All I can say to assure you is we are not being difficult, we really think that it is completely impractical and if Sir Stephen were doing the job today that he was doing on the basis on which he gave you evidence he would definitely not be saying that.

**Q40 Chairman:** Foreign Secretary, it just strikes me that if people could see the workings of the machinery of government in the EU better, I honestly believe that they would genuinely see it as being something that is not, as has been said, hidden from them for a negative purpose. I believe would be able to see we are involved in a great project and that its workings are not to be feared. If you keep it hidden then it is easier for people to make straw men to knock down. I hope you and your colleagues will continue to think about it. Can I thank you for your

evidence and thank you to Anthony Smith and Shan Morgan for coming with you, it has been very, very helpful to us in our ongoing investigation. Despite the fact that we did not get any complete and open answers, it has set the tone because 14 days from now people will expect that document on the table.

**Margaret Beckett:** Perhaps it would be helpful if I was to make one final observation, Chairman, because you did not, in fact, ask me about this. What we understand is that it is possible that we will get a report from the Presidency, perhaps on 14 June but not necessarily so, that there will be some preliminary discussions the night before the normal meeting of the General Affairs Council and then there will be the normal General Affairs Council, and then later there may be some actual proposals which will go to the June European Council. I thought it might be helpful to the Committee to know that is how close to the wire we expect any further information.

**Chairman:** We have no doubt that you will do your best for the United Kingdom in whatever negotiations take place, Margaret. Thank you for coming.

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**Thursday 12 July 2007**

Members present

Michael Connarty, in the Chair

Mr David S Borrow  
Mr William Cash  
Mr James Clappison

Jim Dobbin  
Kelvin Hopkins

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*Witnesses:* **Commissioner Margot Wallström**, Vice-President of the European Commission, **Mr Christian Leffler**, Chef de Cabinet, **Mr Tomas Niklasson**, Secretariat General, European Commission, gave evidence.

**Chairman:** Can we now turn to the question of the conclusions of the European Council of Ministers which we decided to investigate, given that we have some difficulties with the process and its relationship to our ability to hold ministers accountable in the councils.

**Q41 Mr Cash:** What do you see as the purpose and the importance of the conclusions of the European Council? I have seen the conclusions before the meetings have even taken place. It seems an extraordinary state of affairs that you should have conclusions which are agreed before the meeting has even begun. It seems a little odd, to say the least. In fact, I would say it is bizarre. What do you see as the purpose and importance of the conclusions?

**Commissioner Wallström:** This is very often done. I think everybody would say it is a bit odd to see the conclusions beforehand and that you would formulate them while you are there or after a meeting but this is how political negotiations are often done. You throw up ideas and negotiate those in the text.

**Q42 Mr Cash:** Nothing seems to change. When the conclusions have been prepared beforehand, even though the meeting takes place, what emerges at the end is invariably the same as what was put out before.

**Commissioner Wallström:** With 27 Member States there is a very elaborate process of preparing through meetings between ambassadors. You start to work on texts and you have experts involved. Slowly but surely you enter into a debate where, in the end, European leaders will need to say, "Okay, now we put our foot down. Now we try to agree on the text which we will then stand up for and defend in public", but with 27 Member States around the table this is a rather difficult and very political process.

**Q43 Mr Cash:** You can see the problem in respect of the question of the mandate which was attached to the last presidency conclusions. This mandate is described as binding upon the Member States by the Portuguese Foreign Minister and by the Prime Minister of Luxembourg and I think by yourself. If that is annexed to the conclusions and there has been no change from beginning to end, you will understand why some people think this was a very undemocratic process.

**Commissioner Wallström:** It is not binding but it is politically binding in that the leaders have committed themselves to this compromise. They have put a lot of prestige and political energy and credibility into this process. It will be very difficult to reopen it. This is not something new. They have been discussing these issues for years now, including in the Convention, and now they understand that you have to find compromise to get everybody on board.

**Q44 Mr Cash:** Everything just rolls on.

**Commissioner Wallström:** No. The Intergovernmental Conference of course will look at all the details and how you put this into a finally consolidated text and how you clarify if there are some words that have to be—

**Q45 Mr Cash:** So it is not binding?

**Commissioner Wallström:** No, but it is politically binding, you might say.

**Q46 Chairman:** We will come back to the question of the text and the draft of the IGC because you did make some comments yesterday. Members always tend to jump ahead so that they can get the first question in.

**Commissioner Wallström:** It is okay.

**Chairman:** It may be okay for you but it is not very good for the discipline of the Committee.

**Q47 Kelvin Hopkins:** Does the Commission aim to use the preparation of the European conclusions as a means to achieve its own policy objectives and priorities? My impression is that the Commission is wilful and wants to hammer through its own decisions and drag the rest of the nations and politicians with it. We have just had a good example in David Borrow's question about the common tax base where the Commission knows that Member States do not want it but they still raise it.

**Commissioner Wallström:** We are bound to follow what we promise to do and that is to further the European project as it is explained in the treaties. Regardless of the treaties, we must not forget that this is our role. We are also supposed to supervise the implementation of EU legislation and that is our basic role. We do this more and more in an inclusive, consultative manner. We have improved our working with Member States. We have these consultations where we invite Member States as well as different stakeholders to give their views. We are

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working more and more in a democratic way but it is not always true that all Member States will be against because then we would know that this is impossible to do. There are different views on this and, with our economies being so intertwined, in a free and open market economy in Europe, you will also hear big companies and others, or governments, saying, “Should we not at least agree on how we do the calculations or how we describe reality, the facts and the statistics, or the way we calculate, for example, taxes?”, so that we have the same definitions and the same starting point. This is very often where European value added is defined: what could be helpful for our economies, for the Lisbon strategy or our market economies to function better, and that has to be in our interest, to further the internal market and the market economy.

**Q48 Kelvin Hopkins:** You spoke about being inclusive. I represent a view which is fairly widespread in Europe, a very critical and sceptical view, about the direction and extent of integration that has taken place so far. Views like mine never surface in the Commission, I presume?

**Commissioner Wallström:** Yes indeed, of course we are looking at the EU sceptics. In many countries, they are the ones who very much shape the debate. If you have media, for example, they are very EU sceptic. It takes a lot of courage to go against that and stand for something that is not exactly the media line or the media policy. We listen also to the very political voices and the EU sceptic voices. You need a lively debate and political controversy in Europe. That helps our democracies to function better. I come from a country, as you know, where this is very much the case and I think it is good that we have that debate.

**Chairman:** I can assure you that this is a very pluralist Committee with many views and different angles on the European project.

**Q49 Mr Borrow:** I want to ask about the relationship between the presidency and the Commission when it comes to the European Council’s conclusions being prepared and to what extent the Commission seeks to work through the presidency to suggest paragraphs and drafting that will appear in the final conclusions of the European Council. Is that something that the Commission would see as its role, to seek to work closely with the presidency that has overall responsibility for drafting the conclusions, and is it seen to be the key player in putting words to the presidency?

**Commissioner Wallström:** As the words assume, they are presidency conclusions but the Commission works closely with the presidency. In some cases they work very closely with the Commission and invite the Commission to do a lot of the work, especially if in the presidency there are small Member States where they need the resources of the Commission. In other cases, they will hold their cards very close to their chest until the very last minute. This is all about how they work and how much they want to give away. Both the European Parliament and the Commission will feed into any

process of preparing Council conclusions or a summit meeting. This is done in cooperation because we could not do it without that. Very often they also invite the President of the European Parliament to come and give views and they will also sometimes need our legal experts to consult and share their views on how things should be prepared.

**Q50 Mr Borrow:** Which model would you say the German presidency had? Which model do you get the impression the Portuguese presidency is likely to have in terms of the closeness of the relationship and the reliance on the Commission?

**Commissioner Wallström:** There is no scale to measure this, to say a lot or a little. It has more to do with whether it is a small or a big Member State.

**Q51 Chairman:** Is it not likely that a very strong, bureaucratic economy like the German economy and the German political structure would be much more likely to have heavy weight in any negotiation with anyone, including the Commission?

**Commissioner Wallström:** Of course.

**Q52 Chairman:** Slovenia, which is the first of the small countries to recently come into the EU, does not have a developed bureaucracy or a developed structure. It is much more likely to be led by the Commission. Is that appropriate given that the Councils are supposed to rotate on the basis of the interest of the national parliaments?

**Commissioner Wallström:** I think the way you describe it is correct. If you are a big Member State with a long administrative tradition, including working on EU issues, you cannot compare with a new, small Member State that comes into the game.

**Q53 Chairman:** We must watch the Commission very closely under the Slovenian presidency?

**Commissioner Wallström:** In all cases they feel it is an advantage to work closely with the Commission because the Commission will also have to follow up the implementation and supervise the implementation. Normally, we try to work hand in hand and be helpful but they will rely probably more heavily on the Council secretariat.

**Q54 Jim Dobbin:** What effect do you think the European Council’s conclusions will have on the work of the Commission?

**Commissioner Wallström:** You mean in general?

**Q55 Jim Dobbin:** Yes.

**Commissioner Wallström:** Do you mean the conclusions on the Reform Treaty?

**Q56 Jim Dobbin:** The conclusions in general but you could expand on the Treaty as well.

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**Commissioner Wallström:** This is what will steer the political work very much in the European Union. We will read it very carefully and we will have to be prepared for—

**Q57 Jim Dobbin:** I am interested in the relationship between the Council and the Commission, how they have dialogue and function together and how decisions of the Council affect the work of the Commission.

**Commissioner Wallström:** In the sense that these are the political priorities and political decisions by the Council, by the Member States, the Commission is fully involved. We are present and we can also give our views. When we have differing views we will also state that but of course it is important to us. A good example is maybe the energy policy. There has to be interaction between the institutions to be successful. Normally, the assessment in the Commission is that small Member States very often have more successful presidencies because they do not have a hidden political agenda or their own interests so heavily weighed into the process. They have to rely very much on the Commission. We will inform, help and support. They are used to finding compromises because they cannot force through their views. We have also had some examples of big Member States recently where there are good presidencies.

**Q58 Chairman:** Given where we started with Mr Cash's question about the conclusions and the fact that they are prewritten and they appear not to be amended at the end of what seems to have been a Council cycle, would it not be better to allay the suspicions of the populations of Europe if we had the minutes of the Council meetings, so that there was a proper minute taken? That would then be reflected, presumably, in what effect it had on the pre-draft conclusions. Why are we doing this? You have 47 pages of conclusions that are pre-drafted. Lots of things can be hidden in those conclusions and they are not excised, despite the debate that goes on in the Council. They come out the other end just the same as they went in. Would it not be useful to have minutes produced of the Council meetings?

**Commissioner Wallström:** As you would guess, I am in favour of the highest level of transparency and openness. I think it is time that we opened up Council meetings and had a proper procedure, but this is for the Council to decide on their own working methods. It is not for the Commission to decide exactly how they are going to take minutes or what kinds of protocols they should have. I also remember that as late as 3.30 in the morning there were things changed in the Council conclusions so not everything was agreed beforehand. There were negotiations until the very last minute between some states and governments because these were very important signals to their audiences. The exact wording is very important because this is what will later on be interpreted and turned into legislation and political action in every state.

**Q59 Chairman:** Would it not be wonderful if we could see those workings in the full glare of public interest, rather than just accepting a process that they do not quite understand, that comes out with decisions? You can see why there might be suspicions, as you will see later in the questions that come under the conclusions of the last Council, about what the process was and what it meant when the drafting was done at the end, because no one can see the workings of the machine. That is why people do not trust it.

**Commissioner Wallström:** I have been both a Member of Parliament and a Minister as well for seven years. I also know that you do not want to be cornered while trying to find a compromise or having to give in. You do not want to do that in public and it will never happen. You have to reserve the right to make compromises, to discuss, to negotiate with the others and you do not always want to do that in public. It is important that Council meetings and the general deliberations take place in public, because otherwise the lunches would be very, very long. What you do not negotiate in this room you will have to take outside, or before the meeting you would have to put pressure on a colleague and say, "Okay, since we now have 26 Member States accepting this, could you not also accept this last attempt to find a compromise?" Member States' leaders, heads of state and government will never accept doing this in public but you have to give them some room for manoeuvre. This is part of the political game and political functioning, but the general debate should take place in public and I think it is the right of citizens to know what is going on, as it is what goes on in committees or in the plenary in national parliaments.

**Q60 Kelvin Hopkins:** It does seem bizarre. It appears to me that a conclusion is drawn up by Commission officials.

**Commissioner Wallström:** No.

**Q61 Kelvin Hopkins:** Well, the draft conclusions beforehand.

**Commissioner Wallström:** No.

**Q62 Kelvin Hopkins:** They do the drafting. That is what officials do. Anyway, after that there is a long discussion with lots of arm twisting and I can understand it being secret. Cabinet discussions are confidential but they do record minutes which are available at some time in the future. There will be a record of what has been said. An EU official came before us a few weeks ago who said that sometimes Prime Ministers come out of a meeting not quite remembering what has been said and say, "Did we really agree that conclusion?" It seems to me to be a bit of decoration to dress up what is being decided by the Commission officials at its heart. That is what it is really about.

**Commissioner Wallström:** This is not drawn up by Commission officials. It is the Council secretariat that prepares the Council conclusions. They will also

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work closely with Commission officials. Hopefully we will give our input and so on. I think it is unavoidable that you will have these sessions with so many Member States around the table. You have to negotiate; you have to compromise and you have to agree on a language which will be very sensitive in one Member State but others will accept it. You will have to look through the text so that you can get acceptance by everybody. This is a necessity in such a huge, enlarged European Union.

**Q63 Mr Clappison:** Could you tell us a little more about this process where the secretariat is drawing up the draft conclusions? Do they share those draft conclusions with Member States?

**Mr Leffler:** Firstly, if we are talking about the European Council, the draft conclusions for the European Council are always drawn up under the direct authority of the presidency. Sometimes the presidency does it itself; sometimes it asks the Council secretariat to do it for them. Usually, they will ask the Commission as well as Member States for suggestions, ideas or even drafting input. They decide whether to take it or not. In the past, until a few years ago, that process was entirely informal and the draft conclusions were not circulated by the presidency until the morning of the second day of the European Council. That was the morning of all the surprises. A few years ago, the Council decided to bureaucratise this process in order to make it more structured and, in a sense, more transparent, maybe not to the general public but to the policy makers in Member States. That is why the draft conclusions of the presidency are now submitted to the Committee of Permanent Representatives, usually about a month before the European Council. They are then reviewed and discussed in COREPER by the ambassadors several weeks in a row and submitted to the foreign ministers for their review before they go to the European Council. From your point of view, I would submit this would be an improvement in how you can scrutinise the process leading up to European Council conclusions because it does mean that you would have or should have the possibility to ask your own government to present to you what the details or main guidelines in those draft conclusions are several weeks before—

**Q64 Chairman:** I think we are all anticipating the next question. If that was the process, did that process take place in the last 6 months? It did appear that the draft conclusions that would be the basis of the IGC came just two days before the Council meeting. Did the process you describe break down?

**Mr Leffler:** In this particular case there was a process known under the somewhat awkward name of the contact point, where the German presidency decided to work through a group of officials designated by each government. Those contact points gave their input and that document which ultimately became part of the conclusions of the European Council indeed came very late.

**Q65 Mr Clappison:** When?

**Mr Leffler:** The outline of the document was given by the German presidency a few days earlier. The actual document, if I recollect correctly, came three or four days before but the outline was a little bit before that. The knowledge broadly of what would be in there was there at an earlier stage.

**Q66 Chairman:** Was it circulated?

**Mr Leffler:** No.

**Mr Cash:** It sounds a bit like a German bounce, to me.

**Q67 Mr Clappison:** When was that preliminary contact with the British government, for example, before Berlin Council?

**Commissioner Wallström:** This was a rather long process where contact points in every government were appointed and there were regular meetings between these contact points. These were to sound out from the German presidency what was possible to achieve.

**Mr Clappison:** I am interested in the negotiations, discussions, call them what you want, which preceded the final text. When did they begin? When did the work of the contact points begin?

**Q68 Chairman:** It would be useful if you have anything to give us.

**Commissioner Wallström:** We had better make sure that we know the exact date when the first meeting of the Sherpas was. I cannot remember the exact date but it was several months ago.

**Mr Leffler:** The first collective meeting—

**Mr Cash:** On a point of order—

**Q69 Chairman:** I do not think we have points of order. It would be quite useful if that could be the subject of correspondence also because the document we have before us which was 19 June says, on the bottom line, that it is revision two. Clearly, either they circulated revision two as the first document or there was a revision one, a first draft that was not revision two. Did that get circulated? According to what has been said by Mr Leffler, the normal process for the European Council is that it would be circulated quite some time—I think he said a month—before. If this is revision two that came on the table on the 19<sup>th</sup>, was there a revision one or a first draft of this document circulated before 19 June? I would like you to respond to us in writing from the Commission on this because this is a very important matter.

**Commissioner Wallström:** Mr Leffler was one of our contact points in the Commission.

**Chairman:** I will give you the number of the document so that you know what you are writing to us about: SM3116/2/07, and it says here “Revision Two”. That was circulated on 19 June. Was there an earlier draft circulated? If you could correspond with us. We are taking you into things which are not your responsibility.

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*(The Committee suspended from 3.27pm to 3.37pm for a division in the House)*

**Q70 Kelvin Hopkins:** Can we turn to Sweden, a country I know and love? In Sweden the government apparently is required to consult the EU Affairs Committee of the Riksdag before every meeting of the European Council and the Council of Ministers. We also understand that the Swedish government is required to give the Committee background documents before Council meetings, including the draft of conclusions. Is our understanding correct?  
**Commissioner Wallström:** Yes.

**Q71 Kelvin Hopkins:** Perhaps you should recommend this to other governments and Member States.

**Commissioner Wallström:** I would not dare to recommend any procedures to national parliaments. This is totally in your power to decide the procedures, but I am in favour of the highest level of transparency and openness.

**Kelvin Hopkins:** We have a new Prime Minister, as you may have noticed, and he is talking about giving more powers to Parliament. It is something I shall suggest to him.

**Q72 Chairman:** I would not wish that you should give advice to any other parliament but I remember when we visited the Swedish Parliament as a Committee when we were in the presidency you had many things to show us that were attractive as ways of behaving. Could you talk us through briefly how the arrangement works in the Swedish Parliament? How does it engage with parliamentarians and how is it used?

**Commissioner Wallström:** Until just recently, the Swedish Parliament used to channel European affairs or proposals from the European Union through the European Affairs Committee. There has been a reform of the way the Swedish Riksdag works and nowadays those sorts of proposals will go to the different committees to do the preparation. It is correct that the Swedish Prime Minister will go to the EU Committee beforehand to get the blessing, the exactness or some criticism about the Swedish position on different issues. I do not know all of the details because this is a recent reform and, as you know—

**Q73 Chairman:** Was it the situation that the draft conclusions were given to the European Affairs Committee before the Council? We understood that the draft, including the draft conclusions, went to the European Affairs Committee.

**Commissioner Wallström:** The conclusions from the Council cover everything, foreign policy and what have you. Those were circulated in the normal way, but the part that concerned the mandate was only circulated very late. I doubt that anybody could circulate this beforehand. This was left to the heads

of state and governments for negotiation in the last hours, so that was only circulated I think on the 19<sup>th</sup>.

**Q74 Chairman:** We have been told by our government in a recent evidence session that it could not disclose draft conclusions because they are classified in the council papers as “Limite” by the Council secretariat. In other words, it is only a restricted circulation list and they could not be circulated to us because of that categorisation. How can the Swedish Government disclose it to the Riksdag if that is the case?

**Commissioner Wallström:** I do not know. You have to ask the Swedish Riksdag. I do not have any information about that.

**Q75 Kelvin Hopkins:** Do you think it would be a good idea if the European Council and the Council of Ministers decided that draft conclusions should not have a security classification? Would that not be much more open and democratic?

**Commissioner Wallström:** Yes, it would be more open but in some cases this was also the wish of the German presidency. They knew that these would be very difficult negotiations and they wanted to prepare the text as far as possible and not have an open debate or misinterpretation. Probably this was their plan. The UK presidency used the same method for the budget decisions, to try to do it as late as possible and through this method of having contact points, sounding the Member States out and only circulating the text when they could see that this could be a possible compromise. This is really for the German presidency. This is the method they chose.

**Q76 Kelvin Hopkins:** You can see why it raises suspicions, that things are being done behind closed doors and there is a wilfulness, trying to drive things through, knowing in particular that there is a lot of scepticism in Britain and in some other countries too. It would just help those who want to go towards more integration in Europe in some ways to have a debate.

**Commissioner Wallström:** I would agree with the fact that this is the back side. People will say the negotiations are behind closed doors and we will not be able to give our voice into the debate. These issues were not new to anybody. These were questions that had been debated and discussed for many years. In every Member State there have also been discussions where each government and each head of state has also clarified that this is our position. This is what we would like to get out of the negotiations. The German presidency was interested in finding compromise and they wanted to have a procedure which would allow that.

**Q77 Kelvin Hopkins:** If the issues have been discussed for so long, surely there is even less argument for keeping the draft conclusions secret. Obviously, where there is a round table discussion between Prime Ministers, one can understand they want to have a bit of confidentiality in their discussions, although officials are there and minutes are taken and there is accountability ultimately to

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their own Parliament. It increases suspicion. For people like me, it plays to our wish which is to criticise the European Union.

**Commissioner Wallström:** Maybe because they think this will be misused by those who do not want to see more European integration. I am not the right person to ask. You have to ask the President's representatives. We try to do it in the Commission through a very open, inclusive procedure. We invited six society organisations to discuss with them before the Berlin Declaration because we saw that the Berlin Declaration would probably come as a compromise in the mandate. We also invited the leaders of the European political groups in the Parliament and we discussed with them: "What are your concerns? What do you want to see in the Council conclusions?" Generally, I believe in openness and transparency but they identify this as a very difficult compromise. They wanted to make sure that it was well prepared by the contact points, by sounding Member States governments out and then to leave it for the leaders to negotiate the last formulation.

**Q78 Kelvin Hopkins:** It has been portrayed as a stitch up master minded by the Germans and that is not good.

**Commissioner Wallström:** No. As you could see, until the very last moment there were discussions about the Polish interests and what they wanted.

**Q79 Mr Cash:** They were worried about the German position.

**Commissioner Wallström:** There was also discussion in other Member States. It was an open debate until the last moment.

**Chairman:** Can I suggest it might be useful to read the evidence session we had with our Minister? I can assure you it is not worth reading the evidence sessions we had with the previous European Minister or the previous Foreign Secretary because either they did not know anything or they would not tell us anything. We had a much better session just recently with the European Minister who explained the process to us as slightly more sterile than you have described.

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## Wednesday 14 November 2007

Members present

Michael Connarty, in the Chair

Mr Adrian Bailey  
Mr David S Borrow  
Mr William Cash  
Mr James Clappison  
Ms Katy Clark  
Jim Dobbin  
Mr Greg Hands

Mr David Heathcoat-Amory  
Keith Hill  
Kelvin Hopkins  
Mr Lindsay Hoyle  
Mr Bob Laxton  
Angus Robertson

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*Witness:* **Rt Hon Lord Williamson of Horton GCMG CB**, a Member of the House of Lords, gave evidence.

**Q80 Chairman:** Good afternoon Lord Williamson. I do apologise for having to cancel a previous arrangement to take evidence from you; it must have been a bit taxing for you to be put on hold, but I thank you for being willing to come and see us again and help us complete our inquiry into the Conclusions of the European Council and the Council of Ministers. I believe you wish to say a few words to the Committee before we start.

**Lord Williamson of Horton:** I am very happy to be here; I am quite happy to try to help the Committee. The first point I do want to make is that I think it is very important to make the distinction between Presidency Conclusions—it is done in some of the documents, but it is very, very, important—and, on the other hand, Council Conclusions and Conclusions of the heads of state and government in the European Council. They work quite differently. I was present at many of these occasions and they did work quite differently. There have been changes subsequently but I think still the method of preparation and the way they are treated and the force they carry is different. I think it is important to keep that in mind. My second point is—as I did explain to you when I wrote to you—that I did have very considerable experience of the preparation and use of Council Conclusions and in particular the European Council Conclusions. I just happened to be there, if I can put it like that. However, I am actually past my sell by date; that is the point I want to stress although I have read all the documentation and I know how it operates now by reading the documents. Of course when I was there it did not operate quite in that way because I ceased to have direct responsibility within the EU in 1997—which was a long, long time ago—and I am a pretty well-established parliamentarian now so I see things differently. I nonetheless did have a lot of experience at the time and if you want to contrast the way it was done and how the changes have been made I think I can probably help you a bit on that. I did attend every summit meeting in the European Council for 10 years; I was in the meetings; I was present at the drafting and Conclusions there. I think I am the only one ever to have done that because some of the ministers and heads of

government did not survive the full 10 years, but I did. I was there a lot so insofar as I can talk about that I am very, very happy to do so.

**Q81 Chairman:** Thank you very much. I think it is important that people do recall also that you were Deputy Secretary in the Cabinet Office so you may have a government view from the past as well as the period you spent as Secretary-General of the European Commission from 1987 to 1997. If you need to reply drawing on your personal experiences rather than giving your opinion about what you have read up to date that would be most helpful. A basic thought in our minds is that there appeared to be no minutes of the meetings of the European Council. Many of us come from a tradition where you have meetings and the transactions are recorded in the minutes. The meetings clearly are important. We also heard a rumour that there was a process of taping some of the interchanges and exchanges in the Council but in an informal way. Could you possibly enlighten us on that? From your experience do you think that having minutes would have improved things if there was a formal record?

**Lord Williamson of Horton:** First of all, at least all the time that I dealt with it there were no minutes of the European Council. I was very much struck by it because I wrote part of the minutes of the United Kingdom Cabinet in one week and I was moved over to Brussels immediately thereafter and found there were no minutes at all for the European Council, but there were not. As, I think, Sir Stephen Wall said to you, it is said that there was a tape. I actually believe there was a tape but I never saw it either and he never saw it. I think there was one so somewhere on a tape there was a record. There were no minutes and there was said to be a tape. It is of course true that most of the delegations get their own record because the official of the Council did come out of the meetings of the European Council at regular intervals to the so called Antici group (which you have had references to here which was representatives of the Member States themselves) and they had a sort of brief round up from the Council Secretariat person and

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so they wrote it out no doubt and kept some sort of a record and also kept a bit of a check on what their heads of state and government were doing.

**Q82 Mr Cash:** I am fascinated by your response on the recordings because if you did not know as Secretary-General of the Commission—and I suspect you pretty well knew everything that was going on in the procedures, et cetera, cetera—then the question that comes to my mind, and Stephen Wall also hinted that he thought there were recordings, is why you would not know (maybe it must have been something they did not want you to know); the second thing is whether in fact there is any way in which we could follow this up by finding out who did know and ought to know.

**Lord Williamson of Horton:** First of all you asked me directly about minutes which I interpreted in the English sense, that is to say a proper written record of minutes and there was nothing like that. The individual Member States no doubt have their own record and as I was present at these meetings I of course took some notes for the Commission obviously because they liked to know what was going on, but that was not an official record. I think that if indeed there was—as I believe there was—a tape you could ask for the tape if you wanted to. I do not see why not. The tape was recorded by the Council Secretariat; they owned the tape and they were present. Whether they consider that so secret that they will not tell you anything about it I do not know, but I imagine that the tapes still exist, at least for many, many years, of the European Council.

**Q83 Jim Dobbin:** Lord Williamson, we commend your stamina over those 10 years. Some of us have been on this Committee for 10 years and we know how patient you must have been. What do you see as the purpose of the Conclusions of the European Council at those Council meetings?

**Lord Williamson of Horton:** I think the essential element at the time I was dealing with this matter was that the European Council did have much greater room for manoeuvre in the way in which it dealt with various issues. I will explain that because obviously in the Council a lot of the things that came up were with a view to legislation and therefore there was a fair amount of documentation and furthermore there were armies of officials of the various Member States present in or around about the Council meetings. In the European Council it was completely different. I was amazed when I first went; I did not expect it like that at all. In the European Council there are only—at least there were when I was there—the heads of government, the foreign ministers and on certain occasions the economic ministers and an extremely small number of officials, none of them national officials. No national officials were permitted in the European Council although if they had a red pass, as you read in your documentation, they could occasionally come in and give a message and hang around a bit if they felt like it, but that was not the normal procedure. There were no national officials

in the European Council. In consequence the European Council had more room for manoeuvre, for negotiation in reality among themselves, more discretion to decide or not to decide and to explain themselves without having to explain that their officials gave them this or wanted to do that. The operation of the European Council leading to the Conclusions was a much more flexible and mobile one. Whether that was good, bad or indifferent I do not comment for a moment. It was different and consequently when the Conclusions came out they had a different sort of background to them. As to the Conclusions they were of extreme political weight. If there was a Conclusion from the leaders of all the Member States they had very high political weight and I am sure the Member States themselves and certainly the Commission did attach very great importance to that.

**Q84 Mr Cash:** In terms of the Conclusions what do you feel about the fact that they appear to have been written before the meetings take place?

**Lord Williamson of Horton:** Can I comment quite specifically on that in relation to the past period and then the more recent period? In the past period that is to some degree true but my impression was rather more nuanced than that because the Conclusions of the European Council, some part of them certainly may have been written beforehand, for example some of those that relate to foreign affairs which they did not go over at all, let us say, in the European Council. However, the conclusions themselves did reflect the discussion; they were almost unique in public business to actually reflect the discussion. The Conclusions which were agreed by the heads of state and government normally on the second day and which were drafted overnight on the basis of some text did reflect as far as possible the discussion in the European Council. To that degree they were the truth, if I can put it like that. More recently, of course, since Seville in 2002 there has been a much fuller preparation of the Conclusions beforehand as has been explained to you and they go through a certain procedure. To that degree I would say that they are more fully prepared in advance than they were in the past.

**Q85 Mr Cash:** Does that mean stitched up?

**Lord Williamson of Horton:** I cannot speak for post-1997; I do not know how far they are stitched up. However, they have been subject to scrutiny and possibly change by quite a large number of public servants in lots of countries. You can draw your own conclusions; I do not know about that.

**Chairman:** In a more respectful approach to this I would say that “fully prepared” is quite enough to be said at the moment. David Heathcoat-Amery?

**Q86 Mr Heathcoat-Amory:** Lord Williamson, could I take a specific and very recent example of a European Council and the Conclusions that followed from it, and that is the one held on 21 and 22 June which effectively revive the European Constitution, although it is now called the Reform Treaty. We know from other evidence we have

taken that Member States only saw a draft of the new Treaty two days before, on 19 June. Then it went to the European Council which sat on 21 June. The Conclusions of that Council—I have a copy here—adopted that draft pretty well completely. More than that, the Conclusions say: “The IGC (the Inter-Government Conference) will carry out its work in accordance with the mandate set out in Annex 1” and Annex 1 says, “The present mandate will provide the exclusive basis and framework for the work of the IGC”. That is to say that the draft that was only available on 19 June is mandated by the Council to form the exclusive basis for the Inter-Governmental Conference. Do you have any comments on that process because it does seem to some of us that not only was it all highly secretive but that it must be unusual for a European Council, however powerful, to tell an IGC that it has to adopt the draft in total?

**Lord Williamson of Horton:** On your last point I agree with you; I was quite surprised to see that myself. On the main point, that is to say the timing of the appearance of the text and its examination by the European Council, I do not know of course how far that text was being examined elsewhere in lower committees. I do understand of course that it went on the timing you stated to the European Council, but I do not know whether it was examined. The normal procedure for European Council Conclusions is that under the Seville arrangements there is a reasonable time for looking at documents; there should be, according to the proposed timing, that is to say annotated agenda approximately six weeks ahead and then successive drafts and so on and so forth. Whether that was followed through in the case of the amending or reforming treaty—I see two titles appear for that nowadays—I am afraid I do not know. If I may say so, that may have been not done the way you might expect it to be done in accordance with the European Council Conclusions timing set out in the Foreign Office paper sent to you; that may not have been the case, I do not know. I do not want to divert from your key point but I do know, because I was present, that on earlier occasions when there were drafts of a treaty being discussed in an IGC, for example at Amsterdam, the text was distributed pretty well in advance but the text was in fact in the same way presented to the European Council and it was agreed by them in the full text (of course it had to be adapted for language). This is the Amsterdam Treaty Conclusions, the actual one which was handled in the meeting, and that just states that they agreed it with a reference to the other document which did contain the exact text. They saw that at the last minute but presumably their officials had seen it—I know in this case the officials had seen it—and then they agreed it. I do not want to go over this, but I just brought this one along for one reason only, just to show you one point how it works. This is the actual text that the chairman had in front of him. The most interesting thing about it is that it has a reference and it has “Rev 3” meaning that these Conclusions of the European Council, even at this late stage, were at

Rev 3, but it also has the time at which this one was issued which is 0200 hours. I thought I might just mention that to you as demonstrating how these texts were created during the night and Rev 3 came out at 0200. It was this text which did have annexed to it or cross-referenced to it the Amsterdam Treaty.

**Q87 Mr Heathcoat-Amory:** What is the status of an Inter-Governmental Conference if Presidency Conclusions can really take over that job and, certainly in the case of the June Council this year, instruct the IGC to take over the mandate on an exclusive basis? Surely it means that this highly secretive body where there are no minutes published, where the public are not admitted and, as you said, not even national officials are present, are effectively not necessarily law-making but they are treaty making in great detail. In the case concerned it is obviously much worse because there were only two days for anyone else to have a look at it. We know that this House and this Committee had no input at all. It is even rather doubtful, we gather, that any other government department had any input (although we have not had that confirmed but that is our belief). What do you see the relationship between the European Council and the IGC when it is automatically rolled over in the way you describe?

**Lord Williamson of Horton:** I would just repeat my point, I do not know in this current case how far there was examination by officials before we got to the stage to which you refer. I do not know that so I cannot comment on that. In the case that I did experience there was detailed examination for a long time before it got up to the top of the tree. As to the point, I have already stated here that I was surprised to see a reference that this was to be followed through exactly, that the Presidency and the European Council wanted to follow it through exactly in the Inter-Governmental Conference. If you look at the original Treaty, the Inter-Governmental Conference is a specific part of the structure; it is not part of some other structure—a bit of the Council or anything like that—the Inter-Governmental Conference is set up formally, there will be a formal appointment of the Inter-Governmental Conference with a view to preparing the draft for the treaty or amending treaty which has to be passed in due course to Member States for ratification or not. It is not really part of the European Council in that sense. In my view they are different things.

**Q88 Chairman:** With the Amsterdam Treaty, which was the last treaty that was considered, the construction of the actual document, the Treaty, was that done in public? Mr Heathcoat-Amory has said that the mandate was created and produced at two days’ notice, but clearly the bodywork of the Treaty was already prepared off camera. Was the preparation of the Amsterdam Treaty done in a way that was at least open to be seen by the

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parliaments and the governments, which differs obviously from what we believe has happened up to now with this Treaty?

**Lord Williamson of Horton:** In the case of the Maastricht and Amsterdam Treaties the work on the preparation of the Treaties—that is to say, changing the text and all the other things, and cutting things out and putting things in—was normally prepared in the first instance by a group of representatives of the Member States, also two from the Commission and two from the European Parliament. They were the so-called group of personal representatives. I know about them; I was one of them in both cases. The preparation took an awful lot of time. I have already told the House of Lords and I will dare to repeat it here: my wife has decided to put on my tombstone when I die my age less one year lost in the negotiation of the Maastricht and Amsterdam Treaties which gives you an idea that the preparation at the lower level took an awful lot of time. Certainly these texts existed; these texts were examined very carefully by the Member States. Every Member State had that information. There were not people from the greater public of Europe sitting in the meetings, but the Member States had it insofar as they made it available to their various groups or their people or their parliament. I do not know what they did. It would not worry me at all if they did; I do not mind if they did, it would seem to be quite a reasonable idea. Certainly it existed over a long time. As I say, it seems to me that the case that has been raised here, which is the most recent amended treaty, did not really run on quite that system.

**Q89 Mr Clappison:** In this work which took you a year beforehand as a personal representative presumably you were not just acting of your own volition, you were reporting back to ministers, were you?

**Lord Williamson of Horton:** This was a group of personal representatives. They were actually nominated by their heads of government or their foreign secretaries I think. I was a representative on the Single European Act for the United Kingdom but at Amsterdam I was a representative for the Commission. I was nominated by the President of the Commission and I reported, with my colleague, to the President of the Commission where we were. We circulated within the Commission the text when the text arrived. It went all over they place. They reported back to their governments; they were appointed by their governments and they reported to their governments. What happened after that I do not know.

**Q90 Mr Clappison:** That was over the course of the year.

**Lord Williamson of Horton:** Yes, that was over the course of the year. It is quite a long time because people wanted to put in some clauses, other people did not like them so they went in then they were taken out or they were revised. It took quite a long time.

**Q91 Mr Cash:** When we had Stephen Wall—you have read what he said and you may have read the transcript as well—he raised another very interesting question which was whether or not the Presidency Conclusions would be regarded as legally binding. This is a very important question in relation to the issue that Mr Heathcoat-Amery has just been discussing regarding the nature of the mandate in the context of the formulation of the treaty. The Portuguese President, when he was Foreign Minister for Portugal before the Portuguese took over, clearly stated in the press that weekend that the Conclusions of the mandate were legally binding or they were binding in the sense that everyone was going to have to obey them. To me whether you call it politically or legally it comes to the same thing. The question that concerns me is whether in fact we have now got into a situation where they are using what is no more than a political caveat, as it were, to create a legally binding context in which they then carry forward a reform treaty, for example. Mr Heathcoat-Amery's point, which I very much agree with, is that it is really becoming intolerable that you should have this degree of secrecy and lack of transparency and that it should then effectively become legally binding and then we are left as a parliament in a position of not being able to do anything much about it. What is your view about that?

**Lord Williamson of Horton:** First of all, I am going to answer your question directly. Insofar as there were Council minutes at some stage on these things they are not legally binding, for example, on the Commission; the Commission could do something different. Now we come to the European Council. In the European Council they are all full members, including the President of the Commission (he is a full member of the European Council) so if they agree it there, if the President of the Commission agreed it and if I were there I would conclude that that was binding.

**Q92 Mr Cash:** Legally binding?

**Lord Williamson of Horton:** I am not quite sure. You carefully said at the end “legally or politically”. I am not quite sure about that, but it would be a commitment which had been undertaken by the head of government of each state and by the President of the Commission and they were bound by it. That, in my view, is the case.

**Mr Cash:** Not under Article 148.

**Q93 Chairman:** Mr Cash, you keep coming in; let the witness answer the question.

**Lord Williamson of Horton:** I reply that it is binding. If you ask me whether it is legally binding, I am not quite sure about that. I would have to think for a moment about it.

**Chairman:** We may come back to that question but we are actually here to look at the Conclusions of the European Council and Council of Ministers and not actually the Reform Treaty, although it is tempting. Kelvin Hopkins?

**Q94 Kelvin Hopkins:** The whole process seems rather extraordinary when one is used to the way we operate in Britain. In your experience—it is a little time ago now, I appreciate—could the Commission or the Presidency manipulate the preparation of the European Council’s Conclusions to get binding commitments to a policy before it had been properly considered by the Council of Ministers?

**Lord Williamson of Horton:** I have read quite a bit of the evidence and I noticed the word “manipulate” turned up quite a lot. I do not really agree with that. The state of play is that the Councils of Ministers are working all the time in their field—transport or whatever it might be, they know all about it—and if it comes up to the European Council theoretically it might be possible but I do not think that on issues like transport policy you would expect to see the European Council as it were by-pass the Transport Council and do something completely different. I do not think that is the way it is going to work. I repeat, in the Conclusions of the European Council as I knew it there were basically two types of things. There were things that were self-evident really and they went through on the nod; they were seen but they went through on the nod. It is possible that some clever person might have built something in there which others did not like, but it was pretty rare. The other things were those which were discussed at the level of the European Council, they were the important things. They were discussed in detail and the record did reflect what was said there. That was seen, of course, by the Presidency and by the Secretariat of the Council and by me when I was representing the Commission. I do not think it would be possible to completely by-pass a Council; people would object and say, “You cannot do that, that is still in the Council”. It is quite true that from time to time people added things in—not terribly important things perhaps—because they wanted them in the Conclusions. An example is Hong Kong. It was added by the British because they wanted to have a declaration of support from the European Summit about what we were doing in Hong Kong. It was added in here by the British. Those sorts of things could be done but by-passing or manipulating may be a little bit exaggerating the way things worked in practice.

**Q95 Kelvin Hopkins:** I must say I have been around political bureaucracies most of my life and I have written thousands of words myself for conclusions and minutes and whatever, and it is more subtle than that. It is not by-passing and crudely pushing something through, but someone somewhere has the blue pencil and says, “We cannot have that and we have to have this” and ministers, prime ministers, busy people nod things through. You even said yourself that at your very elevated level there were people behind you although you were not clear who they were, who were actually drafting words. It strikes me as being very mysterious and very subtle, not always crude, but they get their way.

**Lord Williamson of Horton:** One point I would make is that every time I attended the European Council—I attended more than anyone else alive today I think—the draft Conclusions were seen by the Council and they did go through them all. It is quite true that quite a lot of it was nodded through in the sense that they went through very quickly, but they always went through it all. If there were things which were being done which were, let us say, favourable to one country and unfavourable to another because someone had slipped them in in blue pencil, there was a possibility always for the representative of that country to say, “No go; take it out”. It was not completely secretive. The preparation was as described, but once it went before the European Council they did go through it. Practically the whole of the second day of most European Councils was devoted to the examination of the Conclusions of the Council. The first day was discussion then dinner and all that, and then examination of the draft Conclusions of the European Council in the form like this one, usually with 0200 hours or whatever it is on it.

**Q96 Mr Hoyle:** Lord Williamson, in the case of the European Council’s Conclusions did you often find that they were too long and deliberately went into too much detail?

**Lord Williamson of Horton:** The answer to that is yes, they were too long and they went into too much detail, particularly on the foreign affairs side where there was a tendency to believe—which I do not entirely share myself—that if you wrote in words of incredible encouragement to this or that project it would actually alter the world. People did tend to write in a lot about what was happening in Albania or somewhere else and felt it was going to have an influence when it probably had very little.

**Q97 Mr Hoyle:** You have mentioned foreign affairs and you did mention Hong Kong and the plight of Hong Kong. Did you find that Spain used the Council’s Conclusions as a way against Gibraltar and actually clubbing Gibraltar to death because we seem to find that they were blocked on nearly every occasion by Spain and the UK Government had to give in in the end because it just stopped the whole of the European truck moving on?

**Lord Williamson of Horton:** First of all I think Sir Stephen Wall referred to the Gibraltar affair in his evidence to you; I read it. I do not remember it very clearly myself but I do recognise that there was a dispute about whatever might be included in the Conclusions in relation to Gibraltar and that was, of course, between the United Kingdom and Spain. It was resolved by striking out quite a lot of things in the end. There are cases like that but I do not think that there are very many cases where the leader of one of our great nations, such as the United Kingdom, lets it go through because otherwise something awful is going to happen. There is no reason why it cannot be blocked. There is at least on record one occasion when there were no Conclusions of the European Council because they could not agree on them. They just had none.

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The presidency made some announcement—I think it was the Greek Presidency—about what the general points where which had been discussed but there were no Conclusions because some people said they were just not having this.

**Q98 Mr Cash:** I am interested in what use the Commission makes of the Conclusions of the European Council and just to go back to the questions we have just been talking about, in relation to achieving objectives this question of the mandate and the question of achieving what the Commission wants and also at the same time what the presidency Conclusions produce. If the mandate is binding then it seems to override the whole business of Article 148 of the Treaty which provides for an Inter-Governmental Conference. Can you elaborate on that and explain to me how, within the Commission, they would see the Conclusions of the European Council and what use they would make of it?

**Lord Williamson of Horton:** First of all I agree with the evidence that has been given to you by the Foreign Secretary on the Conclusions of the European Council and indeed that the Councils are an aspect of the inter-governmental nature of the European Council. They represent the views of the Member States and not very directly at all of the views of the Commission. At least at the level of the heads of government when I dealt with matters the Commission was extremely attentive to the views of the heads of government, I dare say more attentive than they were to some of the things that might happen in the Council because they always reserved the right of proposal in relation to some of the things that came up in the Council. In the European Council—which was the top body—they were extremely attentive and expected to follow the line which was being taken in the European Council. In my experience the Commission, although it had quite an important role under Jacques Delors in presenting the issues—Jacques Delors often presented the issues to the European Council orally, he said, “This is what it is all about” and he went to great care to prepare that fairly—otherwise the Commission did not have a big role on policy in the European Council in my view. It has quite an important role in indicating whether or not some proposal which had to be implemented would, in the Commission’s view, be practical. I will not worry you with this document any more, but I did have it in front of me at the time. There is not much marked on it, but what is marked on here are the various things where the Commission was asked to do something in the terms of implementing a decision. I marked those down because when I was Secretary-General I reported the next day to all the directors general of the Commission on the conduct of the meeting, what happened and what the Commission had to do (I put it like that, what the Commission had to do) because these Conclusions had to be carried out. That is the way it worked, if I may say so. The Commission did not have a great, over-powering policy role, or if it did I never detected it, but it

did have a role of ensuring, as far as possible, that decisions which had to be implemented could be implemented.

**Q99 Mr Bailey:** I was going to ask you if there were ever any meetings of the Council of Ministers where there were no Conclusions but, demonstrating great prescience, you actually answered that question. I will just amend it slightly. You have mentioned one occasion, have there been other occasions? Secondly, why, in the event of these circumstances, were the Conclusions not amended to get a degree of acceptance?

**Lord Williamson of Horton:** On the first point in relation to the Council I am quite sure there were a good number of occasions when there were no Conclusions whatsoever. In the European Council I actually do not remember any other occasion—there may have been but I do not remember it—where there were absolutely no Conclusions because they could not get there. You ask why did they not just go on until they could get there, well I was present in that European Council and perhaps I should say rather rashly that being present it did not look as if they were ever going to get any Conclusions on some of the points and no doubt the presidency drew the same conclusion, that they were not going to get there so they were not going to have any Conclusions, so it just fell and some of these things vanished, others came back no doubt at a later date. There are occasions when it is not possible to reach an agreement.

**Q100 Mr Laxton:** On those occasions when agreement was able to be reached by the Council of Ministers, how were the Conclusions prepared?

**Lord Williamson of Horton:** On the Council originally—in the days when I was there—the Conclusions of the Council were prepared normally in the official committees which exist all over the Council, COREPER and specialist committees on transport or agriculture or whatever it might be. They prepared broadly the Conclusions, not necessarily in great detail. Those Conclusions were tidied up by the secretariat general of the Council. The secretariat general of the Council was the master of the text on Conclusions of Councils and they, with the presidency then had them in front of them and obviously tried to reach agreement in the Council coherent with those draft Conclusions. The draft Conclusions would normally be circulated fairly well in advance; people knew, if it was not a terribly controversial point, roughly where it was. The Commission’s role was not very great on those things. Some areas like agriculture, owing to the remarkable policy known as the Common Agriculture Policy, the Commission did have quite an input into the type of Conclusions on agriculture but by and large it was prepared in the official committees and it worked its way up then in the hands of the secretariat general of the Council and the presidency with a view to agreement on the floor in the Council. I do not think it was terribly complicated; it worked pretty well. Obviously some of the things that were being discussed would

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14 November 2007 Rt Hon Lord Williamson of Horton GCMG CB

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actually, on some occasions, be legislation. I do not want to make much of this but, for example, in the days when innumerable regulations were needed to implement the agriculture packages there were quite often occasions when there was not only agreement on Conclusions but they did actually agree—they could do that, they were a council—the texts of some of the regulations such as those setting a price for mulberries or some other interesting agricultural product. They could agree those if they wanted to on the floor of the Council. If they thought it was too complicated it would be agreed a bit later on the basis of the general Conclusions.

**Q101 Mr Borrow:** Coming back to draft Conclusions for the European Council, in the German Council those draft Conclusions were only available very late in the day for the Member States of the European Commission, but would it be possible, given the traditional way in which these are prepared, for draft Conclusions to be available to the committees of the national parliaments for scrutiny in the same way as most other legislation is available for scrutiny by the national parliaments? In other words, in the German situation it was very difficult; would it be possible to have a situation where draft Conclusions have been prepared and they would be available to this Committee and our sister committee in the other place to give scrutiny prior to the European Council when ministers have to make a final decision.

**Lord Williamson of Horton:** I have been here quite a long time now and I have been waiting for that question ever since I first arrived. I know it appears in the documentation here and I know it is of interest to the Committee so I expected it. I will make one comment *en passant* and that is of course that I have myself been on the European Union Committee of the other house and I have been extremely keen on the matter of scrutiny of texts all the time I was there and I still am. Coming back to the specific point, as the system is now constructed post-Seville obviously the intention is that the presidency should produce drafts of the European Council Conclusions about three to four weeks before a European Council. That is what they say they are going to do and what the Foreign Office believes they are going to do apparently. They may not be final, of course, but they will be pretty well final. They exist and go to Member States so if you want to ask me a technical

question: could such draft Conclusions be examined by a committee of one or two houses, in my view yes, that is a decision for the Government of course. If the Government wants to have draft Conclusions examined in a parliamentary committee on the sort of timing we are talking about I think it could be done because they are supposed to be available fairly well in advance. The agenda—which gives you a good idea of what is happening—should be available even earlier than that. It is possible but it is a political decision: does a government of a member state—this one, for example—want to have the draft Conclusions looked at in a parliamentary committee in advance or do they think it is better to have other means of informing parliament which they have referred to in some length in their documentation.

**Q102 Mr Borrow:** Would that be up to the governments of each member state to decide to disclose that draft Conclusion?

**Lord Williamson of Horton:** It is in their hands; it is given to them. In my view it would up to the government of the member state. There might have to be a little agreement about whether they could distribute something which was classified *limité* (which is a pretty low classification, I have to say), but they would, after all, not be making them available a hundred per cent to the population, they would only be making them available on this scenario to a parliamentary committee so to that degree they would remain limited in circulation.

**Q103 Chairman:** Lord Williamson, thank you very much for your evidence both in allowing us to see the process through the eyes of someone who has served on both sides of the administration. I think you have given us some perceptive comparisons between the process that we have just seen in the latest treaty and the one that you obviously had quite a bit of knowledge of at Amsterdam and I am sure that will be very, very useful to us. I am very pleased to hear your words that it would not be the end of the world if a government actually shared some of its draft treaty conclusions with a committee such as this in a privileged and confidential manner. Unfortunately we do not seem to have convinced the Government of that right at this moment, but thank you for attending. I apologise again for having to call you back.

**Lord Williamson of Horton:** Thank you for your courtesy. I am very glad, at the age of 73, to know that I can still remember quite a lot of it.

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# Written evidence

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## Memorandum submitted by Julian Priestly, Secretary-General of the European Parliament

I refer to your letter of 7 February 2007 in which you request a written contribution from us to assist the work of the European Scrutiny Committee, chaired by yourself, on the drafting of the conclusions of European Council meetings.

In accordance with the institutional framework defined by the Treaty, it is the Presidency-in-Office of the Council that is responsible for drawing up the conclusions of summits of the Heads of State or Government of the Member States and the President of the Commission, which are held more or less once every quarter. Accordingly, it is the Presidency-in-Office of the Council, assisted by the administration of the Secretariat, that coordinates to this end the preparatory work of all the structured bodies of the Council of the European Union, particularly the specialised working groups (Antici<sup>1</sup>), the Committee of Permanent Representatives (Coreper) and the General Affairs and External Relations Council (GAER).

Parliament's involvement in this process, from the publication of the agenda approved by GAER for a European Council meeting, as stipulated, at least one month before the summit, is very indirect. During the part-session preceding a European Council meeting, Parliament holds a debate with—as a general rule—the Minister (for Foreign Affairs) who holds the Presidency-in-Office of the Council concerning the preparations for the summit. This debate is often wound up by adopting a resolution whose content is political.

At the beginning of meetings of the European Council—although this is not a Treaty requirement—it is traditional for the President of Parliament to deliver to the members of the European Council an address based on the latter's agenda. This is followed by an exchange of views, the substance of which is not reflected in the conclusions of the Presidency.

Lastly, normally during the ordinary part-session<sup>2</sup> following a meeting of the European Council, Parliament enters on its agenda an exchange of views in which the President of the European Council (or otherwise the President of the Council) and the President of the Commission generally take part, in order to comply with Article 4(3) of the Treaty: “The European Council shall submit to the European Parliament a report after each of its meetings . . .”. This debate is likewise often wound up by adopting a resolution in plenary.

In terms of scope, the conclusions of the European Council have certainly tended to indicate with growing precision the European Council's overall view of the issues on the European Union's agenda and in effect they also increasingly set forth a legislative programme by more and more frequently addressing clear messages to the legislative institutions as to the progress which it is desirable to make in the various sectors. This being so, the conclusions may be regarded as a factor in the coordination of the legislative process which is necessary in order to carry out the commitments given under the Interinstitutional Agreement on “Better Lawmaking”.

The conclusions are undoubtedly a valuable source of information also for the departments which assist Parliament's work in order, in particular, to facilitate the determination of deadlines for current procedures, the procedural profile of the issues mentioned in the conclusions, and any “virtual” or future proposals or procedures.

Being the product of a method internal to another European institution, the conclusions reflect a working method and a drafting process typified by the procedures of the bodies and authorities of the EU Council. Whether these procedures are intergovernmental or diplomatic, the measures adopted by the Council to promote openness and transparency by amending its Rules of Procedure and applying Regulation 1049/2001 on access to the documents of the institutions make it easier to follow the drafting of the conclusions at a preliminary stage.

This is an approach to the questions in the questionnaire annexed to your letter. I hope that it will make it possible to contribute more satisfactorily to the work of the committee which you are chairing. Naturally I will be pleased to provide any other or additional information which you may require.

*February 2007*

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<sup>1</sup> The Antici group derives its name from an Italian diplomat, Paolo Massimo Antici, who, during the Italian Presidency in 1975, institutionalised the meetings of assistants of the Permanent Representatives to the European Union (which had been held informally for years) in order to prepare Coreper's agenda.

In close collaboration with the Council and Commission Secretariats, the Antici officials draw up the agendas for Coreper 2 and the associated Council meetings, coordinate the legislative work resulting from them, and take decisions on all aspects of the general functioning on the Council.

During European Council meetings, the Antici officials are required to take notes on the proceedings, in accordance with what is reported by the Council Secretariat official, and forward them to the respective national delegations; this is the only record—a kind of summary in broad outline—of the debates at the Summits of Heads of state and Government, which are held behind closed doors

<sup>2</sup> Extraordinary part-sessions are sometimes held for this purpose.

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**Memorandum submitted by Catherine Day, Secretary-General of the European Commission**

Thank you for your letter of 7 February enquiring about the preparation of European Council conclusions.

According to the rules decided at the Seville European Council in June 2002, the meetings of the European Council are prepared by the Committee of the Permanent Representatives—COREPER (Part II) and by the General Affairs and External Relations Council (GAERC). At least four weeks before the European Council meeting, the GAERC, on the basis of a Presidency proposal, draws up an annotated draft agenda. During the weeks preceding the European Council meeting, draft conclusions are prepared on the basis—where relevant—of contributions by different Council configurations. On the eve of the European Council meeting, the GAERC holds a final preparatory session and adopts the definitive agenda.

The Commission is fully associated to this preparatory process in the context of its participation in COREPER and Council meetings. It contributes to the discussions on the annotated draft agenda as well as on the draft conclusions. It also maintains informal contacts if appropriate with the Presidency throughout the process. On the eve of the European Council meeting, the President of the Commission may address a letter to the Heads of State and Government stating the Commission's views on the expected outcome of the summit. Finally, the President of the Commission—in his quality of member of the European Council—participates to the Summit itself and aims at promoting the general interest of the Community and helping to build a consensus.

I trust that this will clarify the role of the Commission in the elaboration of European Council conclusions.

*March 2007*

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**Memorandum submitted by Sir Stephen Wall (UK Permanent Representative to the European Union, 1995–2000; Head of the European Secretariat in the Cabinet Office, 2000–04)**

My evidence will concentrate on the significance of European Council conclusions in recording decisions at the highest level in the EU and in setting the agenda for future decisions.

Although the European Council does not take legislative decisions, its conclusions, because they are taken by consensus of the Heads of Government, bind the member states politically. For example, the conclusions of the European Council on EU financing reached under the British presidency in 2005 had to be translated into legislation formally adopted by the Council of Ministers but the shape and content of the legislation had been determined by the Heads of Government as recorded in their conclusions.

That does not mean that there is no room for subsequent argument. It is difficult for a member state successfully to challenge the conclusions themselves after they have been agreed. The Council Secretariat are the guardians of the conclusions in this respect. It was unusual but not unknown, when I was the UK Permanent Representative in Brussels from 1995–2000, for a member state, in the Committee of Permanent Representatives (COREPER) to challenge an aspect of the conclusions at the first meeting of the committee after a meeting of the European Council. This usually arose where there was a dispute over the outcome between member states or where a member state did not think the Secretariat had accurately recorded an agreement reached on the last morning of the European Council by the Heads of Government and not circulated in writing before the Council concluded its business. The Deputy Secretary General of the Council was accepted as the person who had the last word on the issue, after consulting the tape recording of the proceedings which the Secretariat was said to hold. No member state was ever given access to the tape and I cannot be certain that tapes of the proceedings are actually made. If a member state persisted in maintaining its view of what had transpired, as against the decision of the Council Secretariat, that member state would have to raise the issue in the General Affairs Council ie at Foreign Minister level and even, ultimately, at Head of Government level. I cannot recall this ever happening.

There is more room for dispute over the detail of how Conclusions are translated into EU law and there is, for example, routinely argument over the detail of how decisions over the level of the EU's own resources should be translated into the Own Resources Decision. Again, these disputes are usually resolved without having to be taken back to Heads of Government for decision.

Until 2002, the Conclusions of the European Council were the sole responsibility of the Presidency country, although they were produced in cooperation with the Council Secretariat and with the European Commission. The relative proportions of input (Presidency, Secretariat, and Commission) varied from member state to member state. Britain, like other large member states, tended to take prime responsibility for drafting the Conclusions but in consultation with the Secretariat and Commission and negotiating with them a text that all three could accept. The Conclusions were not circulated until the second and final day of the European Council. This meant that, unless a national delegation had been slipped a copy of the draft, the conclusions were seen by national delegations for the first time at about 0600 on the last day of the Council. Officials then had a couple of hours to work through the Conclusions, highlight omissions,

unacceptable formulations and “bounces” and draw these to the attention of their Prime Minister and Foreign Minister before the formal session of the Council resumed at about 0900. Heads of Government then spent the entire last morning (or longer if they were deadlocked) arguing about the Conclusions.

It was not uncommon for the Presidency or the Commission to sneak in some policy conclusion on a matter that had not been discussed at all by the Heads of Government, usually some pet project dear to their own heart. If the conclusions dealt with an issue where a member state had a vital interest at stake, say Britain over the budget rebate, it was essential to look out for language that did not accurately reflect a point that the delegation had won, but did reflect the position as the Presidency and Commission wanted it to be. In other words, the Conclusions were a not always honest, and never transparent, exercise whose successful outcome for a particular delegation depended on sharp wits by the Head of government whose interests were at stake and willingness to fight his/her corner tenaciously. Britain has never lacked such Prime Ministers.

Since 2002, the system has become more professional and transparent. The draft conclusions are routinely discussed in COREPER before the European Council, and usually before the last meeting of the General Affairs Council before the European Council. This means that only those issues where disagreement remains are, in practice, referred to the Heads of Government and there is much less room for nasty surprises or for the Presidency to pull a fast one. The system is not fool proof. Not all Heads of Government are assiduous in reading the draft conclusions before the meeting begins so issues agreed at lower level may get reopened. Or, gamesmanship being what it is, a Head of Government may feel he or she can improve on what was agreed and squeeze some additional national advantage. Delegations still need to scrutinise carefully the final version of the conclusions which appears at dawn on Day 2 of the Council to ensure it accurately reflects the outcome of discussion on Day 1. But the system now follows that used in most other international organisations. Contrary to the original intention when the change of procedure was agreed, it has not led to conspicuously shorter conclusions.

The European Council Conclusions play an important part in setting the agenda for future action at EU level. The Commission are not bound to introduce only those initiatives that have previously been agreed by EU Heads and set out in their Conclusions. The Commission retains its sole right of legislative initiative under the Treaties. However, the modern European Commission has a more mature relationship with the Council than existed in the past. The fact that the European Parliament has the power of co-decision over most legislation means that no one Presidency can introduce and complete a piece of legislation during its six-month term. While institutional rivalry still exists, there is a more professional approach of cooperation between succeeding presidencies and of cooperation between Commission and European Council. For example, the focus on energy at the Hampton Court summit in October 2005 was the result of intensive cooperation between the British Prime Minister and the President of the European Commission and a lot of work was done behind the scenes beforehand to ensure buy-in by other member states. The Conclusions of the Hampton Court European Council have been the authority for, and driver of, subsequent Commission proposals.

Because the European Council conclusions are not themselves legislative documents and because, even under the new procedures, they do not get tabled until shortly before the relevant meeting of the Council, they may not readily lend themselves to traditional scrutiny. It is of course for Parliament to decide how far to hold the Executive to account in advance for the policies and outcomes which will be the subject of any one European Council for, if the conclusions themselves may not be tabled very far in advance, the priorities of the Presidency are well known from the timetable and agenda that each Presidency publishes before they take over.

*March 2007*

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#### **Memorandum submitted by Dr Javier Solana, Secretary-General/High Representative of the Council of the European Union**

The procedures currently followed for the preparation, consideration and approval of European Council conclusions are based on those agreed by the European Council itself at its meeting in Seville on 21–22 June 2002 (see “Rules for organising the proceedings of the European Council” annexed to the conclusions of that meeting which have been transposed into article 2(2) of the Council’s Rules of Procedure—see copy attached).

The genesis of the conclusions of the European Council is the annotated draft agenda, which is drawn up by the Presidency, assisted by the General Secretariat of the Council, in close cooperation with the Commission. This document, which is submitted at least four weeks before the meeting of the European Council constitutes a concise overview of the scope of the European Council meeting as well as of the Presidency’s intentions and thus serves as an outline of the conclusions themselves. Its submission to COREPER, and subsequently to the Council (General Affairs and External Relations), gives delegations the opportunity to comment on the Presidency’s proposed agenda, and, if they wish to do so, to suggest additional items.

Since the Seville meeting, it has become standard practice for the Presidency to circulate a further document about two or three weeks before the European Council meeting. This document, which is based on the earlier annotated draft agenda, contains much more substance, and serves as a first draft of the conclusions of the European Council. This document normally takes into account, or even integrates into the text, relevant conclusions adopted by different specialised configurations of the Council in the run-up to the European Council. As with the annotated draft agenda, responsibility for preparing this second document lies with the Presidency, assisted by the Council General Secretariat, in close cooperation with the Commission. This document, in particular in its first version, does not necessarily cover all the items to be addressed by the European Council. On items which require substantive discussion by the European Council, the text is either left open or, occasionally, provides options.

Delegations are given the opportunity to comment on this document in COREPER, and in the light of these discussions the text is amended and submitted to the following meeting of COREPER. It then passes to the Council (General Affairs and External Relations) which takes place just before the European Council. A final draft is drawn up by the Presidency in the light of the discussions in the European Council itself. This text is circulated to delegations just before the final session which is usually dedicated to a final reading of the text intended to secure agreement. This session usually takes place on the morning of the second day.

The role of the Council General Secretariat throughout this process is twofold. Firstly it offers impartial advice to the Presidency on both its overall approach and specific points, on the preparation of the texts and on the handling of the discussions. Secondly it provides material support to the Presidency during the process of production, translation and circulation of all the relevant documentation.

The European Parliament has no direct role in the preparations of conclusions of the European Council. However the President of the European Parliament is invited to a meeting with members of the European Council prior to the start of the European Council meeting itself. The Presidency also keeps the European Parliament regularly informed about the preparations as part of its normal responsibilities.

The treaties state that the role of the European Council is “to provide the Union with the necessary impetus for its development and shall define the general political guidelines thereof”. The conclusions are the main instrument through which the European Council fulfils this objective. These conclusions are in no sense legally binding, but nevertheless given that they are agreed by the Heads of State or Government of all the Member States as well as the President of the Commission (who is a member of the European Council), carry considerable political weight.

The conclusions fulfil their intended purpose in several ways. Firstly they can reflect the outcome of an agreement at the level of the European Council on substantive dossiers (for example the Financial Perspective and the result of Inter-Governmental Conferences on revising the basic EU treaties), secondly, they can be used to define a framework or position on a particular policy area (for example enlargement), thirdly, they can set out an agreed action plan (for example Migration Action Plan, Energy Policy for Europe), fourthly they can include the outcome of political negotiations on issues which have become blocked at the level of the Council and which as a result the European Council has been invited to address (where these negotiations relate to a legislative act, the outcome of the European Council has subsequently to be adopted formally by the Council since the European Council has no legislative role), and fifthly they can provide an assessment of progress in achieving objectives which have already been agreed. There is of course some overlap between these functions, and most sets of conclusions cover a combination of several of them.

Under the Council’s Rules of Procedure, the Council (General Affairs and External relations) is responsible for follow-up to the European Council.

The issue of democratic scrutiny of the conclusion-making process is a matter for each Member State.

**Annex**

## **Official Journal of the European Union**

### **RULES OF PROCEDURE OF THE COUNCIL**

#### **ARTICLE I**

##### *Notice and venue of meetings*

1. The Council shall meet when convened by its President on his own initiative or at the request of one of its members or of the Commission.<sup>(1)</sup>

2. Seven months before the beginning of its term of office, after consulting the Presidencies preceding and following its term of office where appropriate, the Presidency shall make known the dates which it envisages for meetings that the Council will have to hold in order to complete its legislative work or take operational decisions.

3. The Council shall have its seat in Brussels. During the months of April, June and October the Council shall hold its meetings in Luxembourg.<sup>(2)</sup>

In exceptional circumstances and for duly substantiated reasons, the Council or the Committee of Permanent Representatives (hereinafter referred to as Coreper), acting unanimously, may decide that a Council meeting will be held elsewhere.

## ARTICLE 2

### *Configurations of the Council, role of the General Affairs and External Relations Council and programming*

1. The Council may meet in different configurations according to the subject-matter dealt with. The Council in its General Affairs and External Relations configuration (hereinafter referred to as General Affairs and External Relations Council), convened in a meeting as referred to in paragraph 2(a), shall fix the list of these configurations, which is set out in Annex 1

2. The General Affairs and External Relations Council shall cover the following two main areas of activity, for which it shall hold separate meetings, with separate agendas and possibly on different dates, dealing respectively with:

- (a) preparation for and follow-up to the European Council meetings, including the necessary coordination of all preparatory work, overall coordination of policies, institutional and administrative questions, horizontal dossiers which affect several of the European Union's policies and any dossier entrusted to it by the European Council, having regard to operating rules for the Economic and Monetary Union;
- (b) the whole of the European Union's external action, namely common foreign and security policy, European security and defence policy, foreign trade, development cooperation and humanitarian aid.

3. For the purpose of preparing the meetings of the European Council, the General Affairs and External Relations Council convened in a meeting as referred to in paragraph 2(a) shall:

- (a) draw up an annotated draft agenda on a proposal by the Presidency at least four weeks before the meeting of the European Council;
- (b) hold a final preparatory meeting on the eve of the European Council meeting and approve the agenda.

Contributions to the proceedings of the European Council by other Council configurations shall be forwarded to the General Affairs and External Relations Council, convened in a meeting as referred to in paragraph 2(a), at the latest two weeks before the meeting of the European Council.

Except for urgent and unforeseeable reasons linked, for example, to current international events, no other configuration of the Council or Council preparatory committee may meet between the final preparatory meeting referred to in point (b) of the first subparagraph and the European Council meeting.

The measures necessary for the practical organisation of the European Council's proceedings shall be taken by the Presidency in liaison with the General Secretariat, in accordance with the rules on which the European Council itself has agreed.

(1) This paragraph reproduces Article 204 of the Treaty establishing the European Community (hereinafter referred to as the EC Treaty).

(2) This paragraph reproduces point (b) of the sole Article of the Protocol on the location of the seats of the institutions and of certain bodies and departments of the European Communities and of Europol annexed to the Treaties.

*March 2007*

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### **Memorandum submitted by Andrew Duff MEP, Leader of the UK Liberal Democrats in the European Parliament**

Andrew Duff is leader of the UK Liberal Democrats in the European Parliament and spokesman on constitutional affairs for the Alliance of Liberals and Democrats for Europe (ALDE).

#### *Constitutional developments*

1. Concern that the European Council was straying beyond its limited function as expressed in Article 4 of the Treaty on European Union, or was not fulfilling those functions well, led the Convention on the Future of Europe to pay great attention to the role of the European Council and its relationship with the Council of Ministers. The conclusion we came to, formulated as Article I-21 of the Treaty establishing a Constitution for Europe, was that the European Council should now be recognised as an official institution of the European Union and thereby be obligated to accept the disciplines of the normal working methods of the EU as well as the constraints of EU law.

2. The Constitution makes it clear that the European Council “shall not exercise legislative functions” (Article I-21.1). It is, therefore, an executive body empowered to take decisions on its own behalf, or to mandate the Council of Ministers, or to invite the other institutions and/or Member States to take certain actions. Its new-style “permanent” President shall represent the EU’s common foreign and security policy, without prejudice to the work of the Foreign Minister (Article I-22.2). The grounding of the European Council in the institutional framework of the Union means that it will have to “act within the limits of the powers conferred on it in the Constitution, and in conformity with the procedures and conditions set out . . .”. It will have to “practise mutual sincere cooperation” with the other institutions (Parliament, Council of Ministers, Commission and Court of Justice) (Article I-19.2). The Constitution lays down the precise decision-making procedures that the European Council will use in different circumstances—that is, unanimity, qualified or simple majority vote. It is envisaged that the European Council will have to adopt and publish proper rules of procedure, as well as conforming with the general rules on right of access to documents (Articles I-50 and III-341). Its decisions will be subject to judicial review unless they fall into the reserve area of security or defence operations.

3. The European Council as provided for in the Constitution has come a long way, therefore, since its inception in 1974 as a relatively informal way for the heads of government to meet to discuss matters of common interest. One recalls that Jean Monnet, the master of the Community method, welcomed the establishment of the European Council as a timely recognition by the heads of government of the growing importance of European integration. It was already clear at that stage that the European Community had needed summit meetings to unlock the French veto on UK accession (The Hague, 1969), to set the future political direction of the enlarged EC (Paris, 1972), and to tackle the crisis in the Middle East and the subsequent oil shortage (Copenhagen, 1973).

4. Since those days, the European Council has continued to be the political event at the EU level which commands most media and international attention; it has acted as a court of appeal when dossiers have got bogged down in the Council of Ministers; it has decided upon the senior appointments in the hierarchy of the Council, Commission and European Central Bank; it has provided the Union with the necessary political steer in both domestic and international affairs; and it has overseen all constitutional developments.

5. Nevertheless, the European Council has not been infallible. Some of its decisions have been unclear and quickly disputed. Certain presidencies have badly under-performed in the preparation or management of the meeting. Laborious and lengthy conclusions have triggered the thought that Europe’s leaders would have done better on this occasion to have stayed at home. Follow-up has been variable. The Constitution aims to rectify such failings, and the UK Parliament should aim to ensure that the Constitution’s provisions with respect of the European Council remain intact during the forthcoming renegotiation of the constitutional treaty.

#### *Parliamentary scrutiny*

6. The European Council has deserved and would have benefited from stronger parliamentary scrutiny. The European Parliament is making progress in this regard. Chancellor Merkel will have participated in four plenary debates, as well as occasional meetings with the Conference of Presidents, during her six month presidency. (Article I-22 of the Constitution stipulates that the President of the European Council will report back to the Parliament after each meeting of the European Council, of which there shall be at least four each year.) Ms Merkel is also scheduled to speak at the Interparliamentary Forum on the Future of Europe in June.

7. The situation with regard to national parliaments is less good. Best practice is probably to be found in the Grand Committee of the Eduskunta which grills the Finnish prime minister on the occasion of each meeting of the European Council. The British practice of having a prime ministerial statement and short debate immediately after the meetings of the European Council is certainly a better procedure than that of France, for example, where the President never appears before the Assemblée nationale. But the UK Parliament would be wise, in my view, to try to enhance its scrutiny of the prime minister for his performance in the European Council by establishing a regular dialogue between him and an appropriate committee.

#### *Soft law*

8. While the European Council’s official role is to deliberate at the top level of government, to make recommendations, to give opinions and to take certain executive decisions—but not to interfere in the work of the legislator (Council of Ministers and Parliament), it has become clear that the European Council does produce conclusions that have the effect, intended or otherwise, of soft law. Such activities may find later expression in jurisprudence of the Court of Justice, in regulatory actions of the Commission, in subsequent legislative initiatives, and, eventually, in Treaty revision.<sup>3</sup> Certainly the President of the Commission, who is a full (if non-voting) member of the European Council, pays full regard to the prerogatives of the European Council to exercise political leadership of the Union at the highest level. European Council “invitations” for the Commission to act are to all intents and purposes “instructions”.

<sup>3</sup> The fact that the forthcoming IGC may be asked to install the “Copenhagen criteria”—in fact, the presidency conclusions of a European Council meeting in 1993—inside the amended Constitution is a case in point.

9. The activities of the European Council, therefore, have consequences for the Union's current drive to better regulation and, in particular, for the implementation of the Inter-Institutional Agreement on Better Law-making of 2003. The European Parliament is concerned that resort to soft law instruments by the Commission and Council will prejudice its own legislative powers, jeopardise legal certainty, weaken the consultative process, and undermine judicial protection. In other words, MEPs tend to oppose the use of soft law where it is a surrogate for hard law. The European Parliament would be right to insist that the European Council exercises an appropriate degree of restraint when, in establishing the political priorities of the EU, it opts for soft law instruments to accomplish them. It is important for democratic accountability that the agreed inter-institutional processes of deciding the Union's annual policy strategy, budget and legislative programme are strictly observed.

#### *Presidency conclusions*

10. Your Committee's inquiry focuses on the drafting of the presidency conclusions. The formulation of these documents is, of course, the responsibility of sherpas, COREPER, the Commission and the Council of Ministers and not that of the Parliament, whose President becomes involved in the preparation of the European Council meetings only at a late stage.

11. Opinions differ as to the merits of the participation of the President of the Parliament at meetings of the European Council. Clearly, the political effectiveness and personal qualities of individual Presidents vary. My view is that the measure of the institutional relationship between the European Council and the European Parliament is about right: a closer involvement would render the Parliament complicit in the presidency conclusions, might imperil the position of the President, and could blunt the Parliament's wider efforts to hold to account the Union's executive authorities of Council and Commission. The key political point is to make members of the European Council individually as well as collectively responsible for the decisions they take and the conclusions they reach.

*April 2007*

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### **Memorandum submitted by Brendan Donnelly, Director, Federal Trust**

#### **EUROPEAN COUNCIL CONCLUSIONS AND THEIR IMPACT ON THE WORK OF SECTORAL COUNCILS**

1. This submission is offered in a personal capacity by the Director of the Federal Trust, Brendan Donnelly.

2. The European Council is an institution of the European Union not envisaged in the original Treaty of Rome. Its function is described in Article 4 of the Treaty of European Union as "providing the necessary impetus for the Union's development" and "defining the general political guidelines thereof". The Conclusions issued by the regular meetings of the European Council demonstrate to the outside world how the European Council interprets this mandate.

3. Much of what is contained in the European Council's publicised Conclusions falls squarely within the remit of Article 4, being comprised of general statements about the Union's future direction of development, both internally and externally. The Conclusions of December, 2006, included, for example, a statement of continued commitment to the "further development of the area of freedom, security and justice" (Conclusion 16), a reaffirmation that the "future of the Western Balkans lies within the EU" (Conclusion 8), and an expression of "full support for efforts to find a negotiated solution to the [Iranian] nuclear issue" (Conclusion Annex III). But increasingly in recent years the European Council has concerned itself in its Conclusions with specific legislative items of the Union's agenda with a degree of detail surprising to those who expect from the European Council only general political direction for the Union—and little more. The December 2006 Conclusions, for instance, call for the "rapid agreement" ("in the first semester of 2007") of the EP and Council on a Regulation on the establishment of Rapid Border Intervention Teams (Conclusion 24(c)), the realisation of the Common European Asylum System's two phases by 2007 and 2010 (Conclusion 24(f)), and "specific, practical developments" in the management of external borders.

4. The European Council's gentler critics will wonder whether it is appropriate for this body to concern itself with specific legislative items in this detailed fashion. More radical critics will see a potential usurpation of the role of other institutions in the European Union by this "micro-management" from the European Council, not least because the Council's Conclusions are essentially agreed between high-ranking national governmental representatives, with only minimal involvement beforehand of the European or national parliaments.

5. The willingness of the European Council now to concern itself more directly with individual legislative items may well, in the view of this submission, be at variance with the spirit of Article 4 of the Maastricht Treaty. Even so, that Article is broadly drawn and it certainly would be open to members of the European Council to argue that particular pieces or programmes of legislation emanating from the Union are currently of especial importance for the internal or external development of the Union. The Conclusions of December

2006 might well be defensible in this light. More generally, however, this submission does not share the fear (or hope) of some commentators that the now more detailed Conclusions of the European Council represent any real attempt, conscious or unconscious, to usurp the legislative functions of others within the European Union. Even if the European Council wished to do so, it has little or no objective capacity to constrain by its Conclusions the actions of other institutions within the Union's legislative process.

6. Despite the personal and political power of its members, the European Council is not a legislative body within the European Union. It can at most express its political aspirations, which other European institutions will no doubt take seriously, but not necessarily regard as binding on themselves. The European Council cannot issue instructions to the European Parliament or the European Commission. Even its capacity to influence the decision-making of the sectoral Councils is less than absolute. It may well be that the Ministers of Transport, Agriculture or Research will think carefully before disobeying a political instruction from their head of government, whether that instruction is enshrined in European Council Conclusions or not. But within the Union there is a regular rotation of heads of government and national ministers. By the time a particular Council of Ministers comes to consider an issue on which the European Council has pronounced, leading members of both bodies may well have changed. Nor can it be assumed that every head of government is always in a position politically to dictate terms to every specialist minister in the government he or she leads. Fractious coalition governments represent an obvious example of this truth.

7. In reality, the legislative structures of the Union, their transparency and accountability are not greatly influenced by the more or less detailed influence on legislative procedures which the European Council may seek to exercise. Even where the European Council seeks to act as a "referee" on an issue where an individual Council has been unwilling to take a decision, it is up to that Council to accept or reject the arbitration coming from the European Council. The traditional roles of the European Commission and the European Parliament will in any event remain unconstrained by the Council's internal decision-making procedures. The strengths and weaknesses of the "Community method" in assuring transparency and accountability cannot be extinguished by the Conclusions of the European Council.

8. There is perhaps greater scope for the European Council to impinge upon the deliberations of Council formations where the Council is taking decisions outside the "Community method"—thus circumscribing the roles of the Commission and the European Parliament in decision-making. In the absence of the Community's full, structured decision-making framework and the competing pressures of a fully involved Commission and a legislatively powerful European Parliament, it is indeed conceivable that "targeted" European Council Conclusions might greatly influence the work of the Council of Ministers when discussing the Common Foreign and Security Policy or those remaining intergovernmental areas of Justice and Home Affairs residing in the Third Pillar. If this reality creates difficulties for the transparency and accountability of such decision-making, it is a problem inherent in the operation of intergovernmentalism within the European Union, and not one specific to the interaction between the European Council's Conclusions and the work of sectoral Councils.

9. Nothing in the preceding discussion should be taken as implying that the European Council's Conclusions are unimportant. They both reflect and influence the evolving political atmosphere within which the various participants in the European Union's decision-making processes exercise their roles. As part of their ongoing work of scrutinising the actions at the EU level of their national executives, national parliaments will naturally wish to discuss and review, both beforehand and retrospectively, the Conclusions emerging from European Councils. For a more general discussion of the domestic parliamentary scrutiny of British Ministers' actions in the European Council and Council of Ministers, please refer to chapter 5 of the enclosed book, detailing research work carried out by the Federal Trust in 2005 and 2006.

*April 2007*

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**Memorandum submitted by Rt Hon Margaret Beckett MP, Secretary of State for Foreign and Commonwealth Affairs, Foreign and Commonwealth Office**

INQUIRY INTO PREPARATION OF EUROPEAN COUNCIL CONCLUSIONS

Thank you for your letter of 7 February in which you asked for written evidence on the arrangements for the preparation, consideration and approval of Conclusions of the European Council and the Council of Ministers. You also wrote to Hilary Armstrong asking for a Cabinet Office contribution to your inquiry. As agreed by FCO officials and your Committee Clerks, attached is a Government response incorporating FCO, Cabinet Office, DWP, DTI and Home Office views.

You asked that the written evidence focus on two case studies; the JHA passerelle and the Informal Meeting of Employment Ministers 18–19 January. These issues are covered in the attached papers. I hope these are useful to your inquiry. You have also recently requested additional information on the conclusions of international organisations.

I am copying this letter to the Chairman of the Lords EU Select Committee; the Clerks of both Committees; Tom Hines, FCO Scrutiny Coordinator; Tammy Sandhu, FCO Parliamentary Relations Coordinator; and to Les Saunders at the Cabinet Office European Secretariat.

#### EUROPEAN SCRUTINY COMMITTEE INQUIRY INTO PREPARATION OF EUROPEAN COUNCIL CONCLUSIONS AND CONCLUSIONS OF THE COUNCIL OF MINISTERS

##### *The role of Conclusions in the work of the Council of Ministers and the European Council*

1. Conclusions are an important part of the work of the Council of Ministers and the European Council. They have no formal legal status, and their role and purpose is not defined in the Treaties nor in the Council Rules of Procedure. Instead, a way of working, broadly understood within the institutions and Member States, has been established over time.

2. There are three basic forms of Conclusions, each with its own method of preparation and a different political status.

##### A. Presidency Conclusions

3. Presidency Conclusions are the least formal of all the “Conclusions”, are not legally binding and can be on any subject. Their only role is to serve as a public summary of a discussion that has taken place between Ministers. As such they are sometimes used by the Presidency as an output from informal meetings of Ministers (often called “Informal Councils” although they do not have Council status). Whilst broad themes of informals will be part of the Presidency programme the actual focus of the topic for discussion may not be determined until just before the meeting. Outcomes will vary according to the wishes of the Presidency—who may or may not choose to prepare Presidency conclusions.

4. They are rarely negotiated with delegations, or agreed by them. Instead their content is solely the responsibility of the Presidency (though the Commission is often consulted, and sometimes the Presidency Troika). They are normally only shown to delegations on the day of the Council meeting and often only at the end of the meeting, when they are made public.

5. Presidencies will often use their Conclusions to highlight what they see as particular aspects of a discussion for example, to bring out a particular theme of their Presidency or in the case of “informals” to place the discussion in the context of more formal deliberations going on elsewhere. However Presidency Conclusions do not represent a position of the Member States or the Council, and if the Presidency seeks to portray them as such Member States routinely object, particularly where there are substantive differences in view.

##### B. Council Conclusions

6. These set out the policy position of the Council of Ministers on a particular issue. A draft is drawn up by the Presidency, with the help of the Council Secretariat and sometimes in consultation with the Commission. This is normally presented to a Council Working Party between two and four weeks ahead of the meeting of the Council at which the Presidency wishes the Conclusions to be adopted. The text is then the subject of detailed negotiation between delegations in the Working Party and in COREPER. Many sets of Conclusions, particularly in the area of external relations, are agreed at this level and passed to the Council for adoption as “A” points (ie they are adopted without discussion because they have been pre-agreed). However where agreement on one or more points of substance cannot be found at this level, negotiations on the text will continue at Council. Council Conclusions are adopted by consensus between the Member States.

7. Council conclusions are not legally binding but constitute a political commitment on the part of Member States. The initial drafts of the Conclusions are not systematically shared outside the Council, and the UK is bound by rules and obligations to respect confidentiality. They are not normally released to the public until after the final text, which is made public has been adopted. Even when these documents are made public the positions of individual Member States are normally excised.

8. The Council is generally cautious about adopting Conclusions on issues where a Commission legislative proposal is already being discussed.

##### C. European Council Conclusions

9. The European Council is not a legislative body and does not take legally binding decisions. Its Conclusions are a particular form of Presidency Conclusions. But they have a special status, consistent with the European Council’s role, set out in Article 4 TEU, in shaping the EU’s internal and external policy agenda; “. . . The European Council shall submit to the European Parliament a report after each of its meetings and a yearly written report on the progress achieved by the Union”. The endorsement of European Council Conclusions by Heads of State and Government gives them a particular political resonance. Many

of the highest profile decisions the Union takes (for example on future financing or enlargement strategy) are set out in European Council Conclusions. Any European Council Conclusion which needs to be implemented through a legal measure must be followed up through the appropriate normal decision making procedures under the Treaties or by Member States themselves. The rules governing the preparation of the European Council Conclusions were regularised in the Annex to the Seville European Council Conclusions. The established practice, building on those rules, is as follows:

- The Presidency produces a draft annotated agenda giving the headline topics for discussion approximately six weeks ahead of the European Council. This draft is discussed at COREPER and then adopted by consensus at a General Affairs and External Relations Council (GAERC) about four weeks ahead of the European Council. Normally the Presidency draft is changed to take into account the priorities of other Member States. The draft-annotated agenda is classified as a LIMITE document, but the final agenda is made public at the GAERC. The General Secretariat has described LIMITE documents as: “Documents whose distribution is internal to the Council, its members, the Commission and certain other EU institutions and bodies.”
- The Presidency then produces successive drafts of the European Council Conclusions (ie about three to four weeks before a European Council) aiming to narrow the differences between Member State views. These are discussed at successive COREPER meetings before being put to the GAERC which meets at the beginning of the week in which the European Council is held. These drafts are all classified LIMITE.
- Taking into account the debate amongst Foreign and Europe Ministers at the GAERC, the Presidency produces a final draft of the European Council Conclusions at the European Council itself. These are discussed in detail by Heads of State and Government. Foreign Ministers are present and contribute to the debate. The final text is adopted by consensus and normally published on the Council Secretariat website the same day. Presidencies are increasingly determined to ensure that only subjects actually discussed by Heads of State and Government feature in the Conclusions themselves.

#### *The relationship between different kinds of Conclusions*

10. Key elements of Council Conclusions and Presidency Conclusions are often used to prepare the ground for European Council Conclusions, both to ensure that the Ministers responsible for a particular policy area have an opportunity to consider the issues before Heads are asked to opine and to identify potential areas of conflict and disagreement with a view to finding solutions. This is particularly true of the Spring European Council, where a range of different Council formations make a contribution to reviewing progress on the Lisbon Agenda.

11. The Presidency, when drafting European Council Conclusions text, will often seek to incorporate language from Council Conclusions and, sometimes Presidency Conclusions. Equally where Member States are particularly attached to relevant language agreed in Council Conclusions they have a firm basis for which to push for a similar (though often shorter) text at the European Council. In the case of Presidency Conclusions it is normally relatively easy for Member States to resist borrowed language which they do not support, precisely because there is general acknowledgement that these texts are not politically binding.

12. Where language is borrowed from Council Conclusions, it is much harder for Member States to resist or strengthen language which they have agreed at Ministerial level, provided it is quoted in a balanced way, though it is by no means without precedent. Also, if a Presidency wishes, for political reasons, to pursue a more or less ambitious text at European Council, their control over the drafting process allows them to propose the text in the terms that they prefer to Heads of State and Government.

#### *Roles*

##### The European Parliament

13. The European Parliament has no formal role in the production of any of the three types of Conclusions, though EP delegations frequently attend Ministerial Informals and the President of the European Council makes a key note address to the European Parliament. The European Parliament has a range of instruments outside the legislative process, such as resolutions and own initiative reports, to put forward its views. The European Parliament President attends the opening sessions of European Councils.

14. The European Parliament has gained extensive legislative powers since the Maastricht Treaty of 1992. It is now a co-decider with the Council in 80% of EU law making. The key role of the European Parliament is therefore in the implementation of European Council Conclusions. This role ensures that although the European Parliament does not have a formal role in the preparation of Council Conclusions, its legislative power ensures that it does influence the Commission, as the initiator of legislation, as well as the Council.

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## The European Commission

15. The Commission has no formal role in the preparation of Presidency Conclusions although it is likely to be consulted by the Presidency. The Commission has a seat at the table at the individual Councils and during the preparation of Council Conclusions, but it cannot block their adoption. Where it does not support Council Conclusions it will normally make a public declaration to that effect. Both the Commission and Member States use statements to the minutes to clarify their national position of a particular issue, normally on legislative proposals but sometimes on Conclusions. The Commission does not consider itself bound by Council Conclusions, however, as any proposals they bring forwards will have to be agreed by the Council, the views of the Council do have a very significant impact on the future direction of Commission policy-making. Conversely as the President of the Commission is a member of the European Council achieving consensus within the European Council includes securing his/her concurrence with the text, as well that of all the Member States. The Commission considers it has a particular role in finding consensus.

## The Council Secretariat

16. The Council Secretariat has a substantial role in drafting texts for both European Council Conclusions and Council Conclusions. However the role the Secretariat plays does vary according to the requirements of an individual Presidency.

## Coreper

17. Coreper has a substantial role in discussing and, where possible, agreeing texts in advance for both the European Council Conclusions and Council Conclusions.

## Ministers in sectoral Councils

18. Draft Council Conclusions would normally be considered by the appropriate sectoral Councils. Council Conclusions are sometimes submitted to European Council, including at the Spring Council for discussion of the Lisbon Agenda.

## Foreign Ministers

19. The GAERC has a substantial role in preparing the European Council Conclusions as well as producing its own Council Conclusions. Foreign Ministers are present at the European Council and contribute to the discussions. Given the important role played by Finance Ministers in pursuing economic reform, they have a key part to play in discussions of the Lisbon Agenda. This is reflected both in the preparation of Ecofin (Financial Council) key issues papers and in the Finance Ministers attendance at the Spring European Council.

## Heads of State/Government

20. Heads of State formally approve European Council Conclusions, but normally only discuss matters on which agreement has not already been reached.

## The intended purpose and actual effect of Council and European Council Conclusions

21. Conclusions and European Council Conclusions are an important tool in strengthening the role of the Member State Governments, collectively, in defining the policy direction and priorities of the European Union. The established practice of adopting Conclusions by consensus enables all Member States to contribute to their content.

22. The Presidency does play a particularly important role in defining the scope and content of Conclusions, but Member States can and do press the Presidency to pursue issues, and influence how they are carried forward, not on their agendas at the outset through Conclusions. The effect of Council Conclusions depends on the particular issues at stake and the balance of views and decision-making role, between the three main institutions. In the area of external relations they are the most commonly used mechanism for setting out EU policy,<sup>4</sup> in other areas their influence depends on their relevance to the policy debate, the Council's role in the overall decision-making process and the clarity of the message. Conclusions often have foreign policy declarations attached. However, these do not differ from other conclusions. If proposals for actions (eg Joint Action, Common Positions, Council Decision etc) arise from these, they will be put through Parliamentary scrutiny as usual. European Council Conclusions usually have a decisive influence on the future direction of EU/EC policy and provide the framework for future work from the Commission.

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<sup>4</sup> And the Political and Security Committee also plays a key role in their adoption.

Merits of the Conclusions system and the opportunities for democratic scrutiny

23. The merit of the Conclusions system is that it gives a strong role to Member States collectively in defining the future direction of European Policy. This is particularly true in the second and third pillars, where the roles of the Commission and European Parliament are less prominent. In the Government's view, this is a cornerstone of the intergovernmental aspect of the European Union. From a UK perspective, we have traditionally supported a strong role for the Council and the European Council as the most intergovernmental of the EU institutions: the use of Conclusions allows a flexible vehicle for the Council to set out its agenda, and to take decisions, outside the formal decision-making and legislative procedures under the EU Treaties.

24. The UK Government addresses the general issues of scrutiny of policy making in the Council of Ministers and the European Council in the following way:

- Before each Council of Ministers meeting, the UK Minister responsible provides a written Ministerial statement, to inform Parliament about the business of each Council and the UK's position on agenda items. At your request, Departments have recently been reminded of the importance of providing comprehensive statements.
- After each Council of Ministers meeting, and after informal meetings, the UK Minister responsible again makes a statement, setting out the outcome, the nature of the discussion and our role in it. These written replies normally cover the adoption of Council Conclusions where these are dealt with as substantive points for discussion on the agenda.
- Separately the Prime Minister makes an oral statement to the House after each European Council, reporting the outcome. In addition the government frequently holds full debates in the House in the run up to the European Council.
- The Government presents a Command Paper to Parliament setting out the prospects for the EU each year.
- The Government deposits the Commission's Annual Policy Strategy and Work Programme in Parliament, together with Explanatory Memoranda.
- The Foreign Secretary gives evidence to the Foreign Affairs Committee prior to the European Council, the Minister for Europe gives evidence to the Lords Select EU Committee and Lords Sub Committee C after the European Council.
- The text of European Council Conclusions is deposited in the House of Commons Library immediately after each meeting.
- Conclusions often build on policy documents and subsequently give rise to—or are at least cited by—new policy documents that are themselves subject to scrutiny. Parliament therefore has an opportunity to scrutinise input and output.

25. At this point in time it is not evident to the Government that there are any areas where greater scrutiny is required. The Government has an obligation to respect the rules and practices of the Council about the disclosure of documents produced by the Presidency and the Council Secretariat, designed to facilitate discussions in the Council.

26. Ministers are fully involved in the preparation of Council Conclusions and take their responsibilities very seriously. The Government will, of course, take the views of the Committee into account and keep this issue under review.

**Annex A**

## PREPARATION OF COUNCIL CONCLUSIONS

### CASE-STUDY ON THE HAGUE PROGRAMME REVIEW & PASSERELLE

1. The Committee asks about the preparation and subsequent agreement of Council Conclusions on the use of Article 42 TEU: the passerelle, which provides a mechanism for transferring all or parts of Title VI TEU (police and judicial co-operation) to Community working methods, including, if so decided, QMV and co-decision. The issue was considered in the context of the Hague programme review; discussed in substance at the Tampere informal JHA council, and mentioned in:

- the Conclusions of the JHA Council of Ministers on 4–5 December and
- the subsequent European Council Conclusions of 14–15 December 2006.

2. In the five year JHA work programme, "The Hague Programme" of December 2004, the European Council invited the Commission to report on the progress made in achieving the aims of the Programme before November 2006. The European Council on 15–16 June 2006 went on to call upon the incoming Finnish Presidency, in the context of the Hague Programme review, and in close collaboration with the Commission, "to explore the possibilities of improving decision making in the area of freedom, security and justice on the basis of the existing treaties".

3. The Commission consequently tabled at the end of June 2006 a series of Communications, including one entitled “Implementation of the Hague Programme: the way forward” which raised the potential for using the passerelle clause. The Communication was tabled with the Scrutiny Committees on 7 August 2006 and was the subject of a report from the European Scrutiny Committee which was debated in the House of Commons on 30 November 2006, in advance of the final discussions of the JHA Council and European Council conclusions in December.

#### *JHA Council Conclusions*

4. The Commission Communications were first discussed substantively at the informal meeting of the JHA Council in Tampere in September 2006, since their late publication at the end of June left no time to prepare a substantive debate at the JHA Council on 24 July. The outcome of the informal JHA Council meeting was reported to the Committee in a Written Ministerial Statement by Joan Ryan that appeared in Hansard on 28 November 2006.

5. In particular, at that meeting, Joan Ryan made clear that, whilst the UK Government was still considering the proposed use of the Article 42 passerelle, it had at the least serious concerns about the potential impact of the passerelle proposal for issues relating to national security; the consequences that might arise from the extension of external competence; and the need for safeguards such as the emergency brake. She suggested that the EU should focus on practical action to deliver concrete results in tackling serious and organised crime, including improvements to working methods and the implementation of those measures already agreed. Although the debate at Tampere did not reach a level of great detail in relation to the scope and application of Article 42, a large number of Member States also expressed serious concerns about the proposal.

6. We subsequently sought to reinforce the message from Tampere through a letter from the International Directorate in the Home Office to the Presidency and Commission. The Finnish Presidency tabled their first draft of JHA Council Conclusions on the Hague review on 21 November 2006.

7. That first draft of the JHA Council Conclusions were first discussed at a meeting of JHA experts (officials) later that week, on 24 November, where there was a general consensus that the approach taken by the Presidency in setting out a detailed re-write of the Hague Programme, including an implication that there would be further debate of decision making within JHA (the passerelle), did not reflect the views expressed by Ministers at the Tampere Council and would need to be substantially re-worked into a shorter document simply reporting on progress to date and reflecting some key priority areas for the coming years. The UK proposed an overall approach, drafting changes and sections of text both in the meeting and in correspondence subsequently, as did some other Member States.

8. The Presidency produced a completely revised second text of the JHA Council Conclusions the following 27 Monday November, which was discussed at a further meeting of JHA experts the same day. The Presidency then sought agreement to a third amended text at the meeting of the Committee of Permanent Representatives (COREPER) in Brussels on 29 November, on the basis of a document tabled on 28 November. At COREPER Member States gave their views on the level of progress achieved in relation to the Hague Programme goals, the priorities for the next three years and the use, if any, of the passerelle, methods for decision making, and whether the European Council should discuss the issue, in light of which the Presidency made a further set of amendments to the text.

9. A fourth revised text of the JHA Council Conclusions was presented to Ministers at the JHA Council the following week, on 4–5 December, where again delegations gave their views on the key issues raised at COREPER. In particular the Home Secretary demanded and achieved further amendments to the Conclusions to make clear that there should be no further work on the JHA passerelle, and no reference to the Constitutional Treaty in Council Conclusions. The final, agreed wording was that “the subject of decision making would remain under consideration by the Council. This would be brought to the attention of the European Council in December.”

10. The outcome of the December JHA Council was reported in a Written Ministerial Statement by Joan Ryan that appeared in Hansard on 18 December 2006.

#### *European Council Conclusions*

11. Whilst preparations for the JHA Council were underway, draft Conclusions were also being prepared for the European Council which met in Brussels on the 14–15 December.

12. The Finnish Presidency issued a draft annotated agenda for the December European Council on 6 November, which made clear that “The European Council will be . . . invited to consider possible improvements to the decision-making and action of the Union in this field.” However, although the Presidency circulated draft European Council Conclusions in late November, they did not issue Conclusions text on JHA decision-making until 9 December—less than a week before the European Council.

13. The draft European Council Conclusions of 9 December included text which linked future changes to JHA decision-making to the Constitutional Treaty. This did not reflect the outcome of the meeting of the JHA Council on 4–5 December, where the Home Secretary had made clear that there should not be any link between the Constitutional Treaty and JHA decision-making.

14. Ordinarily COREPER would discuss the draft Conclusions. However, on this occasion, and given the late circulation of the language on JHA decision-making, there was no time for a Coreper discussion. However we flagged up in COREPER our concerns about any text which sought to open up a discussion on the use of the passerelle, with support from a number of other Member States. The first formal discussion of the text was therefore at the General Affairs and External Relations Council (GAERC) on 11 December, where we intervened to make clear that the UK could not accept the current text. We stressed that that this was not what the JHA Council had agreed, and emphasised the need to avoid pre-judging future discussions (on the future of Europe). A number of other Member States supported this position.

15. At the December European Council of 14–15 December the Prime Minister intervened to caution against links to the Constitutional Treaty, stressing that this would cause real difficulty for some delegations, including the UK, and insisting that the language be changed. He was supported in this by a number of other MS.

16. In addition to its interventions in these formal fora, the UK also made its position clear to the Presidency.

17. In terms of Parliamentary Scrutiny for the December European Council, the Foreign Secretary took part in the pre-European Council Debate on 6 December, and gave evidence to the Foreign Affairs Committee on 13 December. The Foreign Secretary and Lord Rooker then reported back to Parliament with a post European Council Statement, and by taking part in the Post European Council Debate.

18. The final version of the December European Council Conclusions, agreed by Heads of State, make no explicit reference to taking forward Article 42 TEU. The Conclusions refer instead to “the principles acknowledged in the context of the Union’s reform process”, and the need to “strengthen” the framework for pursuing the Union’s policies in JHA. The effect of these Conclusions is that we do not expect any further work will be undertaken on the JHA passerelle.

### *Conclusion*

19. Thus although the UK had no involvement in drafting either the JHA nor European Council Conclusions (Presidency drafts), it was nevertheless successful in influencing and changing the text to reflect UK interests.

20. More importantly, the European Council Conclusions state that: “the European Council considers first of all that practical progress could be achieved by intensifying operational cooperation between competent authorities of the Member States. The European Council invites the [Justice and Home Affairs] Council to make progress in the light of the options that have been presented.”

21. The UK is satisfied with this conclusion that work in the field of Justice and Home Affairs should focus now on practical action and co-operation rather than institutional reform. We do not expect there to be any further discussion on the use of Article 42, although you will be aware that the issue of decision making procedures may be part of wider discussion on the Future of Europe later this year.

## **Annex B**

### **RESPONSE TO SCRUTINY COMMITTEE INQUIRY CASE STUDY ON 18–19 JANUARY 2007 INFORMAL MEETING OF MINISTERS FOR EMPLOYMENT AND SOCIAL AFFAIRS**

#### **TERMS OF SCRUTINY COMMITTEE CASE STUDY**

The Committee is minded to use two recent cases as part of its investigation.

- (ii) The other case study concerns the Green Paper on Labour Law and the attached letter of 5 February from the Minister for Employment Relations (Jim Fitzpatrick). It appears from the Minister’s letter that the German Presidency reached Conclusions at the Employment Council on 18–19 January which seem to prejudge the outcome of the consultations on the Green Paper and some of the Conclusions appear to conflict with the principle of subsidiarity. Again, the Committee wishes to know more about this.

#### **INFORMAL MEETING OF EMPLOYMENT MINISTERS 18–19 JANUARY**

1. In the case of the Chair’s Conclusions drawn from the Informal Meeting of Ministers of Employment and Social Affairs (18–19 January 2007) it is important to clarify the purpose and role of these Informal meetings. As the German Presidency explains on its website “it is customary for the country holding the EU Presidency to organise informal meetings at which Ministers discuss topical EU-related issues. The meetings

enable those taking part to engage in a free exchange of ideas. They are not Council sessions and therefore cannot replace the Council's normal activities. No official agenda is drawn up and meetings cannot arrive at formal Conclusions or decisions."

2. The way in which Informal Meetings are conducted and reported is primarily a matter for the Presidency; the shape and form of these meetings varies considerably. In its indicative programme the then future German Presidency let it be known that its Informal meeting of Employment Ministers would likely focus on issues raised in the Commission Green Paper on Labour Law (published 22 November 2006). The Informal meeting was scheduled for very early in the German Presidency (and by convention incoming Presidencies are low key in publicising details of their programme before they take over the Chair) so it was only shortly before the meeting that the theme was set as "Security through Change" with a focus on the concept of "Good Work" which is linked, among other things, to the Commission Green Paper on Labour Law.

3. The German Presidency circulated a short discussion paper to act as a catalyst for the discussion—which was organised in two parts. In the first half, as is usual, the Presidency and the Commission led the debate and less usually invited input from the European Social Partners and European Parliament. Member States contributed to the discussion through a series of statements made by Ministers (DTI Parliamentary Under-Secretary of State for Employment Relations and Postal Services, Jim Fitzpatrick, led for the UK). The second part of the debate was led by eight invited keynote speakers (including DWP Secretary of State John Hutton).

4. The "Chair's Conclusions" to the 18–19 January Employment Ministers' Informal served no more purpose than to provide the Presidency with a vehicle to summarise and capture the essence of the discussion without commitment. Indeed there is no obligation on Presidencies to release "conclusions". It is nonetheless customary for Presidencies to prepare some statement for the end of Informal meeting and I include links below to the output from the previous three Presidencies, Finland, Austria and the UK. The different ways to which each Presidency refers to the output of its Informal meeting (concluding remarks, conclusions and meeting report, respectively) highlights their non-official nature. Presidencies are usually very careful to draft the output to these meetings in a relatively open way.

5. It was the decision of the German Presidency to capture the essence of the debate in the form of "Chair's Conclusions". These were prepared by the Presidency (in cooperation with the "Troika" ie: the two subsequent Presidencies but not with other Member States) and formed the basis of their press conference at the end of the meeting.

6. In this example the "Chair's Conclusions" relate to the overall theme of the meeting ie "Good Work" and highlight issues raised in the debate. Whilst some of these issues are Green Paper related, the conclusions themselves do not and cannot prejudge the outcome of the Green Paper discussion. The Green Paper is itself a consultation document and is part of a wide-ranging EU debate on labour law issues. The timing of discussion at the Informal Meeting provided Ministers (should they wish to use it) with an opportunity to share any emerging view on issues raised in the Green Paper; but it in no way pre-judged formal responses to the Green Paper. Indeed most Ministers made clear in their interventions that their thinking on the Green Paper was only preliminary.

7. While the discussion at the Informal meeting can be characterised as part of the wider debate on issues raised by the Green Paper and other related dossiers, the "Chair's Conclusions" issued have no status, are not negotiated or agreed with any other Ministers and are neither politically nor legally binding. We therefore do not believe there are any subsidiarity issues here. However the output from any Informal can serve to provide a useful initial indication of views of EU Ministers on matters of current interest—in this case the Green Paper. It is because of the read-across that Jim Fitzpatrick's letter to the Scrutiny Committees made reference to this debate.

Links to concluding remarks to previous Informals:

"Concluding remarks" from the Finnish Presidency—Informal meeting of Ministers for Employment, Social Affairs and Health (6–7 Jul 2006):

[http://www.eu2006.fi/news\\_and\\_documents/other\\_documents/vko30/en\\_GB/1154092686094/?u4.highlight](http://www.eu2006.fi/news_and_documents/other_documents/vko30/en_GB/1154092686094/?u4.highlight).

"Conclusions" from the Austrian Presidency Informal Meeting of Ministers for Employment and Social Affairs (19–21 January 2006):

<http://eu2006.bmsg.gv.at/cms/eu2006EN/detail.htm?channel=CH0601&doc=CMS1137851810205>.

"Meeting report" from the UK Presidency ESPHCA Informal Meeting of Employment Ministers (7–9 July 2005):

<http://www.eu2005.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1112704221230&a=KArticle&aid=1119529645841&date=2005-07-19>.

**Letter to the Chairman of the European Scrutiny Committee from Jim Fitzpatrick MP, 5 February 2007**

15725/06—COMMISSION GREEN PAPER: MODERNISING LABOUR LAW TO MEET THE CHALLENGES OF THE 21ST CENTURY

I am writing to update you on the above Green Paper.

Both the Secretary of State for Work and Pensions, John Hutton and I attended the Informal Employment and Social Affairs Council of 18 and 19 January, which had been expected to address the Green Paper. A formal statement on the meeting was made to the House of Commons on 29 January by the Department for Work and Pensions Parliamentary Under Secretary, James Plaskitt (a copy is attached).

In the event the German Presidency decided not to focus the Informal entirely on the issues raised in the Labour Law Green Paper. The broader theme was “Good Work”, which is one of the focal points of Germany’s current EU Council Presidency. A Presidency discussion paper defined good work as consisting of (a) Fair wages (b) Protection against health risks at work (c) Workers’ rights to assert their interests and to participate (d) Family-friendly working arrangements and (e) Enough jobs. The paper highlighted a number of references made to good work in the Green Paper and in other Commission documents such as the Communication on the Demographic Future of Europe.

To facilitate the debate, the Presidency proposed a series of questions for ministers to address:

1. Where and in what manner do you see for your country and for the EU as a whole a particular need to act to achieve the goal of good work:

- with wages?
- in asserting workers’ rights?
- in protection against health risks at work?
- in family-friendly working arrangements?

2. Should the Member States agree (much) more binding goals on the road to good work?

3. A variety of other forms of employment has developed in addition to regular, unlimited employment relationships. Do ministers agree that the regular unlimited employment relationship will also in future provide a legal framework that promotes:

- workers’ motivation,
- further training, and
- reliable communication and participation structures in the enterprise?

4. What concrete measures must be taken to provide legal and social security to people working in the new forms of employment or making transitions between different employment situations and periods without employment?

Taking their cue from the German Presidency paper, there was a wide-ranging exchange of views and national experiences. There was no negotiation, nor agreements reached. However the German Presidency prepared their own conclusions (attached), which essentially reflected points raised in debate.

For the UK, I pointed to the importance of flexible labour markets in stimulating job creation and higher employment. I went on to say that while we encourage choice in ways of working, only 6% of our work force was on a non-standard contract. I also make it clear that all workers had certain basic rights. John Hutton was one of the eight keynote speakers in the afternoon session. He said that the best way to manage insecurities was to provide employment security through equipping people to manage and take advantage of change and warned against protectionism and over-regulation. In both our interventions, we stressed that most of this work had to be done at the Member State level.

With regard to the views of stakeholders, my officials are holding meetings with interested parties during the ongoing consultation period. Areas of interest that have emerged in the discussions have included agency workers and the advantages of flexibility and choice to both employers and workers. A number of business representatives have expressed concern regarding the possibility of further employment legislation. Stakeholders have been encouraged to make their views known formally to the Commission and to engage with their European networks.

The Commission’s consultation on the Green Paper finishes at the end of March. The Commission will report soon after on the views that have been gathered. At present, there is no definitive indication that the Green Paper debate will result in any new legislative initiatives. It is expected that the debate will feed into ongoing work, such as that on “flexicurity”.

As you are aware, we in Government are considering the questions in the Green Paper and will respond in due course. I will ensure that a copy of formal response is copied to the Committee.

I am writing in similar terms to Lord Grenfell.

I am copying this letter to the Clerk to your Committee, Les Saunders (Cabinet Office) and Alison Bailey, Scrutiny Co-ordinator.

## WRITTEN MINISTERIAL STATEMENT (29 JAN 07)

## WORK AND PENSIONS

## EMPLOYMENT AND SOCIAL POLICY (MINISTERIAL MEETING)

The Parliamentary Under-Secretary of State for Work and Pensions (Mr. James Plaskitt): The Employment and Social Policy informal meeting was held on 18–20 January in Berlin, Germany.

My right hon. Friend, the Secretary of State for Work and Pensions and my hon. Friend, the Under-Secretary for Employment Relations and Postal Services (Jim Fitzpatrick) represented the UK.

The theme of the informal was “Good Work—More and Better Jobs”, which was discussed in two plenary sessions.

My hon. Friend participated in the morning plenary stressing that the real outsiders were the unemployed. He went on to say that if Europe is to remain competitive in a global market and continue to afford valued social protection systems, flexible labour markets are needed both for workers and employers to stimulate job creation and encourage more people into work. One size does not fit all and member states have to develop approaches that work for their own labour market structures and traditions. But overly restrictive employment legislation risks a two-tier labour market and more jobs in the illegal sector. Effective, light-touch employment legislation is consistent job creation, and more permanent jobs. For example in the UK, while we encourage choice in ways of working only 6% of the work force is on non-standard contracts; all workers have certain basic rights.

My right hon. Friend was one of eight keynote speakers in the afternoon session. He said that the best way to manage insecurities was to provide employment security through equipping people to manage and take advantage of change, rather than through protectionism and over-regulation. This could be done by providing insurance in the broadest sense/through active labour market policies, skills and re-training, and the right labour law framework. Most of this work had to be done at member state level, but in the context of our shared European values. Even well functioning labour markets could have groups of vulnerable workers but it should not be assumed that this was due to their employment status alone.

All member states broadly agreed on the importance of high levels of health and safety at work. There was a strong emphasis on the social dimension of Europe—including, from some quarters, calls for an EU minimum wage, minimum standards for workers on “atypical contracts” and a European definition of a worker—although others continued to emphasize the primacy of meeting Lisbon targets and made it clear that social issues were for member states to decide. They also underlined the important role of social partners, of work-life balance, of life-long learning, of a greater emphasis on skills and training, better childcare facilities, and promoting gender equality. Most member states agreed that it was up to them to lead on social issues, although the EU could provide added value by exchanging best practice and a general framework. The other recurring theme was that, with increased mobility of workers and free movement, member states had to cooperate more closely.

The German presidency concluded that we needed to look further at a number of issues, including the integration of ethnic groups and minorities into the labour market, grey areas such as bogus independent workers, and where the balance between rights and responsibilities was. Also, that part-time work could be positive when it was what the workers wanted, but there were concerns that increased temporary work created uncertainty for employees where this was at the expense of permanent regular contracts. Social policy was a national issue. The German presidency would continue to try and define what the social dimension of Lisbon should be.

## CHAIR'S CONCLUSIONS DRAFTED IN COOPERATION WITH THE TWO FOLLOWING PRESIDENCIES PORTUGAL AND SLOVENIA

Europe needs more and joint efforts to promote GOOD WORK. GOOD WORK means employee rights and participation, fair wages, protection of safety and health at work as well as a family friendly work organisation. Good and fair working conditions as well as an appropriate social protection are indispensable for the acceptance of the European Union by its citizens.

The Ministers are of the opinion that greater flexibility on the labour market has to be reflected in adequate employee rights. This includes that employees can defend their participation rights with the help of collective bodies representing their interests. The Member States and the social partners bear great responsibility for preventing that more labour market flexibility will lead to a reduction of social protection for employees.

Fair wages are an important characteristic of GOOD WORK. The Member States and the social partners are called upon to ensure that wages are set in a fair and adequate manner while safeguarding the national wage setting systems' characteristic features.

Working conditions that promote lifelong learning and the chance for further occupational education, modern and staff-oriented leadership and work organisation as well as promoting and maintaining health and occupational qualifications are the key to corporate competitiveness and to the employability of especially older employees. Corporate prevention and rehabilitation programmes must become standard practice.

Regular employment relationships are indispensable. They provide security and strengthen competitiveness in a sustainable manner. The Member States are called upon to strengthen standard working relationships in accordance with their national practice and to limit their circumvention by atypical employment relationships.

New forms of employment types can facilitate reintegration into the labour market. They must, however, not be abused of for the purpose of excluding employees from their rights. They must not lead to discrimination and exclusion.

Family friendly work organisation is an opportunity to improve equal rights, competitiveness, health protection, income security and coping with the demographic development. A family friendly work organisation must be developed consistently.

Young people need security in their occupational development and perspectives for their own future and the foundation of a family. They need clearly defined framework conditions for a good start in working life.

Wage replacement benefits and minimum security for job seekers are elements of a social Europe that has made the fight against poverty and social exclusion one of its central priorities. The persons concerned must receive help from a well balanced system of support programmes within the meaning of an activating labour market policy, in particular in view of threatening or actual unemployment. This approach combines support and demands.

## Annex C

### EUROPEAN SCRUTINY COMMITTEE: INQUIRY INTO PREPARATION OF COUNCIL CONCLUSIONS

#### OTHER INTERNATIONAL ORGANISATIONS

1. The Committee asked for information on the practices and procedures of other international organisations when producing “conclusions”.

#### *G8 Communiqués*

2. G8 Summit communiqués are politically, not legally, binding. They are under negotiation until the day of the Summit itself, when Heads of State or Government sign them off, Negotiations are carried out by the “G8 Sherpas”, personal representative of the G8 Leaders. Summit communiqués are published by the Presidency. There is no Parliamentary scrutiny of this process.

#### *NATO*

3. The North Atlantic Council is NATO’s decision-making body. It meets weekly at Permanent Representative level, and several times a year at Ministerial level. Most of its decisions relate to its own activities, notably management of NATO’s operations, so many of them are classified. They are not normally made public, though more significant decisions will be briefed to the media by the Secretary General, or reflected in communiqués issued after Ministerial meetings. Within the UK, significant decisions or discussions may also be the subject of statements to Parliament by Ministers.

4. NATO decisions, including those in communiqués, are usually only politically binding on the UK. However, in some instances they can have legal implications. For example, the accession of the last seven new members was accompanied by protocols to the Washington Treaty that all Allies had to ratify. We can expect the same process if and when other countries accede to the Alliance.

#### *UN Security Council*

5. UN Security Council resolutions can be both politically and legally binding. The Council is empowered under Chapter VII of the UN Charter to adopt legally-binding decisions in response to threats to international peace and security, breaches of the peace and acts of aggression. These decisions can include the imposition of legally-binding measures, including authorising the use of force. Other Security Council resolutions dealing with the peaceful settlements of disputes are not legally binding. Negotiations of UN Security Council resolutions are conducted through the UK’s Mission to the UN in New York, and by senior Government officials and Ministers as required. Negotiations continue until the point of adoption itself by the Council. Once adopted Security Council resolutions are made public.

6. There is no Parliamentary scrutiny of the negotiation and adoption of UN Security Council resolutions, which can sometimes be adopted within hours of a crisis erupting. Security Council resolutions do not take direct effect in UK law and have to be implemented, where necessary, through domestic legislation. The United Nations Act 1946 gives a power to implement measures imposed under Article 41 of the UN Charter (ie sanctions) by Order in Council, though other domestic powers may also be used in appropriate cases, eg under the Export Control Act 2002. Legally-binding UN sanctions are also given effect in the EU through CFSP Common Positions and EC regulations. These are subject to the Parliamentary scrutiny applicable to such measures.

#### *OSCE*

7. The OSCE cannot make legally-binding decisions. Its decisions are politically binding. Since the signing of the Helsinki Final Act in 1975, the CSCE/OSCE has accumulated a substantial body of political commitments across its three dimensions (pol-mil, economic/environment and human). The OSCE's decision-making bodies are the Meeting of Heads of State or Government (Summit—when these happen), the Ministerial Council, the Permanent Council (PC) and the Forum for Security Co-operation (FSC). The Summit or Ministerial takes decisions, sets priorities and provides political orientation. The PC takes decisions on day-to-day operations and regular political issues. The FSC implements tasks and decisions defined by the Summit or Ministerial Council. The UK Delegation to the OSCE in Vienna participates in the negotiations at PC and preparatory working groups and preparatory committees and other OSCE bodies. The UK is also represented at Ministerials and Summits. There is no UK Parliamentary scrutiny of this process.

8. Parliamentarians from the OSCE however do participate in the OSCE's own Parliamentary Assembly, a distinct body involving more than 300 Parliamentarians from all the OSCE participating States. It aims to promote Parliamentary involvement in the Organisations' activities, debating issues and adopting resolutions and recommendations pertinent to OSCE work. Its members also play a role in election observation. The UK Parliamentary delegation is headed by Tony Lloyd MP.

*April 2007*

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**Letter from the Chairman of the European Scrutiny Committee to Rt Hon Margaret Beckett MP,  
Secretary of State for Foreign and Commonwealth Affairs, Foreign and Commonwealth Office**

#### *Inquiry into the Conclusions of the European Council and the Council of Ministers*

We are, as you know, very grateful for the written and oral evidence you have given us for our inquiry into the arrangements for the preparation, consideration and approval of the Conclusions of the European Council and the Council of Ministers.

At the oral evidence session on 7 June, you told us, in reply to questions from James Clappison and me, that it would be a breach of confidentiality and impractical to deposit the drafts of Conclusions for scrutiny by the Committee (QQ36 to 39).

It appears, however, that many other national parliaments do have access to the drafts of Conclusions. The evidence of this is given in the attached note by the UK National Parliament Office [See Ev 46]. It is based on information provided by the staff of other national parliaments.

I think it probable that we shall want to refer to the note in our Report on the inquiry. So we should be grateful to know if you have any comments on the note and if you would like to add anything to the evidence you gave us on the point on 7 June.

*June 2007*

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**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**

Thank you for your letter of 27 June about draft Council Conclusions attaching a report from the UK National Parliament Office on scrutiny arrangements in some Member States.

I note with interest the findings of the UK National Parliament Office report. Clearly, different Member States have different procedures for consulting their national Parliaments. However, draft European Council Conclusions are classified as confidential by the Council Secretariat. The UK has always respected this restriction. If any Member State were to make draft European Council Conclusions documents public, then this would be in direct contradiction of the instructions of the Council Secretariat.

As the previous Foreign Secretary noted in the written evidence she submitted to your enquiry on 09 May, there are, in the Government's view, important arrangements in place for the scrutiny of policy-making in the Council of Ministers and the European Council. To reiterate, current arrangements include:

- Before each Council of Ministers meeting, the UK Minister responsible provides a written Ministerial statement, to inform Parliament about the business of each Council and the UK's position on agenda items. At your request, Departments have recently been reminded of the importance of providing comprehensive statements.
- After each Council of Ministers meeting, and after informal meetings, the UK Minister responsible again makes a statement, setting out the outcome, the nature of the discussion and our role in it. These written replies normally cover the adoption of Council Conclusions where these are dealt with as substantive points for discussion on the agenda.
- Separately, the Prime Minister makes an oral statement to the House after each European Council, reporting the outcome. In addition, the Government frequently holds full debates in the House in the run up to the European Council.
- The Government presents a Command Paper to Parliament setting out the prospects for the EU each year.
- The Government deposits the Commission's Annual Policy Strategy and Work Programme in Parliament, together with Explanatory Memoranda.
- The Foreign Secretary gives evidence to the Foreign Affairs Committee prior to the European Council, the Minister for Europe gives evidence to the Lords EU Select Committee and Lords Sub Committee C after the European Council.;
- The text of European Council Conclusions is deposited in the Libraries of both Houses immediately after each meeting.
- Conclusions often build on policy documents and subsequently give rise to—or are at least cited by—new policy documents that are themselves subject to scrutiny. Parliament therefore has an opportunity to scrutinise input and output.

However, I have noted your comments and, in addition to the arrangements above, I would be happy to offer the Committee the draft-annotated agendas of European Councils for information. This would give the Committee an early heads-up on European Council business enabling you to feed in your views and enhance Parliament's engagement on EU matters.

I am copying this letter to the Chairman of the Lords EU Select Committee; the Clerks of both Committees; Tom Hines, FCO Scrutiny Co-ordinator; Guy Janes, ECO Parliamentary Relations Co-ordinator; and to Les Saunders at the Cabinet Office European Secretariat.

*September 2007*

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