

PREM 19/3110

Confidential filing.

Parliamentary scrutiny of EC Legislation.
and Institutions.
House of Commons Links with the E.C.

PARLIAMENT.

May 1980.

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
7.5.80.							
5.10.81.							
6.6.85							
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17.10.90.							

PREM 19/3110



10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

17 October 1990

PARLIAMENTARY CONFERENCE OF EC PARLIAMENTS

Thank you for your letter of 15 October which the Prime Minister has seen. She endorses the Lord President's suggestion of inviting David Howell to lead the delegation. She has commented that the remainder of the Government side must be a balanced delegation representing both strands of opinion.

Dominic Morris

Ms. Gillian Baxendine,
Lord President's Office.

DB



PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

Prime Minister

15 October 1990

We are stuck with going to
this conference. David Howell seems a
good & sensible candidate to head the UK delegation. Agree?

Dear Dominic

John Yes - the rest of
the govt. will
must be a balanced
delegation representing both sides of
opinion
no

PARLIAMENTARY CONFERENCE OF EC PARLIAMENTS

As you know, the UK Parliament has been invited to send a delegation to this conference on 27-30 November. The proposal originated from the European Parliament and was endorsed by the meeting of Presidents of EC Parliaments earlier in the year. It is essentially a Parliamentary response to the Inter-Governmental conferences in December and will debate a fairly wide range of political and economic topics. The conference will consider and vote on a text on the final day of the conference although this will have no legal significance.

The Lord President and the Chief Whip have been considering the leadership of the delegation. The UK delegation - of 18 MPs and 8 Peers - can have only a certain amount of influence on the overall course of the conference, particularly since the initial text will be drafted by a committee made up of Chairmen of Scrutiny Committees (in our case, Nigel Spearing and Baroness Serota). Nevertheless, it seems important to have a leader of sufficient stature with helpful views on European matters. They therefore propose, if you are content, to invite David Howell to lead the delegation in the light of his chairmanship of the Foreign Affairs Committee and his position as a senior Government backbencher. The rest of the delegation will be selected through the usual channels shortly.

Yours sincerely

Maria Thorne

PP GILLIAN BAXENDINE
Private Secretary

Dominic Morris Esq
PS/Prime Minister

file

have to do Mundo.

DM

PRIME MINISTER

HOUSE OF COMMONS LINKS WITH EC

Earlier this year the Lord President was invited by the House Services Committee to propose ways of improving communications between the House and EC Institutions. He proposes to recommend to the Services Committee that:

- MPs should be given free postage and telephone calls to the main EC Institutions.
- Members of the European Parliament should be given access to the Members Dining Room at lunchtime, to the Strangers Bar and Cafeteria, and access to spare seats in the Peers Gallery and the Commonwealth Gallery.

He is ruling out the Services Committee's earlier suggestion about cheaper travel for MPs to Community Institutions. Although the post and telephone recommendation has some cost implications for the House, they are likely to be modest. None of this need be hurried through before the Summer Recess, but are you happy for him to make these proposals to the Services Committee after the House returns from the Summer Recess?

DM

DM

yes no

19 July 1990

jd c:\wpdocs\parly\links

To: MR MACLEAN



From: Gillian Baxendine
Date: 10 July 1990

LINKS WITH EUROPEAN COMMUNITY

The Lord President has prepared the attached draft paper to the Services Committee dealing with postal/telephone links with the European Community institutions and with access for MEPs to the Palace of Westminster.

As we have discussed, it is important to get Opposition agreement to the proposals in the paper. Dr Cunningham spoke favourably in the debate on almost all aspects of this and the Lord President will try to clear the paper with him before the Services Committee meeting. He will be making clear to Dr Cunningham that he sees this as a package so that the parts which all Members want (free postage and 'phones) are made dependent upon some improved access for MEPs, which is more controversial. He will be asking Dr Cunningham to do what he can to convince the Labour Members of the Services Committee about this.

However, we also agreed that the Chief Whip would need to talk to the Opposition Chief Whip about this. Subject to any revisions to the paper (the paragraphs about post and 'phones are yet to be finalised with the Serjeant's office) it would be sensible for Mr Foster to be shown a copy of the paper before it goes to the Committee.

I am copying this note and the attached paper to Alistair Goodlad.

Gillie

GB

GB/aw

LINKS WITH EUROPEAN COMMUNITY
Draft Paper from the Chairman

INTRODUCTION

At our last meeting we took a preliminary look at the question of links between the House and the European Community, in particular the European Parliament. I was invited to prepare a paper containing proposals on the following matters:

"...improving communications between Members of this House and the institutions of the Community, and facilities for United Kingdom Members of the European Parliament in the Palace of Westminster (including access to the Galleries of the House), ... and other matters relating to access to facilities of the House."

BACKGROUND

Procedure Committee Report

This consideration arises from the Report by the Select Committee on Procedure on the Scrutiny of European Legislation. The Report makes a number of helpful comments which it may be useful to summarise here.

The Report notes the reluctance in the past to extend the facilities of the House to MEPs. However it also notes the increased importance of the European Parliament in the light of the new role and powers given to it under the co-operation procedure. The Government in its Response shared the Committee's view that there was no strong case for giving MEPs a formal role at Westminster, but that informal links had the potential to be very productive for the House in its scrutiny of European proposals. It is these which I seek to address in this paper.

One further point made by the Committee is worth stressing: MEPs' involvement in Westminster - and hence their use of any facilities extended to them - is by necessity going to be limited since MEPs will want to spend most of their time in Strasbourg, Brussels and in their constituencies. Visits to London can only be occasional but gestures from this House to make such visits easier would increase the likelihood that Members here could establish valuable contacts with their European counterparts.

Debate on Procedure Committee Report

The debate on the Procedure Committee report on 28 June gave me an opportunity to hear the House's views and it is on that basis that I am putting forward the specific proposals that follow. More than half a dozen Members addressed aspects of these questions. As one might expect, there was strong pressure to establish as quickly as possible improved telephone and postal links with the Community; but there was also strong support for easier access for MEPs. This came particularly - but not only - from the Shadow Leader and the Liberal Democrat spokesman; and no one spoke against the idea.

It seems to me essential that we pursue both aspects of this together. Logically, there is little point in making it easy for us to communicate with the EC at a distance if we are not also willing to welcome meetings with and visits from Members of the European Parliament. As the Shadow Leader pointed out there are some quite simple steps which would show "the determination of the House to seek better relations with our colleagues" in Europe.

SPECIFIC PROPOSALS

1. Access to Galleries

At present the passes issued to MEPs entitle them to [bypass the security checks at St Stephen's entrance, but no more]. I propose a modest extension to allow MEPs access to spare seats in the galleries. The Clerk of the House advises that to allow them access to the Side Galleries causes constitutional problems; I therefore propose that they should be granted access to spare seats in the Peers Gallery or the Commonwealth Gallery where such problems do not arise. [I should add that both the Government and the Official Opposition support this proposal.]

2. Catering

The Catering Sub-Committee at its last meeting looked - as requested by the full committee - at the possibility of "admitting United Kingdom Members of the European Parliament (and former Members of this House) to certain of the refreshment facilities of the House (and in particular to the Members Dining Room at lunchtime)".

The Committee agreed to recommend access to the Strangers' Bar and Cafeteria, to be reviewed once the Phase 1 facilities are in use. However they felt it necessary to refer back to the full Committee the question of admission of MEPs, to be considered along with wider questions.

I therefore invite the Committee to look at this again bearing in mind the limited use to which such a concession would in fact be put. I invite the Committee to consider either!

- extending to MEPs the same concession as to former Members;
or

- asking the Catering Sub-Committee to look again at the question of granting limited access to the Members' Dining-Room, bearing in mind the limited use to which it is put at lunchtimes and on Fridays.

3. Members' Post

[The attached paper from the Serjeant-at-Arms puts forward some alternatives to the use of the existing post-paid envelopes which are invalid outside of the UK.

At this stage I propose a modest extension to allow free postage to the major EC institutions. This can be achieved quickly and simply and at small cost but will be of real value to Members. The working of any new system can be renewed at a later date and I suggest that we leave until then any extensions which Members may wish to propose.]

4. Phone Calls Abroad

[The attached note from the Serjeant-at-Arms advises that it would be possible on the existing telephone system to pre-programme up to 14 numbers to allow Members direct dialling to the main EC institutions. This could be done over the summer recess.

I recommend that we proceed as proposed in the Serjeant's paper.]

5. Travel for Members to the EC

This was raised in the debate by several Members, although not by the Procedure Committee. It is a separate and larger question, of greater cost and complexity than phone calls and post. I propose therefore that we do not pursue it further at this stage.

FORMER MEMBERS

I share the view expressed by the Committee last time that it would not be right to treat Members of the European Parliament any better than we treat former Members of this House. I propose, therefore, that as appropriate, we extend to former Members any concession made to MEPs.



PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

11 May 1990

CA 11/5

Dear Secretary of State,

PARLIAMENTARY SCRUTINY : RESPONSE TO PROCEDURE COMMITTEE REPORT

In my minute of 19 April ^{gap} to the Prime Minister I undertook to report back to colleagues following my meetings with Peter Emery, Nigel Spearing and John Cunningham before final publication of the Government response to the Procedure Committee's report on Parliamentary scrutiny of European legislation.

All three meetings went well and I am now reasonably confident that the Government response will, as we hoped, be regarded on both sides of the House as a positive and constructive one which will help to improve the effectiveness of our scrutiny procedures. I am not proposing any changes (other than perhaps some minor editorial amendments) to the text of the response as submitted to the Prime Minister on 19 April.

Peter Emery was generally content with our responses on all the main points although he felt that the Opposition might resist the idea of automatic referral of documents to Committees. The only specific request he made was for the response to be published as a Command Paper.

Nigel Spearing also welcomed the main points of our response and said that he felt the incorporation of the evidence session in the Standing Committee procedure would be a useful step in improving both the effectiveness of scrutiny and the attractiveness of the Committees for members to attend. He too warned that the proposal for automatic referral might give rise to objections from back-benchers but he understood the reasons why we had proposed it. He then raised a number of detailed procedural points which will be useful to us when we come to draw up the detailed implementing proposals. Like Peter Emery, he urged that the response be issued as a Command Paper.

John Cunningham again seemed generally receptive to what we are proposing and did not raise any particular points of difficulty. Whilst this does not mean that we can expect the Opposition to accept all our ideas without question, there seems to be no fundamental objection to our approach from their side.

cont..... /

I have agreed with the Chief Whip that once the response has been published a debate will be arranged to take note of the Procedure Committee report and the Government's response. This will certainly help us in presentational terms since it offers the House an opportunity to express its views before the detailed implementing proposals are finalized. Unless, however, a clear consensus emerged for some acceptable variation on what we have agreed, I would hope that the implementing proposals will follow very closely the terms of the response as published. The specific changes to Standing Orders would then be tabled and a second, shorter debate would probably be necessary on the occasion when they were moved.

As regards the timing of publication, I see every advantage in now moving ahead with all speed. I am therefore seeking to arrange for publication on Monday 21 May. In the light of Peter Emery's comments, I propose that the response should be issued as a Command Paper on that day and announced by means of a written Answer. I also intend to hold a Press briefing that afternoon to explain our thinking on the key points.

I am copying this letter to the Prime Minister, members of OD(E), Sir Robin Butler and Bernard Ingham.

Yours sincerely,

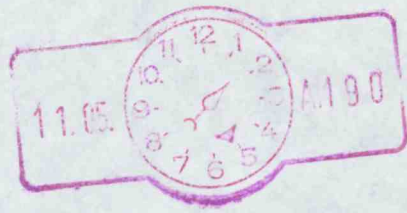
Ellie Baxter
(Private Secretary)

GEOFFREY HOWE

(Approved by the Lord President
and signed on his behalf)

The Rt Hon Douglas Hurd CBE MP
Secretary of State for Foreign and Commonwealth Affairs

Parliament
EC legislation & institutions
May 1990



file - DS

bc - PC

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10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary


24 April 1990

Dear Tim,

SCRUTINY OF EC LEGISLATION

The Prime Minister has considered the proposals in the Lord President's minute of 19 April, dealing with the Government's response to the Procedure Committee's recommendation on Scrutiny of EC Legislation. She is content to proceed as suggested, and with the detailed responses set out in the enclosed note.

I am copying this letter to the Private Secretaries to members of OD(E) and to Sir Robin Butler.

Yours sincerely,

C. D. POWELL

Tim Sutton, Esq.
Lord President's Office

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ce.p.c
P.U. ①



PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

Prime Minister

Accept the Lord
President's proposals,
which have been
agreed by OD(E) &
the Chief Whip.
C.D.?
23/4.

PRIME MINISTER

SCRUTINY OF EC LEGISLATION

at first Yes mt.

1. I have been considering with OD(E) colleagues how we should respond to the report from the Procedure Committee published on 30 November last year. This is a complex subject, and one where our response needs to be judged carefully if we are to secure some key improvements. The attached note prepared by officials following our discussions in OD(E) explains in detail the way in which we have agreed we should respond and the reasoning which led us to these conclusions. A draft of our proposed response itself is attached as an Annex to that paper. This minute summarises the few key issues, which are all linked.

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2. We are all agreed on the need for effective scrutiny by national Parliaments of EC proposals. But our present procedures have the disadvantage that far too much EC legislation is debated on the Floor of the House and late at night. The real prize for Government from any change - and I believe this is now within our grasp - is automatic referral of consideration of EC documents to committees upstairs. This will lessen the pressure on the time available for Government business on the Floor of the House, and should also make the scrutiny process more effective. It would, of course, remain open to us, on some important issues, to propose debate on the Floor of the House as we do now. To achieve this outcome, we need to improve upon the Procedure Committee's proposal on this crucial point. They suggest that the so-called "Twenty-up" rule (whereby any 20 MPs can block a motion to refer upstairs) should be changed to a "Forty-up" rule. Our proposal is that referral should take place automatically unless we put down a motion to the contrary. This will not be popular with all backbenchers, though the majority are, if truth be told, as anxious as we are to get away from late night debates. But my soundings of the Opposition suggest that they will go along with what we want.

3. We will have to give something in order to secure this objective. We originally proposed a so-called "Standing Committee" on EC documents (which would actually be appointed, like all Standing Committees, ad hoc for each document). The Procedure Committee responded by proposing 5 committees of 10 members each that would be Standing Committees in the literal sense, appointed for a whole session. It is here that, on balance and with little enthusiasm, we are agreed that we have to go some way to meet the Committee to secure automatic referral upstairs. Colleagues have agreed to propose 3 committees of 10 members, with flexibility to consider 3 committees of 12 members or 4 committees of 10 members if either variation attracted a broad consensus. This position takes full account of the Chief Whip's concern (which is also felt by Opposition Whips) that if we need to find as many Members to serve on these committees as the Procedure Committee's report would require, it really could become impossible to limit the influence of Members whose attitude towards the subject would be unhelpful to Government objectives.

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4. In presenting this response, which we can legitimately portray as going a long way towards what the Procedure Committee proposed, my judgement is that we will be able to continue the effective tactics begun by John Wakeham last summer. The result of our suggesting ideas of our own to Peter Emery, Chairman of the Committee, was to head them off adopting some of the unpalatable ideas in circulation, such as a Grand Committee (proposed by the Opposition) or a single Select Committee on European Affairs that could summon any Minister (as others had proposed). The essence of the package discussed in detail in the accompanying paper is that, by a response which we can present as broad acceptance of the Procedure Committee's most important recommendation, we can maintain our insistence on automatic referral upstairs.

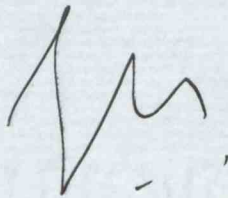
5. On other points, colleagues foresee no difficulty in adopting those of the Procedure Committee recommendations which are broadly in line with our developing practice. These include the proposal that the six-monthly general debates on developments in the Community should not be based solely on one of the regular reports of Community action over the previous six months, but should be more forward-looking, and ahead of the twice-yearly Heads of Government meetings (but still at a time of our choosing). We can also accept the recommendation to cultivate informal contacts with MEPs instead of giving them a formal role. Other recommendations of the Procedure Committee that we will wish to reject do not look like causing a major rift. These include the suggested establishment of EC Sub-Committees by Departmental Select Committees (which if the main thrust of our proposed response commands acceptance would be otiose) and the proposal that Ministers should make oral statements to the House before Council meetings (which would clearly put Ministers under pressure and constrain their negotiating stance).

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If you are content with the proposals OD(E) colleagues have agreed, and with the attached draft of the Government's response, I propose further informal soundings before we issue our response formally, discussing these key points first with Peter Emery, and with Nigel Spearing as Chairman of the Scrutiny Committee, and then with the Opposition spokesmen. I will report the outcome of those informal discussions to colleagues and circulate a final draft before sending our formal response to Peter Emery.

I am copying this minute and the attachments to members of OD(E), to others who attended OD(E) on 22 January and to Sir Robin Butler.



G H

19 April 1990

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PROPOSED RESPONSES TO PROCEDURE COMMITTEE REPORT'S RECOMMENDATION

Recommendation (1): The Scrutiny Committee's remit should be extended to enable it to examine and report on trends and developments in broad European policy areas (para. 22).

Proposed response

The Foster Committee report of 1973, whilst recognising that different approaches to scrutiny were to be adopted in the two Houses of Parliament, believed that it would be advantageous if the two Select Committees set about their tasks in different ways, with one looking at broad policy areas and the other examining documents submitted to the Council of Ministers. The Government believe that this analysis still holds good: the Scrutiny Committee performs a valuable function very effectively. The Government would not therefore wish to see a major shift into the examination of broad policy areas, particularly since this might tend to detract from the Committee's present effectiveness in its primary scrutiny function. However, the Government have already indicated that in their view the present Terms of Reference do allow the Committee to undertake horizontal studies of issues which arise in relation to more than one document: indeed the Committee has carried out an important enquiry into the use of Article 100A as the legal base of certain proposals. Nevertheless, the Government understand the Committee's wish for this to be made more explicit and are therefore prepared to propose an amendment of the Terms of Reference which would give the Committee the scope for considering, for example, consultative documents embodying important proposals for the future development of the Community, and for examining horizontal issues (ie issues that recur in a number of documents). This function would, however, continue to be document-related rather than involving studies of broad policy issues in the abstract which might tend to duplicate the work of other Committees.

Recommendation (2): The Government should seek to ensure that certain defined categories of pre-legislative Commission working documents be made formally available to the House and the Scrutiny Committee (para. 24).

Proposed response

The Government welcome this recommendation and have already established arrangements for supplying the Commission's and the Presidency's forward programmes to the Scrutiny Committee. Experience shows that these documents are somewhat unreliable and subject to change but nonetheless the Government hope that they will assist the Committee in planning their future work.

Recommendation (3): Outside the defined categories of Commission documents, the Government should also take all possible steps to facilitate requests by the Scrutiny Committee, or other interested Select Committees, for access to other Commission working papers (paras. 26 and 89).

Proposed response

The Government undertake to respond sympathetically to any specific request from the Scrutiny Committee, or any other interested Select Committee, for published working documents (eg consultation papers) relating to future Council legislation prior to the submission of a formal Commission proposal to the Council.

Recommendation (4): In considering whether to withhold consent from a legislative proposal in the Council because parliamentary scrutiny has not been completed, Ministers should interpret the criteria laid down in the Resolution of the House of the 30th October 1980 according to the principle of withholding consent unless there are compelling reasons to the contrary (para 32).

Proposed response

The Government undertook in 1984 (in its observations on the Scrutiny Committee's 1st Special Report, 1983/84 Session) to instruct departments that agreement to a proposal before scrutiny is complete should only be contemplated where one of these criteria was satisfied or where a comparably important consideration was in issue. The Government have applied these principles consistently since then and will continue to do so. However, it must be for Ministers to judge, in the light of the negotiating situation as a whole, whether withholding consent is

likely to operate to the overall detriment of the United Kingdom's interests, for example by adversely affecting the content of the measure concerned or by jeopardising the adoption of other measures of benefit to the United Kingdom.

Recommendation (5): The Scrutiny Committee should exercise vigilance on behalf of the House to ensure that the convention whereby Ministers are not required to withhold consent to "confidential, routine or trivial" legislative proposals is not abused (para.33).

Proposed response

The Government are confident that the Scrutiny Committee have exercised such vigilance and will continue to do so.

Recommendation (6): Ministers should take all possible steps to avoid being pressured into reaching conclusions on proposals within an artificially compressed time-scale (para. 34).

Proposed response

The Government seeks to avoid premature Council decisions and will continue to observe the terms of the 1980 Resolution. However, the period of three months prescribed in the Treaty for the final stage of the co-operation procedure (or, by agreement with the Parliament, four months) is a maximum and there may be circumstances in which it is expedient for the Council to take a decision in a shorter timescale. It should also be noted that, under the Rules of Procedure of the Council of Ministers, it is for the Chairman (ie the Presidency) to decide when to put a measure to the vote and, in addition, that he must proceed to a vote if so requested by seven or more members of the Council.

Recommendation (7): The Government should bring proposals rapidly before the Scrutiny Committee and arrange prompt debates where recommended (para. 35).

Proposed response

The Government fully accept this recommendation and will continue to try and meet these aims. In general, the system appears to have been working satisfactorily.

Recommendation (8): Ministers should not treat the Scrutiny Committee's designation of a proposal as one where debate need not delay adoption as a special, separate pretext for giving consent before scrutiny is complete (para 36).

Proposed response

This designation is specifically referred to in the 30 October Resolution and, as recognised in paragraph 36 of the report, is used only in limited circumstances. The Government understand that the Scrutiny Committee's general practice is to employ it only when adoption seems likely before a debate can be arranged and when timing is not of the essence. If, in such cases, an opportunity presents itself to arrange a debate before adoption, it is the Government's practice to do so. In general the Government believe that the system operates well and is not abused. Moreover, if debates are arranged within one month of adoption (see next Recommendation), consideration will not be unduly delayed.

Recommendation (9): When proposals are agreed by Ministers under the terms of the 1980 Resolution before a debate has been held, a debate should be arranged within a month of consent being given (para. 38).

Proposed response

The Government will aim to arrange for debate within a month of agreement being given to any proposal on which a debate recommendation is outstanding, except when the recommendation is for debate on the occasion of another debate. In addition, where a proposal is agreed before the Scrutiny Committee's assessment is complete and debate is subsequently recommended, the Government will similarly try and arrange the debate within a month of the recommendation. Periods when the House is in recess would need to be disregarded for the purpose of calculating the one month period.

Recommendation (10): An oral statement to the House should be made before a Council of Ministers meeting at which a decision is expected to be taken on a proposal which has been recommended for

debate, but on which no debate has been held. The Chairman of the Scrutiny Committee should also be informed if a proposal is likely to be approved when the Scrutiny Committee has not indicated that consent may be given (para. 39).

Proposed response

The Government devote considerable efforts to ensuring that the situation referred to does not arise in practice and have had considerable success in this. Since the report recognises that a statement is not an adequate substitute for a debate, the Government believe there is insufficient justification at present for instituting such a system which would tend to place an additional burden on the Floor of the House, contrary to the main thrust of the report. It is in any case open to the Chairman of the Scrutiny Committee to request a Minister to make an oral statement after a Council and there will also under the present proposals be a debate within one month. However, if experience shows that adoption of proposals before debate is occurring more often than expected, the Government would be prepared to review the situation. The Government accept that the Chairman of the Scrutiny Committee should be informed beforehand if adoption is expected so that the Committee can, if it wishes and if time permits, make representations to the Department concerned.

Recommendation (11): The Government must show flexibility in accommodating additional debates made necessary by amendments to proposals under the co-operation procedure (para. 40).

Proposed response

The Chairman of the Scrutiny Committee has set out certain criteria for recommending second debates and has said that he does not anticipate that the Government's commitment to early debates need lead to any material increase in second debates. Since such debates are expected to be infrequent, the Government accept the recommendation to show flexibility in accommodating them.

Recommendation (12): Only in the most exceptional cases should the Government invoke as a special reason for giving consent to

important proposals before scrutiny is complete the fact that the House is unlikely to meet for several weeks (para 41).

Proposed response

The Government note the Committee's views on the problems caused by recesses and adjournments. During periods when the House is not sitting, Ministers will continue to abide by the terms of the 1980 Resolution and will not give consent to proposals recommended for debate unless special reasons apply. However, in assessing the feasibility of delaying the adoption of a measure in the Council of Ministers pending a debate, Ministers will need to bear in mind how long a delay this might involve when the House is in recess and be guided accordingly. Ministers will continue the current practice of informing the Scrutiny Committee on the resumption of Parliament of any proposals agreed during the Recess which have not completed scrutiny and explaining the reasons for agreement being given.

Recommendation (13): The 1980 Resolution should be amended to formalise the Government's undertakings that it covers any proposal awaiting scrutiny or on which scrutiny is not complete, and that the adoption of a common position will be treated as equivalent to "agreement in the Council of Ministers". The amended Resolution would also need to take account of any extension of the Scrutiny Committee's Order of Reference (para. 42).

Proposed response

The Government accept that the 1980 Resolution should be amended to formalise the undertakings given in 1987 and 1989 and will bring forward proposals to achieve this. The Government note the statement in paragraph 33 of the report that the convention that consent need not be withheld from proposals of a "confidential, routine or trivial" nature should continue to apply.

Recommendation (14): The six-monthly debates on Developments in the Community should be replaced by general debates before each twice-yearly Heads of Government meeting (para: 47).

Proposed response

The Government accept the suggestion that there should be a forward-looking debate twice a year in place of the debates on Developments in the European Community, although the White paper could continue to be a document relevant to that debate. The debates would probably be held somewhat later in each six-month period than they have in the past. They could of course include consideration of subjects expected to be discussed at the European Council but it should be noted that the list of items is often subject to changes shortly before the meeting.

Recommendation (15): There should be no change in the arrangements for questions on European Community affairs (para. 52).

Proposed response

The Government accept this recommendation.

Recommendation (16): We do not recommend the establishment of a European Communities Grand Committee (para. 62).

Proposed response

The Government accept this recommendation and agree with the reasons set out in the report.

Recommendation (17): Standing Committees on European Community Documents should have the power to hear statements from Ministers and cross-examine them before considering the relevant document. They should not, however, have the power to send for persons, papers and records (para. 63).

Recommendation (18): Five Special Standing Committees on European Community Documents should be created, covering the subjects of (a) Agriculture (b) Trade and Industry (c) Treasury (d) Transport and Environment and (e) General (para. 65).

Recommendation (19): The membership of the Special Standing Committees should be 10, and as far as possible, they should include 2 Members drawn from the relevant departmentally-related Select Committee (para 69).

Proposed response

The Government accept these recommendations in principle and welcome the intention to achieve a significant shift away from

debate on the floor of the House and into Committee. However, the Government share the concern expressed in the report that because of the extent of Members' other commitments, and particularly their involvement in other Standing Committees and Select Committees, it would be difficult to find sufficient Members with the relevant interest or expertise to man five Special Standing Committees. The Government therefore propose that initially three Special Standing Committees should be established with ten members each, excluding the Chairman and the relevant Minister. The Committees would have powers to take evidence from the relevant Minister for up to an hour before each debate, as recommended. The Government are, however, prepared to consider minor modifications to the number or size of these Committees in the light of views expressed in the debate on this report. A decision on the allocation of subject areas to the Committees will be deferred until the number of Committees has been settled. Given that a number of practical and logistical problems will also need to be considered, including those mentioned in paragraph 64 of the report, the Government would hope to be in a position to draw up proposals in the light of the debate with a view to implementing them on a trial basis from the start of the next Session. The Government will review the operation of the system at the end of the Session in the light of experience. The review would look in particular at the number of Committees and the division between subject areas and would examine whether the desired shift away from the floor of the House had been achieved in practice.

Recommendation (20): In his weekly Business Statement the Leader of the House should draw attention to imminent meetings of Special Standing Committees on European Community Documents. Such meetings should also be announced in Party Whips (para. 70).

Proposed response

The Government accept that this should be the normal practice.

Recommendation in para 73 (unnumbered): Where a Motion has been moved in a Special Standing Committee, the Government ought subsequently to table an appropriate Motion in the House, on which the question would be put without debate.

The Government accept this recommendation.

Recommendation (21): The minimum number of Members able to block the reference of a European Community Document to a Special Standing Committee by rising in their places should be 40, not 20 (para 72).

Proposed response

The Government take the view that an increase to 40 in the number of MPs required to block a reference to Standing Committee might not be sufficient to ensure that the changes envisaged in the report are carried through. The Government attach importance to seeing that the majority of documents recommended by the Scrutiny Committee for debate are considered in the Special Standing Committees, and therefore favour a system of automatically referring such documents to Committee unless, after discussion through the usual channels, the Government put down a motion for debate on the floor of the House.

Recommendation (22): The Government should draft more pointed Motions for debates on European Community Documents (para. 74).

Proposed response

The Government believe that if members of the Standing Committees have an interest in the subject area and if they are to be given an opportunity to question Ministers about it, the wording of the motion will not be a major factor in determining the level of attendance. Often the UK's attitude to a proposal is too complex to be characterised in a "pointed" motion, particularly when debates are held at an early stage. The Government, of course, have always accepted the desirability of indicating the Government's general position on proposals in Motions for debate.

Recommendation (23): The creation of a new and separate Select Committee on European Affairs would not be feasible (para.95).

Recommendation (24): The Leader of the House should give the House an early opportunity to consider any request by a departmentally-related Select Committee for the power to establish a sub-committee on European legislation (para 97).

Proposed response

The Government remain to be convinced that the creation of such sub-Committees is necessary. Any such proposal would have to be carefully examined, particularly having regard to the resource implications, before it could be put to the House.

Recommendation (25): It would not be sensible for the House to seek formally to direct the priorities of departmentally-related Select Committees towards enhanced scrutiny of European legislation (para. 100).

Proposed response

The Government welcome these recommendations and accept them for the reasons set out in the relevant paragraphs in the body of the report.

Recommendation (26): Select Committees should, wherever possible, create links with the Commission and MEPs in order to improve their scrutiny of relevant European legislation (para. 104).

Recommendation (27): There is no strong case for the introduction of legislation to permit MEPs to take a formal part in the proceedings of the House (para. 110). However the cultivation of informal contacts would be beneficial (para. 112).

Proposed response

The Government accept these recommendations and recognise that there are benefits to be gained from building up informal links between national parliaments and the Community institutions.

Recommendation (28): The Leader of the House should deal sympathetically with the argument that closer contacts with European Community institutions are constrained by the fact that Members' telephone and postal charges must at present be met from their office costs allowance (para 115).

Proposed response

The Government believe that this helpful proposal should be studied by the Services Committee which would be able to investigate the practical options and assess the financial implications before making recommendations. The Committee will report to the House as soon as possible.

PARLIAMENT: EC Legislation
may do



CONFIDENTIAL

PARLIAMENTARY SCRUTINY OF EC LEGISLATION: RESPONSE TO THE
PROCEDURE COMMITTEE REPORT

Note by officials

Introduction

1. The Government is due to respond to the Procedure Committee's report on the scrutiny of European legislation which was published on 30 November last year (Flag A). This note describes the main issues raised and explains the line which OD(E) has agreed should be taken in response to the more important of the 28 recommendations in the report. A copy of the proposed response to all the recommendations is attached (Flag B).

Background

2. When the previous Lord President reported to the Prime Minister on 17 July last year on discussions in OD(E) (Flag C), Ministers recognised that considerable pressure had built up for reform of the scrutiny system. The Procedure Committee was looking for changes to recommend: if the Government did not come up with any proposals, there was a danger that the Committee would adopt some of the less palatable ideas that had been floated by others. OD(E) therefore agreed to feed in a suggestion for setting up a new procedure for the Standing Committee on EC documents, under which the Committee would be able to take oral evidence from the relevant Minister for up to an hour out of the total two and a half hours allowed for debate. Linked with this concession, the Government proposed that documents recommended by the Scrutiny Committee for debate would be referred automatically to the Standing Committee unless

the Government chose to table a motion for debate on the Floor. The aim was to shift more debates into Committee and lessen the burden on the floor of the House, particularly by reducing the number of late night debates. It was envisaged that, as under the present system, the Committee would be constituted afresh for each debate. The Prime Minister subsequently approved these ideas and the Lord President wrote to Sir Peter Emery on 27 July setting out the proposals.

3. Since then, the Prime Minister and other Ministers have on several occasions publicly reaffirmed the need for effective scrutiny procedures. When faced with calls to give more powers to the European Parliament in order to make up the so-called "democratic deficit", Ministers have argued that it is more important for national Parliaments to operate effective scrutiny.

4. Against this background, it is important for the Government response to this report to be seen to be constructive. The report seems likely to command a wide measure of support in the House : the Government's stance on any recommendations that Ministers decide to reject will therefore require thorough justification, in terms that will stand up convincingly in debate.

Procedure Committee recommendations

5. The decision to feed in the Government's own ideas was largely vindicated. The report rejected all the more radical proposals for reform such as the Opposition's proposal for a Grand Committee or John Biffen's proposal for a Select Committee on European Affairs with powers to summon the Prime Minister. Instead it adopted an evolutionary approach and took on board the thrust of the Government's suggestions. There are, however, some important differences to which OD(E) has given careful consideration.

CATEGORY A: RECOMMENDATIONS WHICH CAUSE DIFFICULTY

(i) Standing Committees (recommendations 17-19)

6. The report accepts the principle that more debates should be taken in Committee. Not surprisingly, it also adopts the Government's proposal that the Committee should have the power to take evidence from Ministers. But instead of the Committee being reconstituted afresh for each debate, the report proposes establishing five Committees of ten members each (which would be standing committees in the literal sense, being appointed for a whole Session), covering: a) agriculture; b) trade and industry; c) Treasury; d) transport and environment; e) general. The report makes out a respectable case as to why this system should be preferred to a single committee.

7. Some Ministers have expressed the fear that Committees with a semi-permanent membership and a specific subject area might have a greater tendency to try and impose their views on Ministers, thus constraining negotiating flexibility. On the other hand, the report explicitly rejects the Danish system of mandating Ministers (para 31); and it should normally be possible for Ministers to avoid being drawn into giving unnecessary commitments, particularly where debates were being held at an early stage in negotiations. Moreover, there is some logic in the idea of having members who are interested in the subject and for those members to be appointed and ready to attend a debate at relatively short notice.

8. The Procedure Committee itself recognises in the report that finding Members to serve on the new Committees will not be easy. Because of this, they kept the number of Committees down to five and the membership of each one down to ten. However, the Chief Whip has advised that it might prove difficult to find enough interested (but not fanatical) Members to fill five Committees. The Lord President also, with OD(E) colleagues' agreement,

sounded out the Opposition on their reaction to the proposal for five Committees and it is clear that they share these concerns on the problems of manning. OD(E) therefore agreed that the Government should respond to the recommendation concerning Special Standing Committees as follows:

(i) acceptance of the recommendation in principle;

(ii) because of the additional commitments that five Committees would entail, an opening offer of three Committees of ten members each but with flexibility to consider three Committees of twelve members each or four Committees of ten members if a consensus emerged in favour of either alternative (all these figures excluding the Chairman and the relevant Minister);

(iii) subjects to be divided up between Committees following final decisions on the number;

(iv) implementation of this new system on an experimental basis from the start of the 1990/91 Session, to be reviewed at the end of the Session.

9. It should be possible to present this as a broad acceptance of the Procedure Committee's recommendation and for the Government to be able to expect support for such a compromise on both sides of the House. In the unlikely event that the Opposition chose to press for a single Committee, the Government would retain the option of reverting to a system of ad hoc selection as agreed in OD(E) last July, since it would clearly be impossible for one Committee with fixed membership to handle all the workload (estimated to be about 35 debates in Committee per Session).

10. Although some Ministers have been concerned that this

approach could lead to a substantial increase in the overall number of debates and a correspondingly greater burden on themselves and their Departments, this does not appear to be a major risk. The task of selecting documents for debate will belong, as now, to the Scrutiny Committee and the criteria for doing so will be unchanged; but the Government will need to monitor the situation carefully, given that the number of scrutiny debates has in any case tended to increase in recent years. It will also be important to check whether the central objective of shifting debates into Committee is achieved and look at the balance between the three (or four) Committees. The proposal for a review at the end of the first Session's operation is intended to provide an opportunity to adjust the arrangements if necessary.

(ii) Oral statements (recommendation 10)

11. The report recommends that Ministers should make an oral statement to the House immediately before a Council of Ministers meeting if a decision is expected to be taken on a proposal which has been recommended for debate, but on which no debate has been held. It is proposed that the Government should reject this recommendation because of the clear risk that Ministers would come under pressure to give specific commitments which would constrain their ability to negotiate effectively. By way of justification, the Government can point to the fact that it would go against the general thrust of the report by placing an additional burden on the Floor of the House.

(iii) 20-up rule (recommendation 21)

12. The Government's proposal which was fed in last July was based on the premise that documents would be automatically referred to Standing Committee unless, after discussion through the usual channels, the Government put down a motion for the debate to take place on the Floor. The Procedure Committee say that some safeguard is necessary and propose increasing the

present so called "20-up" rule to 40-up. Consistent blocking by a group of 40 MPs (not necessarily the Opposition) could, however, prevent the shift into Committee from being achieved. It is therefore proposed to resist this recommendation and stick to the original proposal. This may give rise to some protests from backbenchers against leaving the choice entirely to the usual channels; but the Lord President's soundings of the Opposition suggest that they agree that too much is currently taken on the floor and would be happy to consider the Government's proposed mechanism if it can command majority agreement. This automaticity would clearly be the major prize for the Government out of the changes recommended in the report.

(iv) Select Committees to set up EC sub-committees
(recommendation 24)

13. Strictly speaking, this is a matter for the House to decide rather than for Government. Nevertheless OD(E) has agreed that the Government's response should seek to discourage moves in this direction. None of the Select Committee chairmen, except Sir Terence Higgins, has shown any enthusiasm for this proposal. Since it is already proposed to accept the establishment of Standing Committees and a (marginally) extended role for the Scrutiny Committee (see para 14 below), on top of the existing Select Committees, the House ought to be receptive to arguments about the serious risk of overlap, as well as the consequential extra demands on Members' time.

(v) Scrutiny Committee's Terms of Reference (recommendation 1)

14. This is another difficult area which was last discussed in OD(E) a year ago, where it was agreed that the then Lord President should explore both the scope for wider use of the existing terms of reference and whether there was a case for a small-scale amendment to them. In the event, Mr Wakeham was able to avoid amending the terms of reference and this was confirmed in an exchange of letters with the Chairman of the Scrutiny

Committee. However, the Procedure Committee have condemned this as an unsatisfactory response and restated, in fairly strong terms, the case for an extension. OD(E) have therefore agreed that the Government should now take up the suggestion of a "modest extension" which achieves little more than a cosmetic change. The aim would be to satisfy the Scrutiny Committee by allowing it to widen its activities somewhat but without giving it a remit to conduct detailed enquiries on broad policy areas. It would probably be helpful for the Lord President to sound out Mr Spearing on the detail before the specific change is actually proposed.

(vi) Motions for debate (recommendation 22)

15. The premise underlying the recommendation, that more pointed Motions would encourage more MPs to attend debates, is questionable. This proposal would cause difficulties for Departments since quite often the UK attitude to a proposal is too complex to encapsulate in a Motion. In other cases, a take note motion is more helpful in enlisting a bipartisan approach. It is suggested that this recommendation should be rejected, or at least deflected.

CATEGORY B: MAIN RECOMMENDED CHANGES WHICH IT IS PROPOSED TO ACCEPT

(i) Links with MEPs (recommendations 26-27)

16. The report helpfully rejects the idea of formal participation by MEPs (such as takes place in Belgium and Germany where they have joint committees of MEPs and national parliament representatives) since this would probably require legislation which could be highly controversial. Instead, it recommends informal links with MEPs or the Commission. OD(E) agreed that the Government could support this. However, in practice the appointment of MEPs as specialist advisers to Select Committees

or their appearance as witnesses may clash with their commitments to attend the European Parliament between Tuesday and Friday midday.

(ii) Telephone and postal charges for links with EC institutions (recommendation 28)

17. The report suggests that contacts between Westminster and the Community institutions are currently constrained by the fact that Members' telephone and postal charges must be met from their office costs allowance. It might be possible, depending on the cost, to consider installing tie-lines to Brussels and Strasbourg. The practical and financial implications of this will require further consideration, but OD(E) agreed in principle that it was worth pursuing and that the matter could usefully be referred to the Services Committee.

(iii) Scrutiny Committee requests for Commission working papers (recommendation 3)

18. The report recommends that the Government should take steps to facilitate any requests from the Scrutiny Committee for Commission working papers outside the defined categories which they already get. To accept this recommendation without qualification would carry the risk that the Scrutiny Committee or another Select Committee, in their desire to go further "upstream", might seek (however unwisely) to establish a system whereby the Government was required to supply them with large numbers of Commission or Council working documents on a routine basis. As well as the burden on Government, this would swamp the Scrutiny Committee which already has large volumes of paper to digest. However, contacts with the Clerk of the Scrutiny Committee indicate that they are more interested in documents that are already in the public domain but for one reason or another have not been formally deposited. The proposed response is therefore drafted so as to emphasise that the Government will consider specific requests (ie for a known document to whose

existence the Committee had been alerted) relating to published documents (ie not ones subject to confidentiality constraints). This qualified acceptance should be sufficient to satisfy the Scrutiny Committee while minimising the problems referred to above.

(iv) Debates within one month of adoption (recommendation 9)

19. This recommendation says that where proposals are agreed by Ministers before a debate has been held, a debate should be arranged within a month of agreement being given. This should be acceptable in principle since it is clearly undesirable to have debates long after agreement to a proposal. In any case, the situation should arise only rarely if the commitment to early debates is observed. However, the response will need to clarify that the commitment to debate within a month after adoption would not apply to all unscrutinised proposals but only those already recommended - and perhaps those subsequently recommended - for debate. Any periods during which the House is in Recess should be disregarded.

(v) Six monthly debates on the Community (recommendation 14)

20. The report recommends that the six monthly retrospective debates on Developments in the Community should be replaced by general debates before each twice-yearly Heads of Government meeting. In practice recent White paper debates have been largely forward-looking, eg the White Paper debate in November 1989, which took place a few weeks before the Strasbourg summit. In addition, there were scrutiny debates on EMU and the Social Charter in the week before Strasbourg. There will need to be a note of caution about the timing of debates and the availability of a definitive agenda. The White Paper would presumably continue to be a relevant document for the debate.

CATEGORY C: TECHNICAL AND NON-CONTROVERSIAL RECOMMENDATIONS

21. The remaining recommendations are, broadly speaking, either technical in nature (numbers 4,8,11 & 12), or maintain existing practice (numbers 5-7,15,16,23 & 25), or are consistent with changes to which the Government has already agreed (numbers 2,13 & 20).

Cabinet Office

19 April 1990



Cite DCA

10 DOWNING STREET

LONDON SW1A 2AA

From the Principal Private Secretary

SIR ROBIN BUTLER

METHODS OF INCREASING UK STAFF IN THE EUROPEAN COMMUNITY INSTITUTIONS

The Prime Minister has seen your minute of 4 April and was very grateful for the Cabinet Office report which was attached on the need to get more UK staff into the European Community Institutions. She has noted the very unsatisfactory position which the latter reveals and agrees that steps should be taken as soon as possible to improve the position. She has agreed the three major recommendations identified in your minute together with their financing implications.

I am copying this minute to Stephen Wall (Foreign and Commonwealth Office) and John Gieve (HM Treasury).

(ANDREW TURNBULL)

17 April 1990

Ref. A090/857

MR TURNBULL

Methods of Increasing UK Staff in the European
Community Institutions

--- The Prime Minister recently raised with me the need to get more UK staff into the European Community Institutions. I said that the European Secretariat have been reviewing ways of improving the situation. I attach a copy of their report.

2. UK representation is poor in all the Community institutions but notably in the most important - the European Commission - and is not getting better. Our overall share of Commission A grade posts ought to be 15 per cent; it is 11.7 per cent. In the lower recruitment grades - the seedcorn for the future - it is only 7.9 per cent. Even more worrying, UK applications for the EC competitions are declining steeply. The major routes into the Commission are through the lawyers' and economists' examinations. In the 1988 lawyers' competition only 1.6 per cent of the applicants were British and there was only one UK lawyer on the final reserve list of 103. In the current economists' competition only 2.5 per cent of applicants are British. The Community recruitment practices reflect the traditions of the original Six and need to be adjusted to take account of our own traditions. Their methods are also amateurish and need overhaul. The main problems are:-

- The Commission concentrates on economists and lawyers.
- They prefer people with work experience, not those straight out of university.



- Their recruitment competitions are poorly publicised, take a long time and candidates who pass are put on a reserve list from which they have to lobby for a job. This is a process unfamiliar and distasteful for British candidates. It can take four to five years between applying and getting a job.

3. The Commission has at last accepted that there is a problem and is willing to look at ways of dealing with it. There has been an encouraging exchange of letters on this issue between Mr Maude and Mr Cardoso which is attached to the report at Annex D. We will keep up the pressure on the Commission to put its good intentions into practice.

4. However, this will take time to have an impact on the UK's poor position. The review has identified steps which we ourselves can take to improve the situation in the meantime and to ensure that we are ready to take advantage of Community developments. The main need is that we should be able to provide support and employment for candidates, and maintain their interest and qualifications while they are taking the Community's competitions. Three major recommendations are made.

I. A "European option " in Civil Service Recruitment

5. We do at the moment, in recruiting graduates to the fast stream of the Civil Service, invite them to express a "European interest" if they want to seek a Community post. However, we then leave it to Departments to take them on and Departments face a serious conflict of interest in deciding whether to steer their AT/HEO(D)s in the direction of Europe when they are looking for talent themselves. In the end, the difficulty and uncertainty of the European recruitment process and Departments' need for talent to meet domestic policy commitments have tended to prevail.



6. To deal with this problem the review proposes that optants for Europe should then be managed and funded centrally by the Cabinet Office rather than by Departments. They would be seconded to Departments while they were waiting for Community competitions but, since the Cabinet Office would be paying their salaries, we would be better able to monitor what is happening to them and keep them on track for a European post.

7. The addition to the Cabinet Office budget would amount to between £2.5 million and £3 million after four years. This could be provided by "new money" or by slicing the necessary amounts off Departmental budgets. The latter would be difficult and I hope that the Government would provide new money to mark the importance of this initiative especially since Departments would have to replace those successful in European competitions by extra permanent recruits.

II. Secondments to the EC

8. The second proposal in the review (paras 33-40) concerns the secondments we make to the EC. These provide a rapid means of mitigating the problem of our under-representation in Brussels and increasing our influence on the decision making process. However, once again, Departments (who continue to pay the secondees' salary costs whilst they work in Brussels) are faced with a conflict of interest in deciding whether to second people, even where secondments may be in the overall national interest, but are not an immediate departmental priority. Limits on Departmental running costs and the overall shortage of good quality staff are major obstacles to increasing the number of secondments.

9. It is proposed that half the cost of any additional secondments should be met on a central budget. The costs of this proposal are about £270,000 per year for 20 additional



secondments at Grade 7 level. I support these proposals: inevitably it will take a considerable time to improve our overall share of the permanent staff in Brussels however quickly and urgently we start taking remedial action. In the meantime I believe we must exploit the opportunities for temporary appointments as effectively as possible.

III. A Cabinet Office Unit

10. The third major recommendation in the report (paras 41-45) is for the establishment of a unit which would have overall responsibility for monitoring the progress of UK nationals into European posts. As the review recognises (para 42) there is always a temptation to suggest the establishment of a special unit to deliver particular policy objectives. In this case however I agree that such a unit would be justified. We need a focal point to co-ordinate our efforts and to keep up the pressure on the Commission who hold the main keys to solving this problem. A unit is also needed to drive through the sort of changes in Whitehall which are proposed. Countervailing pressures are too strong for Departments to achieve these changes on their own, without effective support and encouragement from the centre.

The Treasury's Reservations

11. Other Departments accept and support these recommendations, but the Treasury has some reservations. The Treasury accept the need to recruit more fast streamers with an interest in Europe, for better action to maintain and develop that interest, with some increased monitoring and encouragement from the Centre, and for effective preparation for the EC Commission's recruitment procedures. They fear that in a tightening labour market for talented young people the measures outlined above might not increase total recruitment to the Civil Service and European institutions but could be at the expense of getting the people



needed for the Home Civil Service. They fear this could be enhanced by central as opposed to departmental management of these entrants. They would therefore prefer more vigorous efforts to get the Commission to make their recruitment methods more accessible to UK nationals and to prevent Departments from hijacking people who exercise the European option under the present scheme.

12. I accept that there is bound to be some risk in these proposals but I do believe that if the European option was vigorously marketed as a route into the European Commission, we could achieve a net increase in recruitment both for Europe and for the Home Civil Service. I accept, however, that we would need at the same time to market Home Civil Service jobs vigorously as part of the combined package.

The College of Europe

13. Finally I should like to mention one particularly encouraging development which has already occurred as a result of the review and which is referred to in the report (para 47). That is the decision by the Department of Education and Science, the Department of Education for Northern Ireland and the Scottish Education Department to increase substantially over the next two years the number of bursaries they make available for students to study at the College of Europe (from an overall total of 4 to 21 this year and 30 in 1991/2). The College is remarkably successful in getting its students through the Commission's examinations - about half of its graduates are successful each year. I believe this development, which should bring our student population at the College into line with other Member States', will be particularly valuable in improving British representation in the Community's institutions.



Conclusion

14. I should be glad to know whether, despite the Treasury's reservations in para 11, you agree that we should pursue the three recommendations in paras 5 to 10; and, if so, whether the costs, which may build up to around £3 million a year after four years, may be provided as an addition to the Cabinet Office budget.

15. I am copying this submission to the Private Secretaries to the Foreign and Commonwealth Secretary and the Chancellor of the Exchequer.

R.R.B.

ROBIN BUTLER

4 April 1990

INTRODUCTION

1. This review has been initiated by the European Secretariat in response to the Prime Minister's and the Head of the Home Civil Service's concern about the UK's chronic under-representation in the European Community institutions. The review's terms of reference are attached at Annex A. It has been conducted in consultation with other Departments through the mechanism of the official cabinet committee EQO(P).

SUMMARY

2. This report is divided into four main sections. The first (paras 3-8) sets out the statistical background to the problem. The report then identifies a number of contributory factors and solutions. These have been divided into two categories: in Section 2 issues which need to be pursued with the European Commission and the other Community institutions (paras 9-11), and in Section 3 those which can be taken forward independently by HMG (paras 12-47). The final section, (paras 48-51) summarises the conclusions and recommendations.

SECTION 1: BACKGROUND

3. The UK is significantly under-represented in the EC institutions at all but the very highest levels (A1 and A2) where an informal quota system still operates. The latest figures for the European Commission (March 1990) show that across the board we have 11.7% of permanent A Grade staff (384 staff) compared with a so called "geographically balanced" share of 15% (492 staff). This contrasts with Belgium which has a 12% share (against a "geographically balanced" entitlement of about 6%), France with 16.0%, Germany 14.6% and Italy 13.3%. Annex B provides a more comprehensive analysis.

4. The position in the Commission is slightly worse than it was 18 months ago when our share was about 12.5%. In the medium term there is every prospect that it will continue to deteriorate: so-called "parachutage" (ie the appointment of staff from outside) is rapidly being phased out from all but the most senior or specialist posts; and in the recruitment grades (A7/A8) from which almost all internal promotion is sourced, the UK proportion is only 7.9% - again marginally down on last year's figure of 8.3%.

5. The main means of entry into administration in the Commission is through competitions for economists and lawyers. As Annex C shows our performance in these competitions has fallen off since the first half of the 1980s. The main problem is the paucity of British applicants rather than their relative success in the competitions. The proportion of UK applicants for the economists' competition has fallen from 4.8% in 1987 to 2.5% in the current competition. In the 1988 lawyers' competition the UK proportion was 1.6% and there was one Briton on a reserve list of 103 (compared with 5.3% in 1984 and a reserve list tally of 13.9%).

6. The situation in the other Community institutions is broadly similar. However the Commission is very much the largest institution (it employs more staff than all the others put together) and it is the place where policies are formulated. Inevitably therefore the review has tended to concentrate on the Commission, but in general its conclusions apply to all the institutions.

7. It may be worth briefly rehearsing the reasons why the figures cause grounds for concern. The officials in the Community institutions work for those institutions: they do not "represent" their own countries. But a paucity of UK nationals means that British methods of working and thinking, and British values, will have less influence on developments in those institutions than those of other Member States. (This is particularly important in the case of the Commission,

in view of its responsibilities under the Treaty.) It also makes our own dealings with the Community institutions that much smoother if there are people there with a shared British background, and in particular makes it easier for us to find out what the Commission is up to.

8. Any steps we take now will take some time to have an impact, but the absolute numbers involved in improving our position are tantalisingly small: if we could maintain a level of entrants into the Community institutions at A7 and A8 grades of between 30 and 40 people a year, then over time the situation would correct itself.

ISSUES TO BE PURSUED WITH EUROPEAN COMMISSION

9. Ultimately the responsibility for resolving the problem lies with the European Commission rather than the UK. One of the main reasons for the deficit lies in the fact that the Commission's recruitment practices reflect the traditions of the original Six and do not always fit comfortably with the UK system. For example the Commission tends to concentrate on recruiting lawyers and economists to the exclusion of other disciplines (sub-para 11 (i)) and they favour older candidates with work experience (sub-para 11 (ii)). Their recruitment methods also seem amateurish and cumbersome, and there are a number of relatively straightforward improvements which we believe could make a significant difference to the situation, for example the use of more effective publicity (sub-para 11 (vi)) and better organised competitions (sub-para 11 (vii)).

10. Although the Commission has been slow to respond to British anxieties it is now clear that, following a successful campaign by the British Cabinets, it has accepted that there is a real problem and is willing to look at ways of dealing with it. This is reflected in an encouraging exchange of letters between Mr Maude and Mr Cardoso (see Annex D). We have also established a very constructive working relationship between the Cabinet Office and UKREP on the one hand and DGIX

(responsible for personnel and administration) on the other, and at DGIX's invitation we are on the point of seconding a British expert to help them with recruitment and publicity. It is very important that we keep up the pressure in DGIX and make sure that they translate their good intentions into action.

11. The following issues need to be pursued:

i) "Generalists" As noted above, and unlike the British Civil Service, the Commission concentrates on recruiting lawyers and economists, which excludes a large number of potential UK candidates. However they have now said that they are willing to run a regular generalist competition in addition to the lawyers and economists competitions, and plan to start within the next few months. The idea of testing ability and aptitude rather than specialist knowledge is unfamiliar to the Commission and we are giving them assistance and advice. (For example the Head of Recruitment in DGIX will be spending a day at CSSB in the near future.) However DGIX is only the first hurdle. Successful candidates are placed on reserve lists from which names are picked by the Directorates General for appointment. We will therefore need to persuade the other DGs to take generalists as well as lawyers and economists from these lists if the development is to have a significant impact.

ii) A8 Recruitment The Commission concentrates on recruiting older candidates (at A7 level) with at least two or three years' work experience. This causes problems for the UK. It means that the Commission does not compete for final year undergraduates in the annual "milk round". This is one reason why its links with British universities and other educational institutions are not strong. Even undergraduates with a serious interest in working in the EC institutions have to find alternative employment until they have the necessary work experience. Not surprisingly, they tend to get embedded in other careers: their interest wanes and they are difficult to

target. In response to UK pressure, the Commission is developing its recruitment at the lower A8 level (which requires no previous work experience) where it is trying to devise a proper training and development programme.

This is a step in the right direction and will help to raise the Commission's profile as a career opportunity. However, only about 15% of recruitment currently takes place at A8 level and there would have to be a major shift in emphasis in order for it to have much impact on the British deficit. And even at this level the Commission will only admit graduates to the competitions, so final year students are still excluded. (As Annex C shows the A8 competitions currently attract even fewer UK applicants than those for A7.) The Commission see the possession of a pre-existing degree as a crucial factor enabling them to sift the thousand of applications which they receive, but we need to continue to press them to accept applications from final year students.

iii) Recruitment at more senior levels As we have explained, the opportunities for "parachutage" are dwindling. An alternative way of improving our representation at the middle to senior levels without having to wait for any improvement in recruitment at A7/A8 to work through would be for the Commission to recruit directly to these levels (cf the reintroduction of the G7 direct entry competition in the Civil Service.) We shall pursue this with the Commission.

iv) Direct Recruitment of Member States' Civil Servants One possibility which we have urged on the Commission is for them to exempt from at least the earlier stages of their own selection procedure serving civil servants and/or those who had passed Member States' own competitions. The Commission would have the right to validate Member States' selection processes and could also hold their own more limited competition. However the proposal goes to the heart of Commission sensitivities about competence and independence, and we have so far had a negative response.

v) Limited Nationality Competitions We have also suggested that the Commission should run limited competitions for candidates from so-called deficit countries such as the UK. This has met with similarly firm rebuff. Given the progress we are making in other areas there is probably little to be gained from pursuing either this proposal or the previous one for the time being, but we could return to them in due course.

vi) Publicity The Commission's publicity is unsatisfactory, and with our encouragement DGIX are pursuing a number of avenues: these include publishing more informative and attractive recruitment literature (at the moment this is particularly poor); advertising competitions more widely and effectively; forging better links with universities (for example by attending careers fairs and appointing "liaison officers" amongst the younger Commission staff); and handling enquiries more efficiently.

vii) The competition process leaves much to be desired. It is obscure: previous papers are not published and the competitions are infrequent and (in the past at least) have been irregular and often held at short notice. The application procedures are complicated and bureaucratic. The written examinations are held at inconvenient places and times (eg Harrow at 8.30am). Candidates are not given adequate prior information about what expenses they can claim. The process is also very protracted: in the past in some cases it has taken as long as four or five years from the closing date for applications for a candidate to be offered an appointment. Candidates who reach the reserve list need to lobby to be offered a job, a process which is unfamiliar, inconvenient and even distasteful for British candidates. DGIX has started to make some progress in these areas. For example they have published an outline timetable for the next two years' competitions and have announced plans to complete each competition within 12 months. (Given that the reserve list is

intended to last for two years, this would mean that it could still take up to three years for a candidate to be offered a job.) The Commission seem to recognise the need to improve the practical arrangements for the competitions, but they are less ready to contemplate more fundamental changes such as guaranteeing a job to someone who reaches the reserve list. We need to pursue this with them.

Of course the poor publicity and the way the competitions are organised affect other Member States as well, but nevertheless we believe they are one of the explanations for the relatively low level of applications from the UK. This is partly because in these areas too the Commission's methods tend to reflect practices in other Member States'. For example we understand that the UK graduate recruitment market, and particularly the literature provided here by employers, is a good deal more sophisticated than it is in other parts of Europe. And as we have already mentioned, the idea of being on a reserve list and then lobbying to get a job is a familiar one in many other Member States. Another factor is that, for a variety of cultural and historical reasons, the background level of awareness of EC career opportunities is lower in the UK than it is in other Member States, and therefore the quality of the Commission's publicity and the accessibility of its competition procedures is relatively more important.

viii) A Single Recruitment Agency for all the Community institutions. If anything the problems about publicity and the organisation of competitions are more serious in the other EC institutions, which are less familiar to candidates and hold competitions even less frequently: the Council for example only holds an A grade competition about once very five years. Some of these practical problems could be overcome if there was a single recruitment agency for all the institutions. This is something which we have been pressing for for some time and the Commission have now said that they intend to set up such an agency within the next two years. This is an encouraging development, but we will need to make

sure that the new organisation adopts satisfactory recruitment methods and does not simply continue with the existing inefficient system, and that it has the resources to do the job properly.

ix) Information DGIX have been helpful in providing statistical information for this review but there is a surprising lack of basic information about staffing. The contrast with the Civil Service Commission is startling. For example we are still trying to get answers to fundamental questions such as whether the UK turnover of staff is any higher than for other Member States, and how our success rate in getting candidates off the reserve lists compares with other Member States. Again this is an area where DGIX themselves are aware of the need to improve their internal organisation, but we need to press them to carry through their good intentions.

ISSUES TO BE PURSUED IN WHITEHALL AND THE UNITED KINGDOM

12. Against this background of continuing and vigorous pressure on the European Commission to implement crucial changes, there are steps which the Government itself can take to improve the situation and to ensure that we are in a position to take full advantage of developments in the EC. We have identified a number of areas where progress can be made.

13. There are three major recommendations which we wish to make. These are: first, that we should introduce a special option in our fast-stream recruitment which would prepare successful candidates for entry into the EC after 3 or 4 years (paras 14-32). Second, that Cabinet Office should co-finance - with Departments - secondees to the Commission in order to build up British influence over a relatively short period (paras 33-40); and third that a unit should be set up within Cabinet Office to drive forward and co-ordinate our efforts to raise the levels of British representation in Brussels (its effectiveness would be reviewed after 2 years)

(paras 41-45). We conclude this section with some recommendations on increasing recruitment from the private sector, which have emerged from the review (paras 46-50).

RECOMMENDATION 1 - Development of a European Fast-Stream

Background

14. The European Commission's policy of recruiting people with at least two or three years' work experience causes difficulties for the UK and it is unlikely that the developments at A8 level which the Commission is proposing will in themselves resolve the problem. We need to find ways of helping undergraduates to bridge the gap.

15. The existing fast-stream entry (the AT/HEO(D) scheme) already includes a European element which was introduced in 1988. The possibility of pursuing a career in the EC institutions is spelt out on a separate page in the Appointment-in-Administration (A-in-A) brochure but, unlike the other options (the Diplomatic Service, the House of Commons Clerkships etc) it is not a separately identified scheme for which candidates apply. Instead they are given the opportunity at CSSB to express an interest in a career in Europe on the understanding that, as far as possible, Departments will take this into account in developing their careers.

16. Last year a third of the 75 recruits to the fast stream indicated such an interest. On the whole they have not been treated very differently from other AT/HEO(D)s. There has been no central monitoring of their progress, nor has any guidance been issued about how they should be trained and developed. (For example an obvious first step would be to check on their language skills.) No training courses have been devised to help prepare them for the Commission's entry examination.

17. Understandably departments are not over enthusiastic about preparing "their" AT/HEO(D)s for careers elsewhere. They are expensive to recruit, train and develop, and, given that they will probably lose them to another organisation after 3 or 4 years, Departments may well find other pressing priorities crowding out the development of potential Commission recruits. Departments also find it increasingly difficult to get enough fast-streamers to fulfil their own requirements: as a result all HEO(D)s, regardless of whether they have declared an interest in Europe, tend to find themselves channelled in to any activity needing quality staff.

Continuing with the existing arrangement: the arguments for and against

18. The Treasury accept the need to recruit more fast-streamers with an interest in Europe, for vigorous action to maintain and develop that interest, and and for effective preparation for the EC Commission's recruitment procedures. But they believe that this can be done by making the existing arrangement more effective, marketing it more vigorously and providing firm and monitored targets for the Departmental development of these people.

19. However we do not believe that the current system can ever be made to work: the countervailing pressures on Departments are too strong and the sacrifices necessary for the arrangements to work satisfactorily are too great. A "European" Department such as MAFF or the DTI could end up with more than a dozen of these people on their books at any one time; and smaller, less-European oriented Departments would find it just as difficult to relinquish any of the few AT/HEO(D)s which they had. We also believe that it would be difficult to market the existing rather informal arrangements in a way that would attract additional applicants.

Proposal

20. We therefore propose that the existing European element in the AT/HEO(D) scheme should be developed into a more formal option and that, once in the scheme, these AT/HEO(D)s should be centrally managed and prepared for Europe in a rather more targeted way.

21. The scheme would need to be vigorously promoted. The Civil Service Commission should produce a separate brochure, parallel and similar to the main A-in-A scheme brochure (with appropriate profiles etc). They would advertise the European option separately.

22. Such a scheme could not, of course, guarantee success in the European Commission's entry examinations, or placement in a job afterwards, and the literature would need to make this clear. It would also need to target those with law and economics degrees, who will continue to find it easier than graduates from other disciplines to gain entry into the EC. However the scheme would not need to exclude other graduates. It is possible at present for "generalists" who have experience in public administration to succeed in getting into the Commission, and the development by the Commission of a proper generalist competition (to which they have now committed themselves) will make this a good deal easier.

23. Guidance should be drawn up about how Departments should develop the "Euro AT's" including appropriate training (eg intensive language training, and a 6 month experience secondment to the EC). A special course for these staff might also be set up by the EIPA in Maastricht and/or new courses developed at the Civil Service College. Finally if the AT/HEO(D)s were successful in the European Commission's exams they would be given help and support to find a suitable post.

24. An early priority would be to explore ways of supplementing the numbers of "Euro AT's" with members of the Economist Group, the Legal Group and other specialisms, and members of departments' main streams (for example, those on Management Development Programmes). The proposed unit (see paragraphs 41-45 below) would investigate how this should be done in consultation with the Treasury, other departments and the relevant central Management Units.

Management and Funding of the Scheme

25. We propose that the AT/HEO(D)s should be attached to the centre (to OMCS) who would second them to a particular Department for, say, 4 years but continue to pay their salaries and approved training. This would reduce the conflict of interests which confronts Departments in deciding whether to prepare these people for a European career, and would give the centre better leverage to ensure that they were properly developed. For example a department would find it difficult without good reason to refuse to release someone for a six month period in Brussels or attend an intensive language training course if he or she was being paid for by someone else. There are other advantages in managing these people centrally: it would make it easier to engender an esprit de corps (for example by organising regular meetings of all those involved) and thereby create an identifiable cadre of potential Commission recruits. By emphasising our own commitment to the option it would help to maintain their enthusiasm for Europe during the long wait.

26. The disadvantages are that central management conflicts with the general policy for devolving responsibility for personnel issues. It would also mean setting up new machinery to deal with a relatively small number of people. However the review's conclusions are that in this case a central arrangement would be justified.

Costs

27. The costs of the scheme would not be insignificant. The Civil Service Commission are very ready to start running the scheme as soon as possible but they would need additional money to do so, since their existing funds are fully committed to current recruitment schemes. If we succeeded in recruiting 30 European AT/HEO(D)s a year then over 4 years the costs of recruitment, training and salaries would build up to between £2 1/2 and £3 million per year. These costs could either be met from "new money", or by top slicing the necessary sum from the allocation of running costs to Departments. If "new money" were needed Cabinet Office would need to promote a bid in the coming Survey. If top slicing was chosen Ministers would need to agree appropriate adjustments to Departmental running cost baselines. Departments have warned that this would be very difficult.

Effect on the main AT/HEO(D) scheme

28. The Treasury are concerned that under the proposed arrangement the two schemes will be in competition with each other. The effect on the recruitment of domestic AT/HEO(D)s, where we already face severe competition from other employers, is uncertain. There is a risk that raising the EC profile in this way may divert potential new entrants and serving staff who would otherwise be keen to pursue a career in a UK department. On the other hand, there are indications that the existence of a European option might well tap new demand for the scheme, thus increasing the overall catchment (for example amongst modern language graduates, and people who at the moment are only interested in the Diplomatic Service option).

29. Certainly the recruitment figures for the new scheme would need to be carefully monitored and the target figure of 30 reviewed if the new demand for the option did not materialise and the scheme looked like diverting too many candidates for the domestic AT/HEO(D) scheme. Questions about

the relationship between the domestic AT/HEO(D) scheme and the European scheme would need to be considered by the regular Establishment Officers' Meeting (EOM) and on an annual report on the development of the European option should be made to them.

30. The earliest that the new option could be put into effect would be 1990/91 recruitment season, many of whose successes will not join the Civil Service until the Autumn of 1991. We therefore propose that the current crop of new ATs who have indicated a European interest and who will be joining the Civil Service this Autumn should be asked whether they want to transfer to the new European option. In this case, however, such transfers would deplete the number of Home Civil Service recruits, and therefore the numbers would need to be limited, say to 10.

31. It would also be important to avoid a European option crowding out home AT/HEO(D)s from European areas, and preventing them from acquiring experience which will be crucial in their own careers. While a European AT/HEO(D) would need to do one job which had a European dimension in the course of his or her training, it should not be necessary to concentrate exclusively on this area. Other posts, particularly ones with an economic or legal bias or those involving relatively universal administrative problems such as taxation or transport policy could be equally useful. The guidelines would need to take this into account.

32. Finally the scheme would need to be flexible. If a European AT/HEO(D) changed his or her mind about Europe, or indeed if he failed to pass the Commission's entrance exam, then (assuming a satisfactory probation) he would be able to switch across to a career in the Home Civil Service. (Indeed this is one reason why we think it is important for these AT/HEO(D)s to be securely lodged with a Department during their training period: if they do drop out of the European scheme for one reason or another they would be that much more

likely to stay in the Civil Service, to the benefit of Departments.) Similarly domestic ATs or HEO(D)s could change their minds and opt to pursue a career in Europe, provided there was room on the central budget and their Department was willing.

RECOMMENDATION 2 - "Temporary Agents" and Secondments

Background

33. In addition to the permanent staff ("fonctionnaires") within the Commission there are also a number of temporary appointments. These fall into two main categories: "Temporary Agents" and secondees (called Detached National Experts - DNEs). Temporary Agents have the same status and salaries as permanent "fonctionnaires" but they are limited to fixed term contracts for a maximum of five years. The posts are advertised in the national press and successful civil servants are usually given special unpaid leave by their Departments. The EC rules allow an individual official to have up to three Temporary Agent contracts.

34. The position of DNEs, or secondees, is rather different: their salaries are (nearly always) paid by the seconding employer (usually, but not always, the national government) with the EC paying allowances on top. It follows that secondments cannot be arranged without a Department's consent. There is a time limit of three years for a secondment, which cannot be repeated by the same official. However, it is sometimes possible for a secondee to switch across to being an Temporary Agent.

35. The UK does rather better with temporary appointments than it does with permanent staff: we have nearly 11% of the Temporary Agents and 16.8% of the total number of secondees in the Commission. But the numbers at present are relatively small: we have 22 Temporary Agents and 50 secondees in the Commission administration at the moment. As Annex A shows we

do significantly worse than the French and Germans in our share of the Temporary Agents. (Equivalent information for secondees is not available.)

36. Temporary officials have an important role to play in our representation in the EC. A spell as a secondee or an Agent Temporaire can help junior staff who are planning to take the Commission's entry examination, and in certain circumstances (eg a secondment in a Cabinet) they can lead to permanent jobs, but they are not in general a route to permanent status. However, sending national officials to Brussels on a temporary basis does offer a rapid means of mitigating the problem of our under-representation and of increasing our influence on the Commission's decision making process. Such arrangements are also likely to form part of the permanent solution: although there are strict controls of the numbers of secondees and Temporary Agents, the Commission seem likely to make increasing use of temporary officials over the next few years, particularly in the agencies which they will be setting up. Moreover, civil servants who are seconded to Brussels bring back valuable experience with them when they return to their departments.

37. We have looked carefully at the problems arising from temporary appointments and have identified a number of ways in which they could be avoided or minimised. These range from improving the flow of information about such posts to establishing more effective ways of keeping in touch with civil servants in Brussels and making sure that their long-term prospects in the Home Civil Service are not diminished. A list of action points is attached at Annex E.

Financial Arrangements

38. The comments in paragraphs 33 to 37 apply with equal force to Temporary Agents and to secondments. However as noted above, the major difference between the two schemes is that secondments depend on Departments' ability and

willingness to provide people and to pay for them. Where Departments perceive it to be clearly in their interests, they continue to arrange secondments. The problems tend to arise at the margin, where a secondment may be in the overall national interest but is not an immediate departmental priority. In such cases running cost limitations and the overall shortage of good quality staff are major obstacles to increasing the number of secondments. This is particularly true for smaller departments, but even the larger ones find it very difficult to make significant increases in the numbers of secondments.

The Proposal

39. A solution to these difficulties could be for part (we propose 50%) of the cost of a secondment to be borne on a central budget (in Cabinet Office). The arrangement would only apply to secondments which were additional to those which Departments were already funding at a given date. Obviously such a system would need to be carefully devised to take account of wider priorities and to ensure that Departments did not off load their weaker officials.

Costs

40. On the assumption that over the next couple of years Departments were persuaded by the new arrangements to release an additional 20 secondees, at an average level of somewhere between SEO and Grade 7, the annual cost, based on a 50:50 split with Departments, to be borne by OMCS would be between £230,000 and £270,000. However the Treasury do not accept that there is a case for using new money to fund this. OMCS' existing budget could not bear the additional costs. In overall Whitehall terms the sums involved are relatively small and therefore if Ministers agree it might be appropriate to "top-slice" it from existing Departmental budgets.

RECOMMENDATION 3 - A Unit

41. Given the scale of the problem and the need for an urgent, proactive response we believe that there is a case for setting up a unit within Senior Staff and Europe Division in OMCS which would have overall policy responsibility for increasing the level of UK representation in the Community institutions. It would maintain close links with the European Secretariat in the Cabinet Office and Personnel Management Division in the Treasury.

42. The Treasury have doubts about the need for new administrative arrangements. We recognise that it is often tempting to suggest the establishment of special units to deliver particular policy objectives. However we believe that there are a number of reasons why such a unit would be justified in this case. First we believe it is desirable for the Government to have a focal point to drive through the changes necessary to improve significantly our showing in Brussels. Leaving the responsibility for this with Departments would dissipate the Government's effort and provide no identifiable point to develop and monitor improvements. Secondly the establishment of a unit would signal both to the Commission and within Whitehall just how seriously the Government takes this problem and how determined it is to resolve it. Finally we believe that there is a need for such a unit to implement the review's proposals for a European fast-stream and for a more effective secondment policy. We have considered whether Departments on their own could respond to clear Ministerial instructions and achieve the necessary changes in these areas. However given the pressure they are under in their deployment of resources to meet domestic policy preoccupations, we do not believe that they are likely to be able to do so. In order to implement these proposals effectively there is a need for strong and persistent central encouragement, underpinned by the kind of financial arrangement which we have suggested. Again these conclusions have been strongly endorsed by other Departments.

43. The unit's performance will need to be evaluated after two years, against targets that would be established at the outset, and its future reviewed. It would have the following specific tasks:

- i) It would have responsibility (in liaison with UKREP) for pursuing the various issues which we have taken up with the Community.
- ii) It would have policy responsibility for implementing the European AT/HEO(D) scheme and for managing the European AT/HEO(D)s (this element of the unit's work would need to continue in some shape or form at least in the short term, whatever was decided about the future of the unit itself in two years time).
- iii) It would be responsible for administering the costs of secondments that are borne on a central budget.
- iv) It would carry on the work now being done as a result of the review, continuing to involve other Departments through the mechanism of the official cabinet committee EQO(P). There are action points which the review has already identified (eg a systematic approach to helping British candidates on the reserve list see para 43 below) which need to be pursued, as well as issues which there has not been time for the review to look at (eg whether arrangements for our participation in the Stagiaire system with the Commission could be improved; and how far we should be concerned about the B grades, where the representation between Member States is even more unevenly distributed - See Annex B - as a source of recruitment to the A grades).
- v) The unit would maintain the links which we have already established with "multipliers" such as university and polytechnic careers advisers and lawyers groups to ensure

that the message gets across to as many people as possible (see para 48 below).

- vi) The unit would absorb some of the work which is currently carried out in OMCS, for example on publicising competitions, running seminars for candidates and trawling secondment opportunities within Whitehall.

Costs and Staff

44. We suggest that the unit should be headed by a Grade 5 supported by two Grade 7s and a small support team (about six or seven staff in all).

45. Three of proposed unit would transfer with their work from their existing branch in OMCS. DTI, who have seconded a Grade 5 to the European Secretariat to conduct this review, would be willing to bear her costs and those of her Personal Secretary for a further year if it was decided that she should run the unit. This would mean that the total additional costs of the unit would be around £50,000 in 1990/91 and £100,000 in 1991/92. If the proposal is accepted the Treasury and OMCS will consider how these costs should be met.

THE PRIVATE SECTOR

46. Of course the Civil Service is not the only source of candidates for the Commission's examinations and the review's terms of reference covered recruitment from both the public and private sectors. The improvements which we are pressing the European Commission to adopt should enable them to recruit more effectively from a wide range of UK sources both public and private, but there too, though, there are steps which the Government can take to improve the recruitment from the private sector.

47. For example, as a result of the increased awareness of the problem of under-representation created by the review,

DES, the Department of Education for Northern Ireland and the Scottish Education Department have decided to increase very significantly the number of Government funded scholarships to the College of Europe, from an overall total of 4 to 21 this year and 30 in 1991/92. Given the remarkable success which the College has in securing its graduates' entry in to the EC institutions (it is the main source of employment for their alumni) this is a very encouraging development. There are in addition two privately funded scholarships. DES are currently exploring whether there is any scope for increasing the contribution from the private sector.

48. The Government can also help by establishing links with so-called "multipliers" such as university and polytechnic careers advisers, and lawyers groups, who can spread information about career opportunities in the EC. To this end we have already established a regular meeting with a small group of careers advisers.

49. Another area where we have identified scope for action concerns candidates who succeed in getting onto the reserve list. As we have explained the concept of lobbying to get off a reserve list is an unfamiliar one for British candidates. We hope to establish a more systematic approach to helping and advising them, both in London and in Brussels.

50. Finally as one of the action points at Annex E makes clear (paragraph (xii)) in devising a more effective policy on temporary appointments we need to take account of secondments from the private sector, and the scope for developing them.

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

51. Our under-representation in the EC institutions is serious and looks likely to get worse in the medium term (paras 3-8).

52. The major responsibility for resolving the problem lies with the Commission and we must continue to press them vigorously on a range of issues including:

- the recruitment of generalists (para 11 i)
- more effective recruitment at A8 level (para 11 ii)
- recruitment at more senior levels (11 iii)
- the direct recruitment of civil servants (para 11 iv)
- limited nationality competitions (para 11 v)
- the quality of their publicity (para 11 vi)
- the organisation of the competitions (para 11 vii)
- the procedures to be adopted by the proposed single recruitment agency (para 11 viii)
- the information on staffing matters which they collect (para 11 ix).

53. In the meantime the Government should take steps in Whitehall and the UK to improve the situation and to ensure that we are in a position to take advantage of developments in the EC. These steps include:-

(1) The establishment of a separate European option in the A-in-A scheme.

- This should be vigorously promoted by the Civil Service Commission (para 21).
- The resulting European AT/HEO(D)s should be attached to the centre, who would pay their salaries and training costs, but be seconded to Departments (para 25-26).
- The centre would draw up guidelines about how these European fast-streamers should be developed (para 23).
- The scheme would need to be devised in such a way as to minimise any adverse effects on the main AT/HEO(D) scheme (para 28-31).


- The scheme would need to be flexible, and allow for the fact that AT/HEO(D)s might drop out of the European scheme for one reason or another (para 32).
- The money for centrally funding the scheme could either be met by "new money" or by top slicing the necessary amount from the allocation of running costs to Department (para 27).

(2) The encouragement of Departments to develop a more effective policy on temporary appointments (both temporary agents and secondees).

- The action points identified by the review at Annex E should be pursued.
- In order to encourage departments to increase the number of secondments half the cost of additional secondments should be borne on a central budget up to a limit of £270,000. The arrangement should take account of priorities and quality of staff (paras 39-40).

(3) The establishment of a unit within OMCS to have overall policy responsibility for increasing the level of our representation in the Community institutions (paras 41-43).

- The unit would pursue the issues which have been taken up with the European Commission.
- Implement and administer the review's proposal for a European fast-stream and a more effective policy on temporary appointments.
- Carry on the work of the review.

- 
- Maintain links with "multipliers" in the UK to get the message across.
 - Absorb some of the organisational work currently being carried out in OMCS.

EUROPEAN SECRETARIAT
CABINET OFFICE
27 MARCH 1990

ANNEX A

REVIEW OF STAFFING IN THE EUROPEAN COMMUNITY INSTITUTIONS

Terms of reference

The aim of the assignment is to increase the number of UK staff recruited to the European Community Institutions (from both the public and private sectors) and to ensure that they are promoted to their maximum potential within the Commission and other Community Institutions in so far as HMG can influence that process. Recommendations to EQO(P) will be made on a regular basis and should cover, inter alia,

- advertising of posts
- other recruitment methods (including university careers advice)
- the system of recruitment (which has been criticised for concentrating too much on specialist economists and lawyers)
- the framing of the competition and the written examination
- the informal channels used for taking on successful candidates from the reserve list
- the role of Whitehall as a source of both permanent and short-term recruits to the Commission and the resource and other problems arising from this
- the retention of UK recruits, especially in the early stages of their appointment
- the subsequent career development of UK recruits (notably exploring ways in which HMG can help and encourage their promotion)
- ways of raising the level of interest in EC posts amongst undergraduates and civil servants
- the organisation of responsibility within Whitehall for European Community staffing issues, and resources available to deal with these issues.

As to methodology the assignment officer should interview both UK Government and Commission officials. In addition she should do all that is possible to raise the awareness of Commission officials to the importance the Government attaches to improving the number and quality of UK officials recruited.

NATIONAL REPRESENTATION IN THE EUROPEAN COMMISSION

	Geographically Balanced Share	Prop of A grade staff	Prop of A7/A8	Prop of A grade Temporary Agents	Prop of B grade staff
	%	%	%	%	%
UK	15	11.7	7.9	10.3	6.7
GERMANY	15	14.6	11.6	15.9	10.4
FRANCE	15	16.5	15.1	20.0	11.0
ITALY	15	13.3	9.0	6.5	11.8
SPAIN	10 *	9.8	13.3	6.5	9.4
NETHERLANDS	6 *	5.5	5.4	7.5	6.4
BELGIUM	6 *	12.1	17.5	9.3	29.9
PORTUGAL	6 *	3.7	7.7	3.7	2.8
GREECE	6 *	5.0	4.8	7.9	3.5
DENMARK	2 *	2.5	2.1	4.7	1.9
IRELAND	2 *	3.4	3.5	4.2	2.4
LUXEMBOURG	2 *	1.6	1.4	1.8	3.4

* Share estimated by Cabinet Office

Based on March 1990 figures.

ANNEX C

UK PARTICIPATION RATE IN COMMISSION COMPETITIONS

COMPETITION	UK Candidates as % total candidates	
	a) admitted to tests	b) placed on reserve list
1983/4 <u>Economists</u>		
A7	5.6}	11.9}
	} 4.5	} 9.4
A8	3.9}	4.9}
1984/1986 <u>Lawyers</u>		
A7	7.7}	14.5}
	} 5.3	} 13.9
A8	3.1}	5.6}
<u>Economists</u>		
A7	5.0}	4.5}
	} 4.8	} 4.1
A8	3.3}	3.5}
<u>Audit</u>		
A7	8.2}	16.9}
	} 6.9	} 17.0
A8	4.6}	17.6}
1988 <u>Lawyers</u>		
A7	2.4}	1.7}
	} 1.6	} 0.9
A8	1.0}	0.0}
1989 <u>Economists</u>		
A7	3.52}	
	} 2.5	
A8	2.01}	
<u>Audit</u>		
A7	4.6}	
	} ?	
A8	0.4}	

Foreign and Commonwealth Office

London SW1A 2AH

12 February 1990



From The Minister of State
The Hon Francis Maude MP

Commissioner Antonio Cardoso E Cunha
Commission of the European Communities
200 Rue de la Loi
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*ok (time) to N. Cunha P.D.
N. Fern P.D.
Mr Defendiaguelo
24/2*

See Antonio

I was sorry that it was not possible for us to meet to discuss Commission personnel issues, particularly as they affect the United Kingdom, when I was in Brussels on 6 February. I very much hope that we shall be able to do so soon; it might be helpful for me to set out our thinking at this stage.

The Government is very concerned about the serious under-representation of the UK on the staff of the Commission. At present the UK has approximately 12% of A grade posts, which is well below our broad geographical "share" of 15%. Moreover, the proportion of UK nationals in the recruitment grades (A7 and A8) is only 8%. This means that the Commission is recruiting about half the number of UK nationals needed to sustain the present proportion of British staff in the longer term. Not only will the UK's already bad situation fail to improve but it will get steadily worse.

I know that the Commission is aware of this problem and is ready to consider measures to tackle it. It is essential in our view that measures be taken which will have an early and significant effect. They must measure up to the scale of the problem.

The main immediate cause of the problem, as the Commission is aware, is the lack of British candidates to enter the Concour. This points to recruitment as an area which would repay very careful consideration. A fundamental obstacle is the Commission's tradition of recruiting specialists. We believe that there would be real and lasting benefits to be gained from a shift in the existing balance between "specialists" and "generalists". As you may be aware, our own experience testifies to the value of a system which recognises the benefits associated with first class generalists: flexibility, and the development of important skills in a range of disciplines, including law and economics, as required. I cannot overstate the benefits to be gained from a measure of Commission flexibility on this score.



We have also been considering whether any specific steps could be identified which would have an early and beneficial effect. A number of ideas have occurred to us; and it may be that the Commission has already thought of some or all of them. The possibilities include:

Improved publicity in the United Kingdom

- i) Establishment of close links between the careers advisory service in the UK and the Commission to increase student awareness of careers in Brussels.
- ii) Visits by recent Commission recruits to their own universities/colleges: our own experience shows this to be a useful recruitment tool.
- iii) Use of private sector consultants to advise the Commission on publicity measures for the concours.

Recruitment

- i) Wider availability of past question papers; this might help to break down some of the general uncertainty in the UK about recruitment procedures, and enable candidates to prepare more effectively for the concours.
- ii) Limited nationality competitions, open to nationalities suffering a significant deficit in the recruitment grades.
- iii) Use, in certain circumstances, of member states' national recruitment procedures - perhaps monitored by the Commission to ensure that the standards are appropriately set to provide recruits of an acceptable standard for the Commission. The United Kingdom's "Appointments-in-Administration" scheme is specifically targetted at the "brightest and best" candidates and has been widely emulated throughout the world. Moreover, in many cases candidates entering via such a scheme could bring with them the invaluable experience of a period working in national administration.

Concern in the United Kingdom at the extent of the problem is genuine and deeply felt; indeed the problem goes to the very heart of United Kingdom perceptions about its place in the Community; it would be difficult to overstate the advantages to be gained from securing measurable improvements.



The United Kingdom Government remains extremely keen to assist in whatever way we can. I hope that you will consider the suggestions outlined above to be helpful and I look forward to discussing these and the general situation with you.

All good wishes.

Yours,

His

Francis Maude

António Cardoso e Cunha
Comissário das Comunidades Europeias

Rue de la Loi 200
B-1049 Bruxelles

Brussels, 12 III. 1990

SG (90) DV 20092

The Hon. Francis Maude M.P.
Minister of State
Foreign and Commonwealth Office
London SW1A 2AH

Dear Sir,

Thank you for your letter of 12 February with respect to the problem of under-representation of UK nationals on the staff of the Commission.

As you rightly point out, the Commission is well aware of this problem. I note that it is of great concern for you, for political reasons which I understand. But it is also - indeed I would say even more - a problem for the Commission because we need to have a good nationality mix in our services for operational reasons, and the lack of young UK national recruits is being felt negatively. Therefore, the Commission is considering various measures to tackle the problem in order to obtain concrete and beneficial results as early as possible.

I agree with your analysis that the main immediate cause of the problem is the lack of British candidates entering the Commission's competitions and that it is at the level of recruitment where remedy must be sought in the first place. For this reason, as recently as last week, the Head of the Commission's Recruitment Unit went to London and had extensive discussions with Officials of the Cabinet Office and he will pursue the issue with a visit to the Civil Service Commission in early April. Furthermore, detailed discussions on this subject have already taken place with Officials of the UK Permanent Representation in Brussels as well as within the Commission itself, and in particular with members of Sir Leon Brittan's and Mr Millan's Cabinets.

These discussions take place in the context of recruitment patterns that are quite different at the Community level from those in the UK public service. We are not able to hold competitions for undergraduates, as we cannot enter the market of those seeking a first job. Moreover, for various reasons, our upper age limit is as high as 35. We are therefore looking mainly at people who are already in employment. This also fits with the fact that - as a very small public service - we cannot provide the same level of in-service training as the bigger national administrations and so look for those who can be very quickly operational on taking up their jobs.

Despite these differences, much can be done.

.../...

- 2 -

The conclusions reached so far envisage the following measures:

Publicity in the United Kingdom

- Reinforcement of the activities of the private consultant at the Commission's London Office, hired in the fall of last year, and extension of his contract beyond the initial period expiring in June 1990.
- Increase student awareness of careers with the Commission through
 - . Improved and regular information of the career advisory services in the UK
 - . a poster campaign to be launched for major competitions
 - . Issuing a new, more attractive Commission career brochure
 - . organizing visits and conferences of Commission recruitment officials as well as of recent UK national recruits to universities, colleges and fairs (such as the forthcoming lawyer's fairs of 15/16 March in London).
- Intensify and improve advertisement for the Commission's recruitment competitions and other selection procedures in the UK press.

Recruitment

- While continuing to run "specialists" competitions at regular intervals, notably for lawyers and economists, introduce on a permanent and regular basis "generalists" competitions.

In this respect I would like to stress that the Commission will need to continue recruiting lawyers, economists and other specialists, since this corresponds to a genuine need within its services and to the traditions of educational systems in other Member States. However, I willingly recognize the benefits of first class generalists as they tend to be generated particularly by the British University system, and I have therefore decided to push ahead with the idea of putting "generalists" competitions and recruitment on an equal footing with those of "specialists". It is envisaged to launch a first "generalists" competition within the next 12 months.

- Introduce a system of "grouped recruitment" whereby the Directorate General for Administration and Personnel would determine, from the reserve lists, groups of recruits from which individual Directorates generals would be forced to choose. The designation of such groups would take account of the number of budgetary posts available in a given period of time and existing national imbalances.

I am certain that such a system would enable us to correct the present situation of certain national imbalances within the Commission staff, by favouring temporarily the recruitment of candidates from Member States which are under-represented. I intend to present my colleagues with a communication and draft decision to this effect before the Summer break.

.../...

- Reinforce recruitment at AB level, that is of candidates without the normal minimum of 2 years professional experience, coupled with a specific training period for such recruits upon entry into service and before being definitively attached to a specific service within the Commission.

I believe that such a move would help to increase the recruitment chances for UK nationals who generally obtain their university degree in their early twenties, yet meet the Commission's services request for recruits who are "immediately" operational.

It would appear to me that the range of specific actions outlined above, when implemented, should have a clearly positive bearing on the recruitment of British nationals. In any case, I can assure you that the Commission will make every possible effort to overcome the present, admittedly serious, problem of attracting sufficient numbers of British candidates to be recruited.

The limits for action by the Commission lie where the actual recruitment procedure would risk "going national", as it is under the legal and political obligation to run competitions on an equal footing for nationals of all Member States. Therefore, the options which you mention in your letter referring to either limited nationality competitions or the use of national recruitment procedures, even when monitored by the Commission, do not appear to be feasible solutions. I am convinced that we don't need to go to these lengths and that the package of actions envisaged will sufficiently improve the UK balance within a reasonable period of time.

I do hope that we will soon have a chance to meet and to discuss these issues in more detail as well as the general personnel situation at the Commission, and I once again regret that it was not possible for us to meet when you were in Brussels on 8 February.

Handwritten signature and scribbles

ANNEX E

SECONDMENTS AND "TEMPORARY AGENTS": ACTION POINTS IDENTIFIED BY THE REVIEW

- (i) Cabinet office should consider making presentations to individual departments on the problems of our under-representation in the UK, and discuss with them ways round the difficulties in arranging short-term postings.
- (ii) The circulation of information about posts in the EC by the centre should be better targeted, should be done by people who are familiar with the details of such postings and should where possible give longer deadlines.
- (iii) Departments, while keeping in touch with UKREP, should be encouraged to develop their own links with DGs so that they may learn informally of job opportunities.
- (iv) UKREP and OMCS need to make sure that departments are made aware of all Temporary Agent posts.
- (v) Departments should keep up to date registers of people interested in posts in EC Institutions and should prepare those people accordingly.
- (vi) The possibility of some kind of central clearing system should be explored to make it easier to find jobs for individuals who wish to go to the EC.
- (vii) Clearer and more comprehensive information should be produced for people going to the EC, and for their personnel managers, covering issues ranging from terms and conditions to the problems of settling in in Brussels.
- (viii) OMCS and UKREP should offer more guidance to departments and individuals on the selection process, and put more pressure on the Commission to alleviate the difficulties caused by delays.

(ix) A system should be set up to help people to settle in to work in the EC institutions.

(x) Departments and UKREP should continue to try to tackle work related problems which arise, but they should try to avoid them by agreeing clear job descriptions in advance and seconding people at an appropriate level.

(xi) Departments should set up proper systems for keeping in touch with officials working in the EC (whether as secondees or as Temporary Agents). They should try to find ways round problems of staff reporting, promotion and performance pay.

(xii) The problems associated with and lessons to be learned from secondments from non government employes should be analysed to see how these can be developed successfully.



BIF 1 week.
6/3.

2 March 1990

**PARLIAMENTARY SCRUTINY OF EC LEGISLATION: PROCEDURE COMMITTEE
REPORT**

- 1 At the OD(E) meetings on 6 December and 22 January, concerns were expressed about the Procedure Committee's proposal to establish five Standing Committees appointed for a whole Session. Instead, I raised the possibility of appointing a Panel of MPs for a Session, from which Standing Committee members would be selected for each debate. Colleagues invited me to look further at this idea.

- 2 Having given the matter a good deal of thought, I regret that I do not feel able to commend the Panel approach to colleagues. The main problems that have emerged are as follows:
 - (i) The Chief Whip considers that there would be real difficulty in finding the 50 Members required, particularly since the panel would offer them only the fairly unattractive prospect of being called upon at short notice to debate some proposal quite likely to be outside their own area of interest

 - (ii) There could be no guarantee of excluding Euro-dogmatists in the initial selection of the Panel. Indeed the reverse might occur, since a Panel would be less attractive to specialists and more dependent on those with a general interest in EC matters putting themselves forward

- (iii) The key point, however, is that the Procedure Committee (and perhaps the House) are unlikely to accept any panel approach as sufficient to warrant agreeing to automatic referral which is our prime objective. The Procedure Committee see the idea of specialised committees as an important ingredient of more effective scrutiny and would argue that a watered down system was an inadequate substitute for debate on the floor of the House

Ad hoc selection

- 3 I know that some colleagues see attractions in reverting to the Government's earlier proposal to the Procedure Committee that a Standing Committee should be reconstituted afresh for each debate. This would involve no greater difficulty than now in finding MPs to serve on it, except that the number of debates held in Committee would increase significantly. Such a solution would of course resolve colleagues' fears about continuity of membership. Again, the key problem is the likelihood of acceptability to the Procedure Committee, and to the House itself. The indications are that the Procedure Committee considered this option carefully before arriving at their final recommendations: the House would take a good deal of convincing that an ad hoc system was preferable.
- 4 The arguments that the Government could deploy before the House in favour of ad hoc selection are somewhat thin. Perhaps the strongest is the difficulty of finding enough members to serve on specialist committees. However, this is covered in some detail in the Procedure Committee's report (paras 68-69) and the House could legitimately expect the Government not to rule it out without at least testing the water to see whether enough members could be found. The

Procedure Committee confined themselves to recommending five Standing Committees of only 10 members each, meaning that only 30 members would have to be found from the Government side. It would be difficult for us to argue openly that this presented manning problems.

- 5 The key factor, however, is the likely impact on our case for automatic referral which could shift about 20 debates from the floor of the House into Committee and would relieve the overall burden, particularly after 10 pm. OD(E) has already agreed that we should press for this. Since it means taking power away from the House, I believe that we will encounter strong resistance unless it forms part of a package which the House would regard as significantly strengthening the effectiveness of scrutiny. Ad hoc selection is unlikely, for the reasons given above, to meet this test, and the House might well not want to concede automatic referral. The immediate risk is that we would be left with the only significant change being the new 1 hour evidence sessions, an extra burden on Ministers, with no corresponding reduction in debates on the floor. In the longer term, there is the much more serious risk that Parliament would become dissatisfied with these very limited changes and would revert to the more radical options of a Select Committee on European Affairs or a Grand Committee, possibly accompanied by specialist EC Sub-Committees of the departmental Select Committees. If we relied on the argument of manning problems to reject the option of five standing committees, we would of course be offering further ammunition to those favouring a single Select Committee.

Special Standing Committees

- 6 In my view these considerations require us to re-examine the Procedure Committee's concept of committees selected for a

whole session, with some division of labour by subject. If colleagues accept this, our aim must be to try and minimise the problems associated with this approach

7 The main problem identified by OD(E) was the fact that genuine Standing Committees would have corporate identities, allowing them to claim more authority for their views on specific subject areas and to develop a corporate independence that might make Ministers' lives more difficult. However, I recall the point being made at OD(E) that such committees would be more likely to be manned by members who are interested in the subject under discussion and capable of providing reasonably effective questioning and worthwhile debate. By contrast, non expert members might be more likely to indulge in general anti-Community posturing in the absence of detailed views on particular Community proposals. Moreover a committee of 10 members, including 2 Select Committee members, leaves fairly limited scope for concentration of power, particularly if the Chairman is selected from the Chairmen's Panel on a rotational basis. It should also be recognised that the role of such Committees would essentially be passive, ie they would have no powers to seek debates on certain areas (assuming that they would want to create extra work, which would fly in the face of all the evidence!)

8 Another point of concern was that Standing Committees might be dominated by enthusiasts with dogmatic views on EC matters. The point to bear in mind on this is that under the Procedure Committee's proposal there would only be 6 members other than the Opposition spokesman, the Whip and the two Select Committee members. In any case, Standing Orders allow any member to attend the Committees and speak, whichever system is used. Small committees should not in practice be any more susceptible to domination by fanatics than most late night debates in the House, or even perhaps than a Committee selected on an ad hoc basis

- 9 One advantage of having genuine Standing Committees would be to avoid the delays of selection. For fast-moving proposals (where debate was needed within, say, three weeks) the only option under any other system would be a debate on the Floor. This would tend to negate the automatic referral system

A modified approach

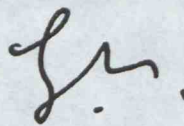
- 10 Colleagues might prefer the idea of selecting four committees, or even three, rather than five as the Procedure Committee proposed. The main problems with such an approach would be:
- a) heavier workload per committee, possibly making it harder to recruit members
 - b) less logical allocation of subject areas, given that the five suggested already stretch the idea of specialisation rather far

Conclusions

- 11 This analysis leads me to conclude that:
- (i) We are agreed that the key prize is automatic referral upstairs. A watered down version of scrutiny (either ad hoc selection or a panel) is unlikely to be sufficient to buy acceptance of this from the Procedure Committee or from the House. By contrast, it should be much easier to obtain a consensus based around accepting the thrust of the Procedure Committee's proposals. A positive response could head off further initiatives for more radical reform

- (ii) Our overall response needs to be seen as constructive. Given that there are certain other major points we are resisting, the rejection of the five Special Standing Committees would make the overall balance of our response appear negative. We would be accused of accepting only the trivial points or the points which caused us no problem or pain. Pressure for "real" changes would mount.
- (iii) There are some advantages, both for Parliament and for Government, in being seen to make scrutiny more effective - particularly if such a move in the direction of a more democratic stance is in any event a price that we probably need to pay in order to gain the objective of automatic referral.
- (iv) There may well be problems in recruiting 50 members for five Standing Committees each Session. Consideration could be given to a smaller number, say four (or even three) Committees if this concern is overriding. However, this would involve a relatively greater burden on the 40 Committee members. It might also dissipate some of the goodwill we had won by accepting the basic recommendations.
- (v) If problems did materialise, resulting in inquorate or poorly attended Committees, we might be able to argue that we should revert to ad hoc selection whilst maintaining automatic referral.

- 12 Before refining our ideas further, I would like to test the waters by sounding out, on an informal basis, the Opposition Front Bench spokesmen on whether they have taken a view on the proposal for five Special Standing Committees and the associated practicalities (in particular the possible manning problems). I would not intend to expose our own thinking at this stage but would simply indicate that we would appreciate hearing their thoughts on the matter. I would like to do this next week if possible. If any colleagues see problems with this, I should be grateful if they would get in touch with me by close of play on Tuesday 6 March
- 13 I am copying this letter to OD(E) colleagues, to others who attended the OD(E) meeting on 22 January and to Sir Robin Butler.




GEOFFREY HOWE

Rt Hon Douglas Hurd CBE MP



PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

30 November 1989

Dear Dominics 

PROCEDURE COMMITTEE REPORT : EC SCRUTINY

You may like to see the attached Press Release which the Lord President has today issued in response to this report. He will be consulting colleagues in due course about the formal Government response to it.

I am copying this to the Private Secretaries of all Members of the Cabinet and to Trevor Woolley (Cabinet Office).

Yours,

Gillian Baxendine

GILLIAN BAXENDINE
Private Secretary

Dominic Morris Esq
PS/Prime Minister
10 Downing Street



PRESS RELEASE

GOVERNMENT WELCOME PUBLICATION OF REPORT ON SCRUTINY OF EUROPEAN
COMMUNITY LEGISLATION

The Government has welcomed the publication today of the report by the House of Commons Select Committee on Procedure on the arrangements for scrutiny of draft European Community legislation. The Lord President of the Council, the Right Hon Sir Geoffrey Howe QC MP, said:

"The Government recognises the importance of the arrangements which allow Parliament to play a full and proper part in the scrutiny of Community legislation.

The present procedures were introduced as long ago as 1973, shortly after the enactment of the European Communities Act, following the recommendations of the Foster Committee. Given the changes which have taken place since then - enlargement, the single market programme and the Single European Act - it is right to consider how the procedures might be brought up to date. I am sure the whole House is grateful to the Procedure Committee for looking at this subject in such depth.

I cannot respond today to any of the individual recommendations, though I am pleased to note that the report has taken account of the suggestions which my predecessor made to the Committee. I shall, of course, be discussing the report with my colleagues since this is a matter which touches on many Departments. I will then come forward with the Government's response to the Committee and to the House so that we can proceed with implementation of such changes as the House considers appropriate".

CONFIDENTIAL



FILE KK

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

18 July 1989

**PARLIAMENTARY SCRUTINY OF EUROPEAN DOCUMENTS:
DEBATES IN STANDING COMMITTEE**

The Prime Minister has noted without comment the Lord President's note of 17 July about the proposal to develop a new Standing Committee on European Documents.

I am sending copies of this letter to the Private Secretaries to members of OD(E) and to Sir Robin Butler.

(C. D. POWELL)

Stephen Catling, Esq.,
Lord President's Office.

tw

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①
Prime Minister
Confer with
this proposal?
CB
17/7.

PRIME MINISTER

**PARLIAMENTARY SCRUTINY OF EUROPEAN DOCUMENTS:
DEBATES IN STANDING COMMITTEE**

As you know, a considerable head of steam has built up both within the House and outside for reform of our existing European scrutiny system. My judgment is that the pressure is such that we cannot simply maintain the status quo nor do I think that the present system of late night debates is particularly satisfactory. Many of the options now being floated would be distinctly unwelcome to the Government, for example, the Opposition's proposal for a Grand Committee or John Biffen's proposal for an even grander joint Lords-Commons Committee with powers to summon the Prime Minister. I therefore think it advisable for us to come forward with some positive ideas of our own before the Procedure Committee, which is currently conducting an enquiry into this, reports.

OD(E) have agreed that the best approach would be to develop a new Standing Committee on European Documents to which all recommendations for debate would be automatically referred unless the Government chose to table a motion for debate on the Floor. Current procedures already allow for debates to be referred to Standing Committee but this only happens in a minority of cases. The new procedures would introduce two important changes: first, debates would be referred upstairs automatically. This would entail amendment of Standing Order 102 which allows any 20 Members to block referral to Standing Committee. Secondly, the debate would be preceded by a question and answer session of up to an hour during which the Committee would take evidence from the responsible Minister.

These changes should give the new Standing Committee debates a much higher status than the present poorly attended debates without placing too much of an extra burden on Ministers. Otherwise the procedures would remain very similar to those already applying to Standing Committee debates: the total time for debate (including the question and answer session) would be 2 1/2 hours; the Committee would not have the power to send for persons or papers; it would be reconstituted afresh for each debate; and any Member could attend and speak.

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The Committee sees three main advantages of this proposal:

- a) it meets demands for changes to the scrutiny system;
- b) it relieves Ministers and our back-benchers of unwelcome late-night attendances; and
- c) since the Committee would be reconstituted for each debate, it would not have a constant membership or corporate existence; this would reduce the risk of demands, which might arise from a Grand Committee, for the Committee to have powers to bind Ministers along the lines of the Danish Folketing.

Crucial to the proposal is the amendment of Standing Order 102 to prevent 20 Members blocking referral of debates to Standing Committee. Any attempt to amend Standing Order 102 could spark a strong back-bench reaction on both sides of the House. For this reason, I believe that it would be very difficult for the Government to propose such a change: it would be much better received from an institution of the House, such as the Procedure Committee. OD(E) has therefore agreed that the best way to proceed is to couple the proposed amendment to Standing Order 102 with our Standing Committee idea and informally suggest to Sir Peter Emery, Chairman of the Procedure Committee, that a proposal along these lines would be well received by Government.

As a separate, but related, exercise I have had discussions with the Chairman of the Scrutiny Committee, Nigel Spearing, and we have agreed a number of practical improvements to the way his Committee operates. I am pleased to say that these have been secured without any change to the Committee's terms of reference.

The Committee is agreed that I should make urgent contact with Sir Peter Emery. I shall be writing to him this week. At the same time I will formalise the exchange of letters with Nigel Spearing (drafts of which have been approved by OD(E) and by the Scrutiny Committee).

Copies of this minute go to the members of OD(E) and to Sir Robin Butler.



JW

17 July 1989

dti

the department for Enterprise

CCPU

The Rt. Hon. Tony Newton OBE, MP
Chancellor of the Duchy of Lancaster and
Minister of Trade and Industry

Rt Hon John Wakeham MP
Lord President of the Council
Privy Council Office
68 Whitehall
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Department of
Trade and Industry

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London SW1H 0ET

Switchboard
01-215 7877

Telex 8811074/5 DTHQ G
Fax 01-222 2629

Direct line 215 5147

Our ref

Your ref

Date

17 March 1989

CR 17/3

Dear Lord President,

PARLIAMENTARY SCRUTINY: EC DOCUMENT DEBATES

Francis Maude wrote to you on 23 February requesting a debate on two Commission reports on completing the Single Market and on the Operation of Directive 83/189. He also wrote to you on 27 February asking for a debate on EC proposals on metrication. He had asked for debates on both of these before Easter. I am writing to you now to update you on the desirable timing for these debates.

Metrication is the most urgent. The House can be expected to take a strong interest and we need to hold the debate well before the proposal is likely to be settled. The second working group meeting is now due to take place on 3 April. It will be important that we report to the House the views of other Member States as soon as possible after that meeting, particularly since there is a possibility that the proposal could be discussed at the Internal Market Council on 3 May. I therefore hope that the debate can take place by 14 April at the latest.

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the department for Enterprise

Francis set out our reasons for suggesting an early debate on the Single Market report in his letter of 23 February. These remain valid. Delay until the latter stages of the Spanish Presidency could mean that the debate would be held when more attention will be focussed on such awkward issues as the "Social dimension" of the single market and monetary union. This would make it more difficult to concentrate on the central message of the opportunities and challenges the single market will bring. I therefore consider that a debate sometime in April would be desirable.

I am copying this to members of L and OD(E) and to the Secretaries of both Committees.

Yours sincerely
Rosalind COTR

TONY NEWTON

(approved by the Chancellor and signed
in his absence)

MA3AAQ



cc/c

Ministry of Agriculture, Fisheries and Food
Whitehall Place, London SW1A 2HH

From the Minister

Sir Geoffrey Howe QC MP
Foreign and Commonwealth Office
Downing Street (East)
LONDON
SW1

GH

20 January 1989

Dear Geoffrey,

Thank you for sending me a copy of your minute of 12 January to David Young about Parliamentary scrutiny of EC matters.

I am particularly conscious of this issue because it probably affects my Department more than some others. The agriculture sector is highly regulated by the Community and involves a large number of proposals. The time span between the appearance of a proposal and the need for a decision is sometimes short. Decisions quite often have to be taken quickly for reasons that we have to accept such as changes in the market. UK interests may suffer if, because of Parliamentary scrutiny, we hold up a proposal forming part of a package in which we ourselves have an interest. These considerations can obviously have a bearing on the timely submission of explanatory memoranda and may also affect the timing of debates.

I registered these points when I wrote to John Wakeham on 7 October last in response to his letter of 26 September to you, and widely copied, about the revised Departmental Guidance on Parliamentary Scrutiny being issued at that time; and I think it is right to remind you of them now. However, I entirely agree with you that we should heed the concerns of the House about the current operation of the scrutiny procedures and that it is very much in the Government's interest that we should operate those procedures properly. We shall make every effort to do so as far as possible.

I am copying this letter to the Prime Minister, David Young, John Wakeham and Sir Robin Butler.

*Yours etc,
JG*

JOHN MacGREGOR

PARLIAMENT: Scrutiny of EC legislation

No. 80.



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FCS/89/003

SECRETARY OF STATE FOR TRADE AND INDUSTRY

Parliamentary Scrutiny of EC Matters

1. As we start a busy new year of EC business, I am writing to you and other colleagues because John Wakeham and I are conscious of growing concern in the House about the current operation of the procedures for Parliamentary oversight of EC business. Last month a debate on a major EC topic of great practical concern to the UK (the structural funds) was not held until all the negotiating in the Community, which started before the summer, was over. This was only the most recent and embarrassing example of a growing tendency for the Government to fall well short of what the House expects.

2. The problem does not lie, as John Biffen has suggested, with the terms of reference of the Scrutiny Committee, but rather with the way we handle the day to day process of scrutiny and the priority we give to it.

/It is



It is deeply frustrating, both to the Committee and to the House, when explanatory memoranda are regularly submitted late or when debates are held after negotiations in Brussels have effectively been concluded.

3. The ground rules were set out clearly by John Biffen himself when he was Leader of the House:

"It is the Government's practice that debates on European documents should be held as far in advance as practicable of the expected adoption of the proposals concerned. It is desirable that this should be at the point when the voice of the House can be most influential. As a general rule, this will normally be early rather than late in the life of a proposal. The Committee rightly notes that the selection of an optimum time for debate is very much a matter of judgement. The Government fully accept the Committee's view that, when making this judgement, it should be the rule always to err on the side of an early debate."

In practice, the arrangements for debates have often been left under the last minute in the hope of presenting the House with a clear picture of likely final agreement. That is not the purpose of scrutiny, as John Biffen's statement made clear. We should aim to put proposals before the House at an early stage. We should also ensure that explanatory memoranda are submitted promptly. John Wakeham underlined the importance of this in his letter of 22 September 1988.

/4. Responsibility



4. Responsibility on both these points lies clearly with the lead department on the particular subject at issue, in the former case in consultation with John Wakeham. I am therefore copying this minute to all our colleagues in charge of Departments, and would be grateful if you and they could ensure that it is drawn to the attention of all Ministers and officials who have occasion to deal with EC matters. It is very much in the Government's interest that we should all operate the scrutiny procedures properly, with due regard for the undertakings we have given and the concerns of the House.

5. I am also copying this minute to the Prime Minister, to John Wakeham and to Sir Robin Butler.

A handwritten signature in dark ink, appearing to be 'G. Howe', written in a cursive style.

(GEOFFREY HOWE)

Foreign and Commonwealth Office
12 January 1989



Copies to: Minister of Agriculture Fisheries & Food
Minister for the Arts
Secretary of State for Defence
Secretary of State for Education & Science
Secretary of State for Employment
Secretary of State for Energy
Secretary of State for the Environment
Secretary of State for Health
Home Secretary
Attorney General
Lord Advocate
Lord Chancellor
Secretary of State for Northern Ireland
Secretary of State for Scotland
Secretary of State for Social Security
Secretary of State for Transport
Chancellor of the Exchequer
Secretary of State for Wales



Foreign and Commonwealth Office

London SW1A 2AH

5 May 1988

Dear Chetler,

COB 5/5

House of Lords Select Committee Report on Staffing
of the Community Institutions

A report, by the House of Lords Select Committee on the European Communities, on the staffing of Community institutions is to be published today. It is a thorough and wide-ranging report, based on evidence taken from among others Mrs Chalker, Mr David Williamson, Secretary-General of the Commission, Mr Richard Hay, (British) Director General of DGIX-Personnel, and Commissioners Christophersen and Sutherland. The summary of conclusions is enclosed. In general, the recommendations provide a very useful basis for re-examination by the EC institutions of staffing policies.

The report is unlikely to attract much press attention except from specialists, though the recommendation that the size of the Commission be reduced may be noted, given current interest in the possible membership of the next Commission. In the past we have supported the idea of a smaller Commission, but others have blocked it, and would be likely to do so again.

I attach a brief note for possible use by the Prime Minister if the Report is mentioned in the House (a copy has already gone direct to your Parliamentary Unit).

A copy of this letter goes to Trevor Woolley in the Cabinet Office.

Yours ever

L Parker

(L Parker)
Private Secretary

C D Powell Esq
10 Downing Street

PART 5 SUMMARY OF CONCLUSIONS

183. The Committee found no evidence of general overstaffing in the institutions. Indeed a number of Commission services are significantly understaffed. While more flexible deployment of staff is to be encouraged, its scope is limited. Member States acting in Council must accept the implications, in terms of extra staff, of enlarging the responsibilities of the Commission. Staffing impact assessments should always be prepared for new policies and the Council should pay close attention to them (paragraphs 143-6).

184. Member State governments should reconsider the number of Commissioners with a view to its reduction (paragraph 147).

185. The quality of officials in the institutions is generally high (paragraph 148).

186. A spread of nationalities among the staff of the institutions is important to the operation of the Community (paragraph 149).

187. Closer co-operation between the institutions in administrative matters would be advantageous, particularly for recruitment (paragraph 150).

188. Sideways mobility of staff should be encouraged, and should not damage promotion prospects (paragraph 151).

189. *Parachutage* of outside candidates into high grades, in order to correct a geographical imbalance or to supply special skills or experience, may be justified in exceptional cases (paragraph 152).

190. The experience of work in *cabinet* is valuable, but the prospects of existing Commission officials should be considered before *parachutage* of temporary *cabinet* officials into permanent posts and the extent of the practice should be reduced (paragraph 153).

191. The *stagiaire* scheme is valuable in promoting understanding of the Community and its work. The scheme should be administered fairly and objectively, and publicity for it should be improved (paragraphs 154-5).

192. Specimen recruitment examination papers, or past papers, should be systematically published (paragraph 156).

193. Grade A8 should be more widely used for recruitment (paragraph 157).

194. The Commission should recruit more scientists to administrative posts (paragraph 158).

195. Publicity for career possibilities in the institutions should be improved. The information offices in Member States should play a more active role in this respect (paragraph 159).

196. The time taken over recruitment procedures should be substantially reduced and competitions should be held annually wherever possible (paragraphs 162-63).

197. The institutions should establish a joint recruitment service to conduct competitions and draw up lists of successful candidates from which the institutions may appoint officials (paragraph 164).

198. The use of a reserve list for appointments causes serious difficulties and the Committee regret that it does not seem practical to change this feature of the system at present (paragraph 165).

199. A joint service for training should be established (paragraph 166).

200. The Parliament and Commission should give thought to the joint operation of their information offices in Member States (paragraph 167).

201. The programme for modernisation of management in the Commission should be promptly and fully pursued, and similar policies should be introduced in the other institutions (paragraph 169).

202. The constructive attitude of the Staff Committees was impressive. The multiplicity of unions however does not seem conducive to the interests of their members or of the institutions (paragraph 170).

203. Exchanges of officials between the institutions and the Member States should be increased wherever possible (paragraph 171).

204. Translation and interpretation should only be required where strictly necessary and never for solely political reasons (paragraph 174).

205. Her Majesty's Government should establish a special unit within the Cabinet Office to act as a single source of advice and guidance in Britain on careers in the Community (paragraph 175).

206. British civil servants working in the institutions should be promoted *in absentia* at least as rapidly as if they had stayed in the United Kingdom (paragraph 176).

207. Her Majesty's Government should make more grants available for study in other Member States, and consider splitting existing grants among 2 or more students (paragraph 178).

208. Universities in Britain should do more to prepare students for service in Europe, whether in the public or private sector (paragraph 179).

209. UKREP should consider further ways to assist British candidates for *stages* (paragraph 180).

210. The Cabinet Office should continue to monitor and improve the seminars for British candidates for Community posts, and consider also holding them elsewhere than in London (paragraph 182).

Recommendation to the House

211. The Committee consider that the staffing of Community institutions raises important questions to which the attention of the House should be drawn, and they make this Report to the House for debate.



PRIME MINISTER'S QUESTIONS

HOUSE OF LORDS SELECT COMMITTEE ON THE EUROPEAN
COMMUNITIES: REPORT ON STAFFING OF COMMUNITY INSTITUTIONS

LINE TO TAKE

- We welcome this thorough and wide ranging study. Good staffing and management policies are important for the efficiency of the EC institutions.

- We shall study those recommendations addressed ^{to} us, and respond as appropriate when report is debated.

[IF NECESSARY]

- The suggestion that the Commission should be reduced, with only one Commissioner from each member-state, is not new. We have strongly supported it.



DRAFT PRESS LINE: HOUSE OF LORDS SELECT COMMITTEE ON THE
EUROPEAN COMMUNITIES: REPORT ON STAFFING OF COMMUNITY
INSTITUTIONS

- HMG welcome this thorough and wide ranging study.

Good staffing and
management policies are important for the efficiency of
the EC institutions.

- Recommendations directed principally at Community
institutions. Those directed at UK involve various
governmental and non-governmental institutions (eg
universities).

- Government will study recommendations carefully and
respond as appropriate when report is debated.

[If necessary]

- The suggestion that the Commission should be reduced,
with only one Commissioner from each member-state , is
not new. We have strongly supported it.

[Unattributable background]

- Committee has identified many key issues. Some were
examined when Government witnesses gave evidence.

- Recommendations to HMG will need to be considered by
departments responsible, including Cabinet Office, FCO,
DES, in formulating response.



Prime Minister

Ref. A087/2350

MR POWELL

ms

COP
5/8

The Prime Minister may wish to know that the House of Lords European Scrutiny Committee is proposing to conduct an inquiry into the staffing of European Community institutions.

2. The inquiry is to be conducted by a Sub-Committee chaired by Lady Serota; Lord Bancroft, Lord Murray, Lord Plowden and Baroness Young will be amongst its members. It will have the following terms of reference:

"To consider the staffing of institutions of the European Community (principally the Council, the Commission and the Economic and Social Committee) and in particular the impact of recruitment methods, career structure and staffing levels on the development and execution of Community policy."

3. The work of the House of Lords Scrutiny Committee is well regarded in Brussels, and we think that an inquiry on these lines could well be valuable, if they were to suggest improvements in management and recruitment of a kind which we believe are needed, and would help to increase British representation in the services of the European Community.

4. A Foreign and Commonwealth Office Minister will take the lead in presenting the Government's formal oral evidence; he will be supported as necessary by Foreign and Commonwealth Office officials and by the Cabinet Office.

RA

ROBERT ARMSTRONG

5 August 1987

MINISTRY OF AGRICULTURE, FISHERIES AND FOOD
WHITEHALL PLACE, LONDON S.W.1



From the Minister

The Rt Hon John Biffen MP
Lord Privy Seal
Privy Council Office
Whitehall
LONDON
SW1A 2AT

18 July 1985

SCRUTINY PROCEDURES FOR EC DOCUMENTS

Thank you for your letter of 11 July. In the light of what you say in your letter about how the revised arrangements will work, I am now prepared to agree to them so that the new instructions can be issued.

I am copying this letter to Members of L and OD(E) Committees, to other Ministers in charge of Departments and to Sir Robert Armstrong.

MICHAEL JOPLING





PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

11 July 1985

Dear Michael,

NSPTL
CDO 11/7.

SCRUTINY PROCEDURES FOR EC DOCUMENTS

Thank you for your letter of 17 June commenting on the revised guidance to Departments which I circulated with my letter of 6 June.

You expressed concern about the work which will be created for Departments by the requirement for L Committee to give early consideration to the need for a Parliamentary debate. The fact is, however, that the Government is committed to give Parliament an opportunity to consider EC proposals while they are still in their formative stage. This is precisely so that any views which Members have can be taken into account before the documents, and the Government's attitude to them, have become entrenched.

In its 1983/84 Report, the Scrutiny Committee was very clearly of the view that the House must have an opportunity to influence the content of an instrument, that the tendency had shifted too far towards debating at the final stage of negotiation or even after the adoption of an instrument and that greater emphasis must be placed on early debates. As Leader of the House, I have a responsibility to see that the practice is changed, and I can discharge this only if I have an opportunity to consider documents with colleagues before the final stages of negotiation. Other colleagues are prepared to accept this and are broadly content with the proposed new arrangements.

A particular document may well be unsuitable for early debate, but L Committee should be the judge of that; and I always had it in mind that there would be cases where, despite an early appearance at L, debate takes place later. I recognise that this may involve some

./...

Rt Hon Michael Jopling MP
Minister of Agriculture, Fisheries and Food

additional work and I am as anxious as you are to avoid two-stage discussions in L Committee. I hope that in most such cases its early meeting can decide what sort of debate is necessary and when it should be held, leaving the precise timing to be settled informally with the Foreign and Commonwealth Secretary and the Chief Whip. As Geoffrey Howe points out in his minute to me of 3 July the circulation in some cases of a follow-up letter need not amount to a second-stage consideration by the Committee: it would normally do no more than record for colleagues' information the final arrangements which had been made.

I understand that the other, more detailed points raised in your letter have been resolved at official level.

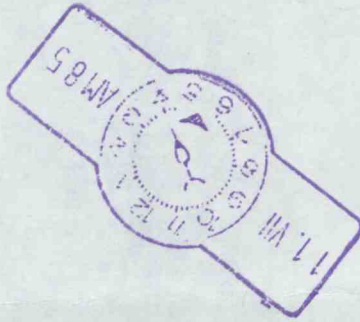
I hope that you will now be able to agree to the revised arrangements. The revised guidance on scrutiny procedures is long overdue. We need to get it out quickly so that the new arrangements for consulting L Committee can come into effect after the Summer recess.

I am copying this letter to members of L and OD(E) Committees, to other Ministers in charge of Departments and to Sir Robert Armstrong.

Yours
John Biffen

JOHN BIFFEN

Parliament : Scrutiny of EC Legislation
5/80.





2 MARSHAM STREET
LONDON SW1P 3EB
01-212 3434

My ref: J/PSO/14552/85

Your ref:

19 June 1985

Dear John,

SCRUTINY PROCEDURES FOR EC DOCUMENTS

Thank you for copying to me your letter of 6 June with the intended revised guidance on scrutiny procedures. I have particularly noted the new arrangements to advance consideration by L Committee.

I fully accept that debates on European documents should be held at a stage when the views expressed in the House can be most influential and that they should be arranged for as early date as is reasonable. I have every confidence that the new procedures will operate successfully.

As you know progress through the Brussels machinery is not within our control and some proposals, which are recommended by the Scrutiny Committee for debate, become bogged down at a relatively early stage. For example, this Department has five proposals listed for debate in Standing Committee. One, relating to a new Water Directive, we are recommending for early debate as it has made exceptionally rapid progress but the remainder, even though first considered by the Scrutiny Committee as far back as December 1982 (Sewage Sludge), November 1983 (Titanium Dioxide), February 1984 (Inland Waterway Carriers) and May 1984 (Large Combustion Plants) are coming along slowly.

I mention this not to indicate any disagreement with the procedures but because my Department may not always be able, within the prescribed two weeks, to give L Committee Secretariat definitive indications of the likely timing, place and duration of debate. Accordingly the procedures will need to allow for some degree of flexibility.

I am copying this letter to those who received yours.

Patrick Jenkin

PATRICK JENKIN

The Rt Hon John Biffen MP

Souting of El. Legislation:

PARLIAMENT

May 80,

570

ccpc

DEPARTMENT OF TRADE AND INDUSTRY
1-19 VICTORIA STREET
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TELEPHONE DIRECT LINE 01-215 5422
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DW15

PS / Secretary of State for Trade and Industry

18 June 1985

PS/Lord Privy Seal
Privy Council Office
Whitehall
London
SW1

be 18/6

Dear Alison,

SCRUTINY PROCEDURES FOR EC DOCUMENTS

- with request if required
On 6 June the Lord Privy Seal circulated proposed guidance on the procedures for handling scrutiny of EC documents. We are broadly content with this but have one comment to make on paragraph 51 which requires that Departments contact L Committee Secretariat to discuss timing, place and duration of a debate within two weeks of a recommendation being made.

2. In order to consider timing, place and duration Departments need to see the Scrutiny Committee's Report which is not usually available until a month after the meeting. Whilst it is possible, in special circumstances, to ask the Clerks for a copy of the draft, regular requests are unlikely to be well received. I suggest that the deadline be amended to six weeks to allow Departments to consider the Scrutiny Committee's Report.

3. I am copying this to PSs to members of L and OD(E) Committees, PSs to other Ministers in charge of Departments and to PS/Sir Robert Armstrong.

Yours sincerely,

Maureen Dodsworth

MAUREEN DODSWORTH
Private Secretary

R 18/6





PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

6 June 1985
JF to HCU
NBRM
CDP 6/6.

Dear Geoffrey.

SCRUTINY PROCEDURES FOR EC DOCUMENTS

Successive Governments have undertaken to ensure that any important European proposals are debated by the House before being adopted in the Council of Ministers. You will recall that the Scrutiny Committee considered the operation of the present arrangements last year, after requesting evidence from me (Select Committee on European Legislation: First Report, Session 1983/84). They noted that Parliamentary scrutiny had to operate within the limitations provided by the Community's working methods, but concluded inter-alia that debates on EC documents should normally be held in good time rather than at the last minute before final adoption (so that the House could have a say in the contents of the instrument).

You and I have been considering how best to bring this about, and have concluded that, in future, L Committee should address itself to the timing of debates and general handling problems shortly after the Scrutiny Committee had first made its recommendations for a debate. There will of course be cases where an early debate is not appropriate, but colleagues will have an opportunity collectively to consider that very issue. I enclose, for your information and that of colleagues, the text of the revised guidance we intend to issue to Departments about the scrutiny procedures. This guidance has already been the subject of consultation at official level, and the only significant changes now relate to the advancement of L Committee consideration (Chapter IV). If colleagues do have any final comments on the detail of the text I should be grateful to have them by Friday 14 June.

There are of course a number of documents which have already been considered by the Scrutiny Committee and are still awaiting debate at an unspecified time. Consideration is being given to how these might be aligned with the new procedures. In the meantime, L Committee should be given 5 weeks notice (including two Parliamentary sitting weeks) of the need for a debate.

I am copying this letter to members of L and OD(E) Committees, to other Ministers in charge of Departments and to Sir Robert Armstrong.

JOHN BIFFEN

The Rt Hon Sir Geoffrey Howe QC MP
Secretary of State for Foreign and Commonwealth Affairs

PARLIAMENTARY SCRUTINY OF COMMUNITY DOCUMENTS

GUIDANCE FOR DEPARTMENTS

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- C. Standard form of explanatory memorandum
- D. Standard forms of FCO cover note
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DEPOSIT OF DOCUMENTS

1. All Commission proposals for Council legislation and other documents published for submission to the Council of Ministers or the European Council - with the exception of those listed in paragraph 7 below - must be deposited in Parliament for consideration in the House of Commons by the Select Committee on European Legislation, and in the House of Lords by the Select Committee on the European Communities. These are known as the Scrutiny Committees. Proposals for Council legislation (ie regulations, directives, and decisions) are automatically deposited without consultation with Departments, whereas non-legislative documents are only deposited after consultation with Departments. The Department must provide the Committees with an explanatory memorandum on each deposited document.

2. Departments receive direct from the Council Secretariat draft proposals for legislation and other documents which have been submitted to the Council of Ministers; documents for the European Council are sent to Departments through the Office of the United Kingdom Permanent Representative to the European Communities (UKREP).

3. Where Departments identify a document which has not been deposited even though it is apparently eligible for scrutiny, they should let the European Secretariat of the Cabinet Office (233-8380 or 6144) know at once.

DEPOSIT OF LEGISLATIVE DOCUMENTS

4. The Foreign and Commonwealth Office (FCO) (European Community Department) in conjunction with the European Secretariat of the Cabinet Office, arranges for English texts of proposals for Community legislation to be deposited in Parliament within 2 working days of their receipt in London. The deposit of budget documents is the responsibility of the Treasury. Departments are sent copies of the FCO list reporting the despatch of legislative proposals for printing and transmission to Parliament. At the same time the European Secretariat of the Cabinet Office writes to the Department responsible for the proposal requesting it to submit an explanatory memorandum to Parliament.

DEPOSIT OF NON-LEGISLATIVE DOCUMENTS

5. In the case of documents other than Commission proposals for Council legislation, the European Secretariat of the Cabinet Office seeks the written views of the lead Department on whether a particular document should be deposited. There can be no hard and fast rules as to which documents of this kind should be deposited. However, the terms of reference of the Community Scrutiny Committee (see Annex A) require it to consider, in addition to proposals for legislation, "other documents published for submission to the Council of Ministers or to the European Council, whether or not such documents originate from the Commission.". The document is only deposited in Parliament when the lead Department has written to the Cabinet Office indicating that it is suitable for deposit.

6. Community practice regarding publication is not uniform and does not follow clear criteria. The definition of "published" must be interpreted widely to include formal transmission to the European Parliament (there are informal arrangements for transmitting confidential documents to the European Parliament which do not amount to publication), publication in the Official Journal and other means such as Commission press releases. The ultimate test is whether or not the Commission itself regards a document as published. The Government must not be left open to allegations that it is withholding from Parliament documents which could be held to fall within the terms of reference of the Scrutiny Committees. The terms of reference of the Lords Scrutiny Committee are wider than those of the Commons Committee and do not formally restrict it to consideration of "published" documents, since they refer to "Community proposals, whether in draft or otherwise" (see Annex B). In practice, however, documents should be deposited in both Houses or in neither.

DOCUMENTS NOT SUITABLE FOR DEPOSIT

7. The presumption is that documents should be deposited unless they fall into one of the following categories:

a. Confidential documents. These are not always easy to recognise: Community security classifications are not a sure guide, though documents bearing the classification "Confidential" must be considered more sensitive than others. Where a confidential document contains proposals for legislation which are not themselves confidential, it may be possible to deposit a suitably edited version. The arrangements applying to certain documents, such as anti-dumping proposals, which are regarded as confidential until adopted are set out in paragraph 11.

b. Working documents prepared by the Council Secretariat, national delegations or the Commission for discussion in the Council or its subordinate committees and working groups. These documents are regarded as coming within the confidentiality of Council proceedings and should not be deposited. The same applies to the internal Commission working documents ('SEC' documents) which are occasionally made available to the Council.

c. Documents sent to the Council concerning the exercise of the Commission's own delegated powers. These should not normally be deposited unless there is a Treaty requirement for Council approval before the Commission legislation can be approved (as there is, for example, under Articles 54 to 56 of the ECSC Treaty). Documents containing proposals for Commission action of an essentially administrative character (eg the granting of financial assistance under Articles 54 to 56 of the ECSC Treaty) need not be deposited even if Council approval is a Treaty requirement, unless they are known to have been published. Where documents are referred to the Council following disagreement between the Commission and a management or regulation committee, they should not as a rule be deposited, since they are not normally published and Council approval is not required before action can be taken.

d. Documents containing draft mandates relating to negotiations with third countries or organisations. These include draft proposals for Council decisions authorising the Community to undertake or participate in bilateral or multilateral negotiations. These should not normally be sent to Parliament since publication could prejudice the Community's negotiating position. However once negotiations are complete and the results are embodied in draft decisions or other instruments to be adopted by the Council, the documents containing those draft decisions or instruments, including documents relating to an agreement to be specified under Section 1(3) of the European Communities Act 1972, should be deposited. (Guidance on the specification of Community Treaties is given in EQO(Guidance)(84) 6). Documents of the "Green Paper" type (eg Commission opinions on Portuguese and Spanish accession) are also regarded as eligible for deposit in Parliament.

e. Documents in the form of draft agreements between the member states (eg decisions or agreements between the representatives of the member states of the ECSC) which are not to be published when adopted should not normally be deposited.

f. Documents prepared by the Commission for the consideration of the Standing Employment Committee. These documents are usually sent to the Council Secretariat but they are not submitted for consideration by the Council of Ministers and so fall outside the terms of reference of the Commons Scrutiny Committee unless and until they are forwarded subsequently to the Council.

DEPOSIT OF DOCUMENTS OTHER THAN COMMISSION DOCUMENTS

8. Documents published for submission to the Council of Ministers by bodies or persons other than the Commission are eligible for deposit. Examples are proposals made to the Council by the Presidency or a member state, or reports by the Court of Auditors. However care should be exercised in relation to the following classes of document -

a. Opinions of the European Parliament or the Economic and Social Committee. These are not normally deposited (although they are received by Parliament direct from these two bodies) other than in the case of certain European Parliament documents dealing with the annual Community budget, for which a separate procedure has been devised.

b. Correspondence from pressure groups to the Council. The bulk of such correspondence is ephemeral in character and is not therefore deposited in Parliament.

EUROPEAN COUNCIL DOCUMENTS

9. Documents published for submission to the European Council are eligible for deposit in Parliament. Whether or not a particular European Council document is deposited should be judged on the same criteria as for other documents falling within the Scrutiny Committees' terms of reference. The fact that documents usually issue only just before a European Council meeting is not in itself a reason for not depositing them in Parliament; this should be done as soon as possible after an English text has been received. Confidential documents for consideration at the European Council are sometimes published at a later stage. Departments should watch closely for advance copies and consider their status in consultation with the European Secretariat of the Cabinet Office (233-8380 or 6180) and the FCO. (233-3594).

10. Documents emerging from the European and other Councils, such as communiqués, are not normally deposited as they fall outside the terms of reference of the Scrutiny Committees, though copies may be placed in the libraries of both Houses.

CONFIDENTIAL DOCUMENTS

11. Some documents must by their nature remain confidential until adoption, for instance certain financial proposals or documents relating to anti-dumping measures. In order that such documents should not bypass the scrutiny procedure it has been agreed, at the request of the Scrutiny Committees, that the final agreed text of such documents should be deposited in Parliament along with an accompanying explanatory memorandum.

TIMETABLE

12. Explanatory memoranda must normally be provided within 10 working days from the date of deposit of the Community document concerned, though the Scrutiny Committees accept that it may take longer in the case of documents which pose particular problems. In some cases it may be necessary to work to a shorter deadline where progress through Council is rapid. Departments can start to prepare explanatory memoranda before deposit and should do so when a draft instrument is likely to come before the Council for speedy adoption. The aim should be to submit explanatory memoranda as soon as possible, even if the official text is not available (see paragraph 17) if this would help the Scrutiny Committees to proceed. Where Departments expect the production of a memorandum to be delayed beyond the normal 10 day deadline, the European Secretariat of the Cabinet Office (233-6144 or 7006) should be informed of the reasons and it will in turn inform the Committees.

FORM

13. All memoranda should be dated and should bear the same Council number as the document to which they refer (to assist cross referencing the COM number of the document should also be shown). The standard form of explanatory memorandum is shown at Annex C. This form should be used for all proposals for legislation, for substantial amendments to legislative proposals, and for other documents published for submission to the Council of Ministers or the European Council. Exceptions to the provision of full, signed memoranda are rare, and are as follows -

a. Minor amendments to legislative proposals and to non-legislative documents which the Scrutiny Committees originally cleared (ie in the case of the Commons, found to be of no legal or political importance or, in the case of the Lords, have not been referred to a Sub-Committee) and which contain changes of little substance, but nevertheless need some explanation. In these circumstances a

short unsigned memorandum may be submitted. Where no explanation is considered necessary the FCO will attach a standard cover note to the document at the time of deposit (for the form of this cover note see Annex D).

b. Self explanatory factual reports which raise no policy issues. These may not require an explanatory memorandum, in which case the FCO will attach a standard cover note as in a. above.

c. Documents of a technical administrative nature (in particular routine items of budgetary procedure), which may be submitted under a short unsigned memorandum.

d. Minor documents (such as correspondence with the Council Secretariat from outside organisations) which may be submitted under an FCO cover note if they are self-explanatory, or under a short, unsigned memorandum.

If Departments consider that a document falls into one of these categories they should consult the European Secretariat of the Cabinet Office (233-8380 or 6144) and may also seek the advice of the staff of the Scrutiny Committees.

CONTENT

14. Explanatory memoranda should deal clearly with the matters covered by the standard headings shown in the model at Annex C so as to minimise the need for further enquiries by the Scrutiny Committees. In particular -

a. The description of the subject matter should be sufficient to enable Members of Parliament to understand broadly what is proposed without reference to the proposal itself. Where the proposal relates to particular kinds of goods or materials, examples should be quoted as an illustration. The Treaty basis upon which the proposal relies should be mentioned in this section of the memorandum (in accordance with the Prime Minister's written Parliamentary answer of 19 July 1979 - Hansard Vol 970 No 43 Col 777). Reference should also be made to reports by either Scrutiny Committee or to debates in either House which are directly relevant and to the reference number of any other relevant documents which have previously been scrutinised.

b. Mention should be made, under the heading of Ministerial responsibility, of the Departmental Minister primarily responsible for a proposal (usually the Minister in charge of the Department even if another of the Department's Ministers signs the explanatory memorandum) and of any other Minister who may be involved.

c. The impact on United Kingdom law is of fundamental interest to the United Kingdom Parliament. Under this heading the aim should be -

i. if there is an impact on UK law, to give as much detail as possible of the existing provisions or the area of existing law (including both enacted and common law) likely to be affected, whether or not amending or new legislation will be required. Where the position differs in different parts of the United Kingdom, this should be explained in reasonable detail. If, however, there is no impact on existing United Kingdom law, or if the instrument is unlikely to have any implication in this country (eg a proposal relating to Community staff), it may be sufficient to state just that, with a brief explanation.

ii. to say what legislative action might be required to implement or supplement the instrument. Mention should also be made of any relevant domestic enabling powers; but there is no need at this stage to suggest whether these powers or the powers of section 2(2) of the European Communities Act 1972 will be regarded as more appropriate. The options can be left open for Ministerial consideration. Because of the breadth of section 2(2), and of the delays to be expected, primary legislation can only be a serious option if extraneous factors point that way; and in that event a brief explanation should be given.

d. The section on policy implications should present a clear factual account of what is principally at issue from the United Kingdom viewpoint. It may on occasion be helpful to give some factual background on the situation in the rest of the Community if this bears on the nature of the proposal or its origin. If there are

no policy implications it is better to avoid a bare negative and to explain why this is so, even at the risk of being obvious. Where possible, the Government's established attitude to a proposal should be given. Where appropriate, reference might be made to public or Parliamentary statements already made by Ministers on the subjects concerned. If it is known that a point arises on the vires of a draft instrument which we intend to pursue in the Council, or that another member state has publicly questioned its vires, this should be indicated under this heading. The memorandum should also mention any outside bodies which have been consulted, but should not attempt to summarise their views.

e. Departments should where possible include among the policy implications of a proposal a reference to its financial implications for the Community, and to those for the United Kingdom if this can be done without prejudicing our negotiating position. Where relevant information has been made available by the Commission (eg when they differ from our own estimates) it should be noted that the estimates may be subject to revision. Where European currency units (ecus) are quoted, estimates should also be shown in sterling.

f. The entry under timetable should, in the case of a draft instrument, be as informative as possible on its likely progress in the Community institutions. It should in particular say whether or not the opinions of the European Parliament and the Economic and Social Committee have been sought (and give references to such opinions if they have by then been published) and indicate where possible when the instrument can be expected to come before the Council.

CIRCULATION OF NUMBERED EXPLANATORY MEMORANDA

15. Departments should distribute copies of all numbered explanatory memoranda, whether signed or unsigned (see paragraph 13), including supplementary memoranda (see paragraphs 23-24), as follows -

Vote Office, Norman Shaw Building (N), Victoria Embankment	150 copies
Printed Paper Office, House of Lords	25 copies
The Library, House of Commons	3 copies
Foreign and Commonwealth Office, ECD(I), (Room E 106)	2 copies
Cabinet Office (Room 344B)	9 copies
UK Permanent Representative, Brussels	1 copy
Clerk to Commons European Legislation Committee, Room 421, St Stephen's House, Victoria Embankment <u>(if via IDS or by hand)</u> or House of Commons, London SW1A 0AA <u>(if by post*)</u>	30 copies
Legal Adviser to Commons European Legislation Committee, Room 429, St Stephen's House, Victoria Embankment, <u>(if via IDS or by hand)</u> or House of Commons, London SW1A 0AA <u>(if by post*)</u>	1 copy
Clerk to Lords Select Committee on the European Communities, House of Lords	1 copy
Legal Adviser to Lords Select Committee on the European Communities, House of Lords	1 copy
Committee Office, European Communities Committee, House of Lords	3 copies
Reference Division, Central Office of Information	1 copy
Scottish Office (Scottish Education Department, Room 2/11, New St Andrew's House, Edinburgh)	1 copy
Welsh Office (EDS3, 1st Floor, New Crown Building, Cathays Park, Cardiff)	1 copy
Department of Education for Northern Ireland, Room 605, Rathgael House, Balloo Road, Bangor BT19 2PR	1 copy

Addresses and details are subject to change and Departments are advised to use the circulation list included in the request for memoranda sent out by the Cabinet Office. Special arrangements apply to the distribution of unnumbered memoranda (see paragraph 19). Departments should ensure that other Departments who have been involved in the preparation of memoranda receive copies.

* Delivery by hand is always preferable. If not first class mail should be used.

16. Departments may make explanatory memoranda available to their own libraries immediately after distribution to the Vote Office. Following Ministerial agreement, explanatory memoranda are also made available to the public in certain libraries in England by the Cabinet Office and to regional libraries via the Scottish and Welsh Offices and the Department of Education for Northern Ireland.

UNNUMBERED EXPLANATORY MEMORANDA

17. An unnumbered explanatory memorandum is a memorandum which describes a document to be considered by the Council of Ministers for which no depositable (ie no official or numbered) text exists. One should be prepared when -

a. A document is fast moving and is likely to come to the Council of Ministers for decision before a formal text, which can be deposited for Parliamentary scrutiny, is available. In an oral Parliamentary reply of 14 May 1980, the Lord Privy Seal said that where no depositable document was produced before a legislative proposal was considered by the Council, the Government would ensure wherever possible that the Scrutiny Committee was kept fully informed by the use of unnumbered memoranda.

b. The lead Department has a reasonable knowledge of the likely content of a document, for example because it has a working document or early draft in another Community language or because measures such as annual trade quotas are to be renewed.

18. Unnumbered explanatory memoranda should follow as closely as possible the form and content of numbered memoranda (including a Ministerial signature) except that where a reference number would normally be quoted the words "official text not yet received" should be inserted (see Annex C). When preparing unnumbered memoranda it is sometimes useful to annex an unofficial version of the text, particularly if no depositable document is likely to be available for some time. In the case of bulky documents it may

be more cost effective to send copies to the Clerks of the Scrutiny Committees only for information. The European Secretariat of the Cabinet Office (233-8380 or 6180) should be consulted about the desirability of making the proposals publicly available in the absence of an official text. Where a Council working document is used as the Annex, care should be taken to remove all references which would indicate its origin. The memorandum should make it clear that the text is made available on the Government's authority only and that the text is not an authoritative Community document.

CIRCULATION OF UNNUMBERED EXPLANATORY MEMORANDA

19. Such memoranda are given a limited distribution as follows:

Vote Office	6
Cabinet Office	4
Scottish Office	0
Welsh Office	0
Department of Education for Northern Ireland	0
Other recipients	as for numbered memoranda

If it is certain that a depositable text will never exist the words "official text not available" should be inserted in the top right hand corner and then distributed in the usual way for numbered memoranda, except that 6 copies only should be sent to the Vote Office.

20. When the official text becomes available the Department should confirm with the European Secretariat of the Cabinet Office (233-6144 or 7006) that this text should be deposited in Parliament, and should prepare an addendum to the unnumbered memorandum which simply states that in their memorandum of [date] the words "official text not yet received" should be replaced by the Council document number. The addendum and copies of the memorandum bearing the Council document number should be circulated as follows:

	Addendum	Full numbered memorandum
Vote Office	1	6
Cabinet Office	4	5
Scottish Office	0	1
Welsh Office	0	1
Department of Education for Northern Ireland	0	1
Other recipients	1 copy to each	0

21. If at any stage it becomes known that an official text will not become available the Department should prepare an addendum which simply states that in their memorandum of [date] the words "official text not yet received" should be replaced by "official text not available". The distribution for the addendum and memorandum should follow that in paragraph 20.

CORRIGENDA TO EXPLANATORY MEMORANDA

22. It is sometimes necessary to amend an explanatory memorandum by issuing a corrigendum. This should be distributed on the same circulation as the original memorandum and state clearly the date, reference numbers and title of that memorandum. When the Vote Office have received 150 copies of the original memorandum (paragraph 15), Departments should contact the Vote Office (219-4669) and ask for the copies to be returned to them so that the corrigendum can be attached by the Department.

SUPPLEMENTARY (UPDATING) EXPLANATORY MEMORANDA

23. Supplementary (also known as updating) memoranda should be prepared if a document undergoes substantial revision from a policy point of view in the following cases:

- a. documents for which scrutiny has not yet been completed, to ensure that the Committees are kept up to date with progress;
- b. documents which have been recommended for debate (paragraph 59);

c. documents where the Commons Scrutiny Committee reports that it is not at this stage recommending a debate but wishes to be kept informed of the progress of discussions with a view to reviewing its recommendation before a final decision is taken on the document;

d. documents for which scrutiny has been completed, in which case "second stage scrutiny" arises (see paragraph 46).

In the case of c. a letter either to the Chairman of the Committee from a Minister or the Clerks of the Committee from an official reporting developments may sometimes be adequate. However the supplementary memorandum or letter should be sent in good time before final decisions are taken on the document.

24. Supplementary memoranda should in general follow the format for explanatory memoranda as closely as possible, though appropriate reference should be made to reports by either Scrutiny Committee and to debates in either House. In certain cases, where the original Community text may be out of date, an informal revision can usefully be prepared and annexed to the supplementary explanatory memorandum. As with unnumbered memoranda, the texts are made available on the Government's authority only and the memorandum should make it clear that they are not authoritative Community documents.

III THE SCRUTINY PROCESS

THE COMMITTEES

25. The Commons Scrutiny Committee is reappointed for the whole of each Parliament, its terms of reference being incorporated in Standing Order No.105 (see Annex A). The Lords Scrutiny Committee members are appointed each session on a rotation basis, its terms of reference are given at Annex B. Each Committee is served by a Clerk, with supporting staff concerned with aspects of Community policy. The Lords Committee also appoints part-time specialist advisers for particular enquiries. In the Commons, the Clerks prepare briefs for the Committees on deposited documents and the Government's explanatory memoranda. In the Lords, the Chairman and Sub-Committees normally depend directly on Commission proposals and explanatory memoranda.

LIAISON WITH THE COMMITTEES

26. An FCO Minister of State has special responsibility on behalf of the Government for the proper functioning of the arrangements for assisting the work of the Scrutiny Committees; the FCO should therefore be consulted on any sensitive issues. The Leader of the House of Commons is concerned that the Government's Parliamentary obligations in relation to scrutiny procedure are fully met. The European Secretariat of the Cabinet Office acts as the central link between the Committees and Government Departments generally. The existence of this central link, however, does not detract from the importance of an effective working liaison between Departments and the staff of the Committees. Departments should deal only with the Committee Clerks or legal advisers, not with specialist advisers. Where Departments are in doubt as to the correct procedure they should consult the European Secretariat (233-6144 or 8380).

COMMITTEE MEETINGS

27. Before each meeting of the Commons Scrutiny Committee the European Secretariat of the Cabinet Office circulates the draft agenda, on which it invites Departments' comments. Departments should consider whether there is any other proposal on which an urgent decision is needed from the Scrutiny Committee which ought to be included on the agenda and inform the Cabinet Office accordingly (233-6144 or 7006). Agendas for the Lords Committee and its Sub-Committees are circulated by the Committee Office in the House of

Lords. The European Secretariat of the Cabinet Office (233-6144 or 7006) can provide extra copies. If Departments identify an additional proposal on which an urgent decision is needed they should inform the Clerk concerned and the European Secretariat quickly.

GIVING EVIDENCE TO THE COMMITTEES

28. The Commons Scrutiny Committee is empowered to report on whether deposited documents raise questions of legal and/or political importance, to give its reasons for its opinion, and to report on what matters of principle or policy may be affected by a proposal. The Lords Scrutiny Committee is required to consider the merits of documents. Both Committees can take evidence both in writing and orally. Despite the difference in their terms of reference a similar approach should be taken in giving evidence to either Committee.

WRITTEN EVIDENCE

29. Departments should meet specific requests by a Committee for supplementary information on proposals still under scrutiny. Such information is provided for the Committee alone and is not ordinarily laid before Parliament as a whole unless the Committee asks for this to be done. Departments should note that once information has been supplied to one of the Scrutiny Committees, even by means of an informal letter to the Clerk, it normally becomes evidence. It is then entirely a matter for the Committee whether it decides to report and publish it. Departments should clear written evidence in draft with their usual contacts in the FCO, the European Secretariat of the Cabinet Office and any other interested Departments.

ORAL EVIDENCE

30. An undertaking has been given that Ministers and officials will be available to appear before the Committees to give evidence about Community proposals as required. The Clerks to the Committees have been asked to give as much notice as they can of the need for oral evidence - at least two weeks if possible where a proposal is not urgent. Arrangements have on occasion been made for Sub-Committees of the two Scrutiny Committees to meet concurrently for the hearing of evidence. Officials invited to give oral

evidence should refer to the Memorandum of Guidance for Officials Appearing before Select Committees circulated by the Civil Service Department on 16 May 1980 (GEN 80/38). Departments should inform the European Secretariat of the Cabinet Office (233-6180) of any difficulties they experience in giving oral evidence.

CONFIDENTIAL ORAL EVIDENCE

31. If Departments consider that it would be helpful to give a Committee confidential information, they should only do so if the Committee agree to treat it accordingly. The Lords Scrutiny Committee have decided that whenever confidential evidence is given in private prior agreement should be reached with the witness on what, if any record, should be made. There are three options available: to have no record at all; to have a single private note by the Clerk; or to have a strictly limited number of copies of a transcript made. Any note or transcript made would only be available to the Members of the Committee and their advisers through the Clerk.

CONSIDERATION BY COMMITTEES

a. Commons

32. The Commons Committee lists in its reports on each of its weekly meetings those documents which in its opinion raise questions of legal and/or political importance and require further consideration by the House; those that raise questions of legal and/or political importance, but where there is no recommendation that they should be debated; those raising no such questions; and a cumulative list of documents outstanding for debate.

b. Lords

33. In the Lords, documents are sifted by the Chairman, once an explanatory memorandum has been received, into those thought not to require special attention (Category A) and those remitted to the appropriate Sub-Committee for further consideration (Category B). A report on the progress of scrutiny is published by the Lords Committee, usually fortnightly, listing the decisions taken. List A records documents sifted as Category A since the previous report. List B gives all documents currently referred to Sub-Committees. List C records documents which previously appeared in List B but are not to be the subject of reports. Lists D and E record reports made for information and debate respectively over a convenient recent period.

COMMITTEE REPORTS

34. After each Scrutiny Committee meeting the European Secretariat of the Cabinet Office informs Departments of the decisions taken. The European Secretariat also circulates to Departments on a weekly basis a full list of outstanding debate recommendations. This list is also sent to the Scrutiny Committees. The Commons Committee's full recommendations are recorded in their weekly Reports to Parliament (copies are available through HMSO), which normally appear a fortnight in arrears. Full information about the decisions of the Lords Committee is included in its Report on the Progress of Scrutiny, normally published fortnightly while Parliament is sitting (copies are available through HMSO).

SCRUTINY CLEARANCE

35. Once a document has been reported on by the Commons Committee with no recommendation for further consideration by the House, and has appeared in List A, C or D in the Lords Committee's report on the Progress of Scrutiny, the scrutiny procedures have been completed and there is no further obstacle from the Parliamentary point of view to the adoption of the document concerned by the Council of Ministers. However either or both Committees may recommend that a document should be given further consideration by the House, ie debated (see Section IV). In this case the scrutiny procedures are not complete until the debate has been held, or in the case of Standing Committee debates, after referral to the House. (But see paragraph 46 on second stage scrutiny).

GOVERNMENT UNDERTAKING

36. During the Parliamentary Recess, or when a proposal needs to make rapid progress through the Council machinery, a proposal may come before the Council of Ministers for decision before the Scrutiny Committees have had an opportunity to consider it, or before the scrutiny procedures have been completed. The Government has given Parliament an undertaking, which has been embodied in a Resolution of the House of Commons of 30 October 1980, that Ministers will not give agreement to any legislative proposal recommended by the Commons Scrutiny Committee for further consideration by the House, before the House has given it that consideration, unless:

- a. the Committee has indicated that agreement need not be withheld, or
- b. the Minister decides that for special reasons agreement should not be withheld, in which case the Minister should explain the reasons for this decision at the first opportunity to the House.

37. While the undertaking is embodied in a Resolution of the House of Commons it has also been given to, and should be held to apply to, the Lords. Even though the letter of the undertaking applies only to legislative proposals which have been considered by the Committees, the spirit of the undertaking should be observed in respect of all documents which involve a policy commitment, whether or not they have yet been considered by the Committees. Departments should therefore ensure, that when consideration is given to the adoption of unscrutinised documents, exception b. of the Resolution of 30 October 1980 is satisfied.

EFFECT OF THE UNDERTAKING

38. The effect of the undertaking is that a Minister should be advised not to give agreement in the Council of Ministers to the adoption of any document until the scrutiny procedures are complete, unless the relevant Committee has indicated that agreement need not be withheld or the Minister decides that for special reasons agreement should not be withheld. The undertaking does not specify what might constitute "special reasons", nor have the Committees subsequently expressed a view on the point. In giving evidence to the Commons Scrutiny Committee on 16 May 1984 (House of Commons First Special Report from the Select Committee on European Legislation, HC 527 and 126-iv Session 1983-84), the Leader of the House indicated a number of factors which would influence a Minister's decision in such circumstances:

- a. the need to avoid a legal vacuum which might arise if an existing measure were to expire without agreement to an extension or adoption of a successor measure;
- b. the desirability of permitting a particular measure of benefit to the United Kingdom to come into operation as soon as possible;

c. the difficulty, particularly if the negotiations in the Community have themselves been difficult or protracted, of putting a late reserve on a measure which will either have little effect on the United Kingdom or which is likely to be of benefit to the United Kingdom.

39. Departments should take steps to arrange debates and clear scrutiny procedures before Council consideration of a document reaches its final stages; adoption without the completion of scrutiny procedures should be regarded as highly exceptional and only justified if one or more of the factors listed in paragraph 38, or a factor of comparable importance, apply.

PARLIAMENTARY RESERVES

40. Before deciding to agree to the adoption of a document which has not completed the scrutiny procedures serious consideration should be given to the possibility of agreeing in the Council subject to a Parliamentary reserve. The Government's assent is then not formalised until the reserve is lifted (ie until after the scrutiny procedures have been completed - see paragraph 35). This course is clearly preferable to the alternative of allowing the document to be adopted without such a reserve, (particularly if the Scrutiny Committees have not had an opportunity to consider the document).

41. Departments are responsible for ensuring that the FCO instruct UKREP Brussels to place a Parliamentary reserve on a document which has not completed the scrutiny procedures and to inform UKREP, via the FCO, when the reserve can be lifted.

ACTION WHERE DOCUMENTS AWAIT DEBATE

42. In the case of documents awaiting debate the European Secretariat of the Cabinet Office (233-6180 or 8380) should be consulted before a Minister is advised that, for special reasons, agreement need not be withheld. When it has been agreed to take this course, the Minister responsible should be advised to write to the Chairman of the relevant Committee with copies to

the Leader of the House, the FCO Minister of State, the Chief Whip (Lords) the Secretary to the Cabinet and the Clerk(s) of the Committee(s) before the decision is taken in Council, explaining why he/she is satisfied that agreement should not be withheld, why a debate could not have been held before adoption, and indicating that a statement will be made to the House. When agreement is given subject to a Parliamentary reserve the Clerk(s) of the Committee(s) should be notified by telephone.

ACTION WHERE DOCUMENTS HAVE NOT BEEN CONSIDERED BY COMMITTEES

43. Similarly, in the case of documents yet to be considered by the Scrutiny Committees the European Secretariat of the Cabinet Office (233-6180 or 8380) should be consulted before a Minister is advised to agree to the document in Council without a Parliamentary reserve. If it is decided that a document is to be adopted in advance of scrutiny, the Minister responsible should explain in writing why this is necessary to the Chairman of the Committee(s), with copies to the Leader of the House, the FCO Minister of State, the Chief Whip (Lords), the Secretary to the Cabinet and the Clerk(s) of the Committee(s). The letter should indicate that once the Committee has had an opportunity to consider the document in question, the Minister would be prepared to make a statement to the House if the Committee considers that this is necessary. An unnumbered or other explanatory memorandum should also be supplied whenever appropriate. The only exceptions to this procedure are documents, such as anti-dumping measures, to which special arrangements apply (see paragraph 11); routine items such as transfers of appropriations, which are often considered in Brussels before English texts are available in the United Kingdom; and extensions of existing non-controversial arrangements, particularly where legal continuity needs to be preserved. If a Department is unsure whether or not a proposal comes under one of these headings they should seek the advice of the Committee Clerk.

STATEMENT TO HOUSE

44. If agreement is given in the Council of Ministers to a document before a debate has taken place the responsible Minister will need to make a statement to the appropriate House of Parliament at the first opportunity after the Council decision has been taken. In general, an oral statement is

preferable to a written answer; for important proposals an oral statement should be the rule, except where Parliamentary time cannot be found for such a statement on the first or second working day following the Council at which agreement was given. The statement should include a reference to the scrutiny position, noting, if appropriate, when the document was recommended for debate and the reason why a debate could not have been held before adoption; explaining the special reasons why the Minister had decided not to withhold agreement; and if possible indicating the likely timing of a debate. An expression of regret at the impracticability of arranging an earlier debate will normally be appropriate.

45. In the case of documents not yet considered by the Scrutiny Committee whether or not a statement is required will depend on the outcome of the Committee's consideration. The form of the statement (oral or written) will be governed by the same considerations set out in paragraph 44.

SECOND STAGE SCRUTINY

46. The scrutiny procedure is normally complete once the Committee has reported on the document and any debate or debates recommended by the Committees have taken place. However, a new situation may be created if the proposals subsequently undergo substantial amendment, affecting United Kingdom interests, in the course of Council discussion. Departments should provide Parliament with information on any such changes so that the Scrutiny Committees can have a second look at the proposals and make a further recommendation for debate, if they so desire, before adoption by the Council. The onus is on Departments to identify cases where such further information should be reported to Parliament, though the European Secretariat of the Cabinet Office (233-8380) should be kept in touch. The European Secretariat maintains and circulates periodically a list of major proposals which in the lead Department's view are likely to warrant further reference to Parliament before adoption, together with Departments' forecasts of when such reference should be made. Second stage scrutiny is set in motion when the Department concerned deposits a supplementary explanatory memorandum on a proposal which has already been reported on or debated. Wherever possible this should be done at least six weeks before the proposal is due to be adopted by the Council. A chart to assist Departments in identifying candidates for second stage scrutiny is at Annex E.

CABINET OFFICE RECORDS

47. The European Secretariat of the Cabinet Office maintains a record of all documents which have been deposited in Parliament indicating their progress through the scrutiny process. As soon as Departments know that one of these documents has been adopted by the Council, they should supply details of the adoption date to the European Secretariat (233-6144 or 7006).

WITHDRAWAL OF RECOMMENDATIONS FOR DEBATE

48. The Commons Scrutiny Committee has indicated that it is prepared to consider withdrawing a recommendation for a document to be debated in circumstances where the original recommendation is no longer valid. This may arise in the following circumstances -

a. Where the document in question has been withdrawn by the Commission. Arrangements have been made by the FCO to supply the Committee with lists of withdrawn documents following the Commission's periodical reviews of outstanding proposals.

b. When the document in question has been amended in such a way as to remove those features which the Scrutiny Committee identified as giving rise to the need for debate. If a Department believes this to be the case it should consult the European Secretariat of the Cabinet Office (233-8380 or 6180). Then either the Department should submit a supplementary explanatory memorandum to the Committee, or the responsible Minister should write to the Chairman of the Scrutiny Committee (copied to the Lord Privy Seal, the FCO Minister of State and the Secretary to the Cabinet and the Clerk of the Committee), explaining the circumstances and suggesting that the Committee might wish to reconsider its recommendation for a debate.

49. There is no formal procedure for the withdrawal of recommendations by the Lords Scrutiny Committee. It makes fewer recommendations for debate and these recommendations are normally acted on promptly. If however a case arises in which a Department feels that the need for a debate recommended by the Lords Scrutiny Committee may have been overtaken by events, it should consult the European Secretariat of the Cabinet Office (233-8380 or 6180).

IV ARRANGING DEBATES

A. DEBATES IN THE COMMONS

TIMING

50. Certain commitments have been given to the House of Commons Scrutiny Committee which condition the Government's handling of EC documents. In replying to the conclusions of the First Special Report (1983-84 Session) of the Scrutiny Committee on aspects of scrutiny procedure which had caused concern, the Lord Privy Seal said: "It is the Government's practice that debates on European documents should be held as far in advance as practicable of the expected adoption of the proposal concerned. It is desirable that this should be at the point when the voice of the House can be most influential. As a general rule, this will normally be early rather than late in the life of a proposal. The Committee rightly notes that the selection of an optimum time for debate is very much a matter of judgement. The Government fully accept the Committee's view that, when making this judgement, it should be the rule always to err on the side of an early debate." In order to fulfil these commitments it is necessary for Departments to initiate action as soon as possible after the Committee's recommendation has been made. The first stage of this action is collective consideration in Legislation (L) Committee of the need for a debate, its possible timing and the terms of a Resolution. There should be a presumption that an early debate will take place, but there will be cases where it can be argued that no debate should take place before agreement in Brussels or where debate should take place very much later than would be implied by the general guidelines.

INFORMING L COMMITTEE SECRETARIAT

51. The Department should contact L Committee's Secretariat in the Cabinet Office (233-7665) not more than two weeks after the Scrutiny Committee has recommended the document for debate, about the likely timing, place and duration of debate. (The Secretariat should be contacted immediately if a debate is wanted less than five weeks after the Scrutiny Committee has considered the document.) Agreement can then be reached on the timing of the consideration by L Committee of the Scrutiny Committee's recommendation.

MEMORANDUM FOR CONSIDERATION BY L COMMITTEE

52. The next step in arranging a debate is for the Minister responsible for the Community document to submit a memorandum to L Committee. This should normally be done as soon as possible after the Scrutiny Committee has recommended the document for debate. In some cases, such as documents which the Scrutiny Committee have recommended for debate and on which they have asked to be kept informed of developments, it might be appropriate to delay consideration by L Committee; and during certain times of the year, the business may have to be dealt with by correspondence. These matters, however, would be for the Department to pursue bilaterally with the L Committee Secretariat.

53. The memorandum should cover the following points -

a. The recommendation made by the Scrutiny Committee, particularly whether or not they propose a debate in Standing Committee.

b. The tactical considerations, in particular the state of negotiations in Brussels and its implication for the timing of a debate. To meet the requirements of genuine Parliamentary scrutiny, it will generally be desirable to hold a debate early, rather than immediately prior to a final Council consideration. If there are special factors which require debate to be held shortly before or even after, agreement has been reached in the Council, these factors should be brought out at this stage. In those circumstances, the Committee may wish to consider whether the Chairman of the Scrutiny Committee should be informed and whether the use of a Parliamentary Reserve would be appropriate (see paragraphs 40 and 41).

c. Where and when the debate should take place eg on the Floor of the House after 10.00 pm or in Standing Committee, before a specified date. If the Minister's recommendation differs from that of the Scrutiny Committee, the memorandum should explain why.

d. The exact wording of the motion. This should include reference to all the documents and explanatory memoranda which are to be the subject of the debate, including any supplementary memoranda issued or under preparation for the debate. (Examples of recent motions used are given at Annex F).

e. The proposed line including the line to be taken on likely amendments to the Government's motion.

Points d and c need not be covered in detail if a debate is not proposed for the near future. However, two weeks before a debate is eventually held, and following consultation with the Chief Whip's Office and the Foreign and Commonwealth Secretary's Office on the timing of debate (see paragraph 55 below), a letter covering these points should go to L and OD(E) Committees with a copy to the Secretary of the Cabinet.

CONSULTATION WITH BACKBENCHERS

54. When the subject matter of the Community document is controversial the Minister concerned might wish to consult the chairman of the relevant back-bench subject group and possibly other Government backbenchers. Any such consultation should preferably take place before the relevant meeting of L, so that the Minister is in a position to report the outcome of these discussions.

MEETING OF LEGISLATION COMMITTEE

55. The various aspects of the handling of the debate are discussed by L Committee as soon as possible after the Scrutiny Committee has recommended a document for debate. The Memorandum by the Minister of the Department concerned forms the basis of L Committee's discussion. In this way the discussion on handling can in many cases be taken well in advance of the likely date of agreement in Brussels. It is then for the Department concerned to liaise with the Chief Whip's Office on the precise timing of a debate in consultation with the Foreign and Commonwealth Secretary's Office. Where it proves impossible to arrange a debate before a decision is required in Brussels, or where circumstances have changed since L Committee's consideration of the handling of the debate (eg where significant amendments are made to the original document) it may be necessary for L Committee to reconsider the

matter. In those circumstances the Minister responsible for the Community document should write to the Chairman of L Committee, with copies to its members; the Chairman and members of the Ministerial Subcommittee on European Questions (OD(E)); and any other Ministers who have an interest. The Secretary of the Cabinet and the Secretaries of L and OD(E) should also receive copies.

PLACE

56. Debates may be taken either on the Floor of the House or in Standing Committee. As a general rule only the more technical and specialised Community documents are likely to be recommended by the Scrutiny Committee as suitable for debate in Standing Committee. However the final decision on when the debate is held will be taken by the business managers after discussion through their usual contacts. For instance the Chief Whip's Office may wish to explore the possibility of debates being taken in Standing Committee to relieve the pressure on time on the Floor unless the subject is of major importance and needs to be debated on the Floor.

DURATION

57. Debates on the Floor of the House are usually held after 10.00 pm and last for up to 1½ hours. Exceptionally that time may be extended or prime time may be provided. House of Commons Standing Order No 80(4) provides for up to 2½ hours of debate in Standing Committee.

FORM OF GOVERNMENT MOTION AND AMENDMENTS

58. Debates on Community documents are held on an expanded take note motion. This should cite the relevant documents by their Council numbers and any additional explanatory memoranda issued or under preparation for debate; and should indicate Government policy on the document. Amendments to motions may be tabled by any Member and are selected by the Speaker, or in the case of a Standing Committee, by the Chairman.

SUPPLEMENTARY EXPLANATORY MEMORANDA

59. Departments should consider whether Parliament has been given sufficient information on the latest state of Council discussions on the document. Any supplementary explanatory memorandum should be provided at least 48 hours before debate and if possible three to four weeks in advance to allow time for the Scrutiny Committee to consider and report further on the document.

SCOPE OF SPEECHES

60. The Minister, or Ministers, responsible for the document opens and winds up the debate on the Floor and in Standing Committee. The Minister's opening speech should explain the contents of the document and any relevant scrutiny points; when the debate is being held after the adoption of the document the speech should cover the ground dealt with in paragraph 44 above.

REFERENCE TO NEW COMMUNITY DOCUMENTS

61. Exceptionally, the Minister might wish to refer to a new Community document which has not been included in the motion; in such cases the European Secretariat of the Cabinet Office (233-6180 or 8380) should be consulted in advance and then the Chief Whip's Office informed. The Speaker has ruled that a Minister is free to quote from a Community document only where it has been available in the Vote Office at least two hours prior to debate (19.6.80 Hansard Vol 986 No 188, Col 301).

ACTION WHERE DOCUMENTS ARE NOT COVERED BY STANDING ORDERS

62. European Community documents are defined in the House of Commons Standing Order No 3 as "draft proposals by the Commission of the European Communities for legislation and other documents published for submission to the Council of Ministers or to the European Council whether or not such documents originate from the Commission". The standing orders of the House expressly provide for documents so defined to be debated after 10.00 pm on the Floor or to be referred to a Standing Committee. However, some documents (mostly budgetary) fall

outside this definition and special arrangements need to be made if they are to be referred to Standing Committee or to be debated after 10.00 pm. The Department must advise the Chief Whip's Office in writing of such cases.

ACTION WHERE THE DEBATE IS ON THE FLOOR

63. The Leader of the House announces the debate, its date and the documents to be taken in the Thursday Business Statement in the House in the week immediately prior to the debate. All documents and memoranda included in the motion are referred to in the Business Statement and it is the responsibility of the Department to ensure that copies are available in the Vote Office by lunchtime on the day of the statement.

ACTION WHERE THE DEBATE IS IN STANDING COMMITTEE

a. Motions to be tabled

64. The Chief Whip's Office will table the necessary motions. If this is agreed to, the item will normally be included on the agenda of the next meeting of the Committee of Selection, which will select the membership of the Standing Committee. The Standing Committee will normally meet on a Wednesday but not until at least a week after the meeting of the Committee of Selection. The Friday before the Standing Committee meets, the responsible Department should contact the Public Bill Office, House of Commons, about the terms of the motion which the Minister intends to move in the Committee. The Public Bill Office will advise on the form of the motion but generally the motion will be that agreed in Legislation Committee prefaced by the words "that the Committee takes note of European Documents". This is printed as a notice of motion on a separate (blue) sheet circulated together with the Order Paper, usually the Monday before the Committee meets. On the day of the meeting the motion is re-circulated on a white sheet.

b. Attendance

65. Any Member of the House may attend the Committee, speak and propose amendments, but only the members of the Committee may vote on the motion.

c. Report to the House

66. Following their meeting, and usually on the same day, the Standing Committee reports the document to the House, together with any resolution to which it has come. This report appears in the Votes and Proceedings of the House for that day, and is normally published the following morning.

d. Referral to the Floor

67. A Government motion tabled by the Chief Whip's Office is subsequently made on the Floor of the House on the document reported from the Committee. The terms of this motion will normally be identical to that agreed by the Standing Committee.

B DEBATES IN THE LORDS

68. Debates on Community documents in the House of Lords normally take place on the basis of a motion referring to the relevant report of the Scrutiny Committee. When a document has been recommended for debate in the House of Lords, L Committee needs to be consulted only if particular problems are likely to arise. The motion is customarily moved by a member of the Scrutiny Committee (who will usually be the Chairman of the relevant Sub-Committee). The arrangements for these debates are therefore not wholly in the hands of the Government (who in any case have no formal control of business in the Lords) but there is informal liaison between the Government Whip's Office and the Clerk of the Committee to ensure that debates are arranged at a time of mutual convenience. The motions to take note of Reports awaiting debate are included in the section "No Day Named" in the Lords Order Paper. Occasionally reports which have been made for the information of the House (List D) are given a short debate in the context of an unstarred question: such debates are handled according to the usual procedure for unstarred questions.

PROCEDURE TO BE FOLLOWED BETWEEN PARLIAMENTS

69. There can be no hard and fast rules on the procedure to be followed during the interregnum between two Parliaments. The Cabinet Office will issue specific guidance on procedure when a General Election is called but the following paragraphs are based on the procedures followed at the time of the 1979 and 1983 Elections.

70. For scrutiny purposes, the "election period" runs from the dissolution of Parliament until the reconstitution of both Committees. Until the dissolution, normal procedures apply.

71. It should be noted that the Commons Committee is appointed under a Standing Order of the House; the Committee will therefore not require any action on the part of the House to ensure its continuation once Parliament returns although it cannot meet until members have been nominated by the House. It is formally for the Committee to elect a Chairman from among its members but, in practice, the Chairmanship will be settled by agreement between the Government and Opposition Whips prior to the new Committee's first meeting.

72. At the time of the 1979 and 1983 General Elections the formal deposit of documents and explanatory memoranda was held in abeyance between the ending of one Parliament and the opening of the next. However internal departmental procedures continued as if Parliament were sitting. The depositability of documents was assessed on the criteria which applied in the preceding Parliament. Printing arrangements for depositable documents continued and the documents were distributed as usual to avoid any backlog on the resumption of Parliament. Departments continued to prepare explanatory memoranda on all depositable documents, but these were not signed and no reference was made to their policy implications. Copies of documents and explanatory memoranda were provided on an informal basis to the Scrutiny Committees' Clerks.

73. Departments were advised to assume that outstanding debate recommendations made by the Committees before dissolution would be renewed by the incoming Committees (and this proved to be the case).

74. In some cases, Council adoption with or without a scrutiny reserve was needed before the scrutiny procedures had either been cleared or begun. Departments were then advised to invite their Minister to write to the Leader of the House of Commons (and if appropriate to the Leader of the House of Lords), with copies to the FCO Minister of State and the Secretary to the Cabinet, explaining why agreement was necessary, even if subject to a Parliamentary reserve. Blind copies of such letters were informally passed to the Committee Clerks for information. In turn, the Leader of the House advised Ministers to inform the Committee Chairman, when appointed, of the action taken. In some cases, Departments judged it appropriate to make a statement to the House on the resumption of business by means of a written Parliamentary answer.

75. Once Parliament had been opened, deposit of documents and submission of explanatory memoranda were resumed on the basis applying in the previous Parliament. After a change of Government in 1979 approval to do so was first obtained from the appropriate FCO Minister and the Leader of the House. Departments were informed of this by letter from the Cabinet Office.

76. After the General Election in May 1983 the new members of the Commons Select Committee on European Legislation were appointed on 21 July 1983. The Lords Scrutiny Committee reassembled on 28 June 1983, shortly after the State Opening of Parliament.

COMMONS SCRUTINY COMMITTEE
TERMS OF REFERENCE

The Select Committee on European Legislation is appointed under
Standing Order No 105, viz:

Select Committee on European Legislation

105.-(1) There shall be a Select Committee to consider draft proposals by the Commission of the European Communities for legislation and other documents published for submission to the Council of Ministers or to the European Council whether or not such documents originate from the Commission, and to report its opinion as to whether such proposals or other documents raise questions of legal or political importance, to give its reasons for its opinion, to report what matters of principle or policy may be affected thereby, and to what extent they may affect the law of the United Kingdom, and to make recommendations for the further consideration of such proposals and other documents by the House.

(2) The Committee shall consist of sixteen members.

(3) The Committee and any Sub-Committee appointed by it shall have the assistance of the Counsel to Mr Speaker.

(4) The Committee shall have the power to appoint specialist advisers for the purpose of particular inquiries, either to supply information which is not readily available or to elucidate matters of complexity within the committee's order of reference.

(5) the Committee shall have power to send for persons, papers and records; to sit notwithstanding any adjournment of the House; to adjourn from place to place; and to report from time to time.

(6) The quorum of the Committee shall be five.

(7) The Committee shall have power to appoint Sub-Committees and to refer to such Sub-Committees any of the matters referred to the Committee.

(8) Every such Sub-Committee shall have power to send for persons, papers and records; to sit notwithstanding any adjournment of the House; to adjourn from place to place; and to report to the Committee from time to time.

(9) The Committee shall have power to report from time to time the minutes of evidence taken before such Sub-Committees.

(10) The quorum of every such Sub-Committee shall be two.

(11) The Committee or any Sub-Committee appointed by it shall have leave to confer and to meet concurrently with any Committee of the Lords on the European Communities or any Sub-Committee of that Committee for the purpose of deliberating and of examining witnesses.

(12) Unless the House otherwise orders, each Member nominated to the Committee shall continue to be a member of it for the remainder of the Parliament.

LORDS SCRUTINY COMMITTEE

SELECT COMMITTEE ON EUROPEAN COMMUNITIES: TERMS OF REFERENCE
AND SUB-COMMITTEES

TERMS OF REFERENCE

That a Select Committee be appointed to consider Community proposals whether in draft or otherwise, to obtain all necessary information about them and to make reports on those which, in the opinion of the Committee, raise important questions of policy or principle, and on other questions to which the Committee consider that the special attention of the House should be drawn.

That the Committee have power to appoint Sub-Committees and to refer to such Sub-Committees any of the matters within the terms of reference of the Committee; that the Committee have power to appoint a Chairman of Sub-Committees, but that such Sub-Committees have power to appoint their own Chairman for the purpose of particular enquiries; that two be the quorum of such Sub-Committees;

That the Committee have power to co-opt any Lord for the purpose of serving on a Sub-Committee;

That the Committee and any Sub-Committees have power to adjourn from place to place;

That the Committee have power to appoint specialist advisers;

That the Committee have leave to report from time to time;

That the Reports of the Select Committee from time to time shall be printed, notwithstanding any adjournment of the House;

That the Minutes of Evidence taken before the Committee or any Sub-Committee from time to time shall, if the Committee think fit, be printed and delivered out; and

That the Committee or any Sub-Committee appointed by them have leave to confer and to meet concurrently with any Committee of the Commons on European Legislation, etc or any Sub-Committee of that Committee for the purpose of deliberating and of examining witnesses; and have leave to agree with the Commons in the appointment of a Chairman for any such meeting.

SUB-COMMITTEES

Sub-Committees of the House of Lords Scrutiny Committee are -

- a. Finance, Economics and Regional Policy
- b. External Relations, Trade and Industry
- c. Education, Employment and Social Affairs
- d. Agriculture and Consumer Affairs
- e. Law
- f. Energy, Transport, Technology and Research
- g. Environment

TERMS OF REFERENCE OF SUB-COMMITTEE E (LAW)

To consider and report to the Committee on:

- a. any Community proposal which would lead to significant changes in UK law, or have far-reaching implications for areas of UK law other than those to which it is immediately directed;
- b. the merits of such proposals as are referred to them by the Select Committee;
- c. whether any important developments have taken place in Community law; and
- d. any matters which they consider should be drawn to the attention of the Committee concerning the vires of any proposal.

STANDARD FORM OF EXPLANATORY MEMORANDUM

Council number and COM number of documents*

EXPLANATORY MEMORANDUM ON EUROPEAN COMMUNITY LEGISLATION**

[Title of document]

Submitted by the [Ministry]

[day/month/year]

SUBJECT MATTER
(including Treaty basis)

MINISTERIAL RESPONSIBILITY

IMPACT ON UNITED KINGDOM LAW

POLICY IMPLICATIONS
(including any financial implications)

TIMETABLE

OTHER OBSERVATIONS

[Minister's signature]
[Title]
[Department]

* For an unnumbered Explanatory Memorandum substitute "Official text not yet received", or "Official text not available" as appropriate.

** For Explanatory Memoranda on documents not containing proposals for legislation substitute the word 'DOCUMENT' for 'LEGISLATION'.

STANDARD FORMS OF FCO COVER NOTE

The attached document, dealing with
.....
is a self-explanatory factual report prepared by the Commission on which no
explanatory memorandum is considered necessary.

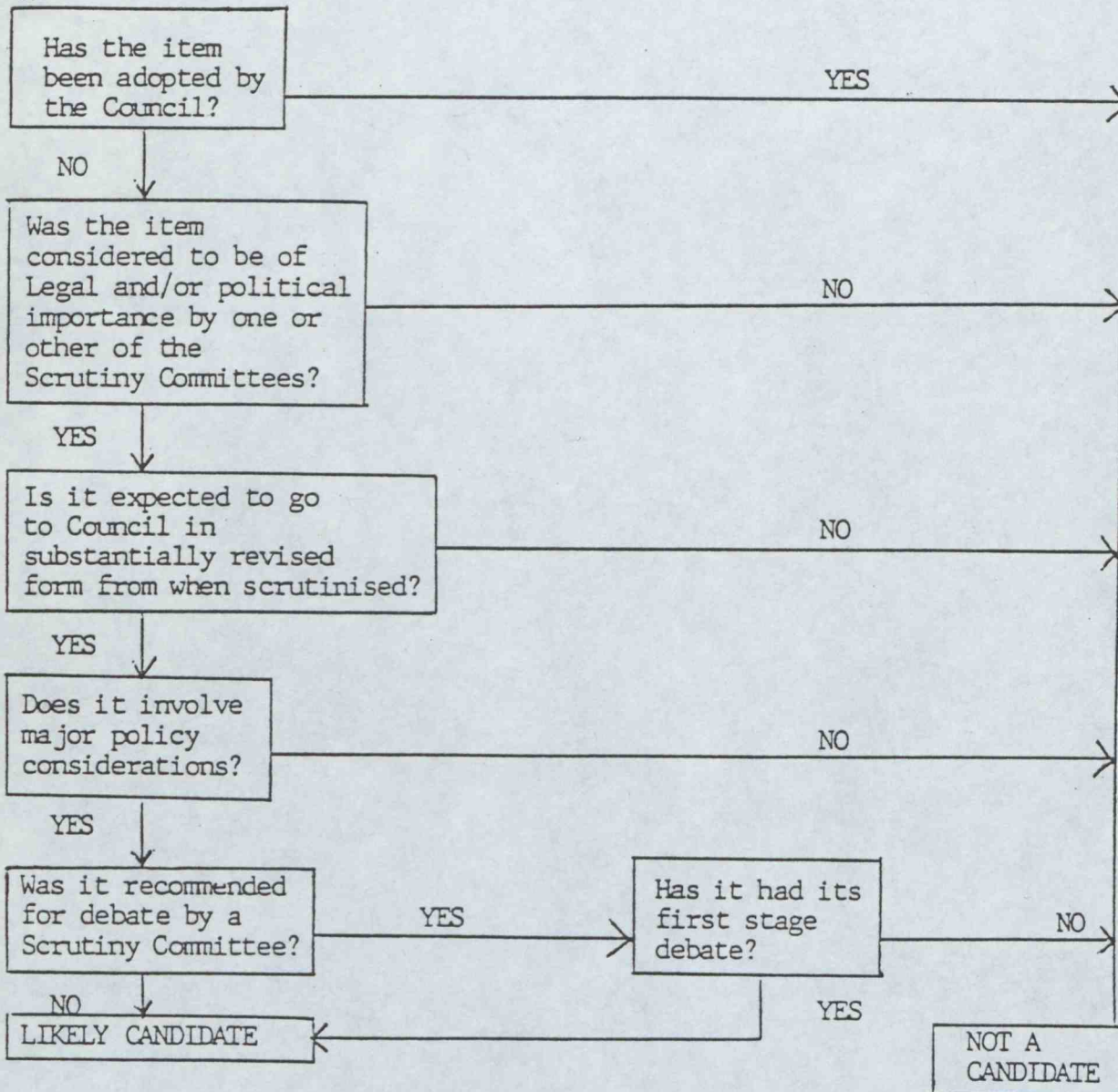
The lead Department is -

or

The attached document, dealing with minor amendments to
.....
is self-explanatory and no explanatory memorandum is considered necessary.

The lead Department is -

CRITERIA TO BE APPLIED TO CANDIDATES FOR SECOND STAGE SCRUTINY



ANNEX F

EXAMPLES OF MOTIONS FOR DEBATES ON COMMUNITY DOCUMENTS

That this House, while stressing the importance of maintaining continued close links between Greenland and the Community, recognises that the proposed change in the status of Greenland has wide support; and takes note of European Community Document No. 5064/84 transmitting legal texts providing for a change of the legal status of Greenland and fishery arrangements with regard to Greenland.

That this House takes note of European Community Documents Nos. 7685/84, 7686/84 and 7948/84; and in respect of 7685/84 and 7686/84 supports the Government's approach in pressing for charging provisions which reduce distortions to trade; and in respect of 7948/84, supports the Government's intention to seek to ensure that the provisions of any new directive should be based on a scientific assessment of the available information as to safety in use and should take full account of the interests of consumers, livestock producers, the meat trade and the pharmaceutical industry.

That this House takes note of European Community Documents Nos. 4692/81 and 4465/84, draft proposals for Directives and a Decision on the right of establishment for certain activities in the field of pharmacy, and the Explanatory Memorandum from the Department of Health and Social Security dated 16 July 1984; endorses the view that the instruments are necessary; and welcomes the United Kingdom's endeavours to encourage the adoption and implementation of these measures which will give pharmacists the same freedom of movement within the Community already afforded to the other health professions.

That this House takes note of European Community Document No. 9272/1/83, the first Annual Report of the Commission on the Community's anti-dumping and anti-subsidy legislation; and supports the Government's intention to ensure that the Commission's action in this field continues to take full account of United Kingdom interests.

That this House takes note of European Community Document No. 8175/84, Proposal for a Third Council Directive on Summer Time Arrangements, and, while recognising the reasons for the proposal, urges Her Majesty's Government to press for the retention of the existing arrangements.

HM 5/10 Parliament

PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

5 October 1981

Mr Humphrey,

PARLIAMENTARY SCRUTINY OF EUROPEAN COMMUNITY DOCUMENTS

will request is required

Thank you for your letter of 28 September covering revised guidance for Departments on the Parliamentary scrutiny of European documents.

I have no comments on the guidance itself and, unless any of the other recipients of your letter has any objection, I am content for it to be promulgated by the Cabinet office as you suggest.

I am copying this letter to the recipients of yours.

Mr Silver
Francis Pym

FRANCIS PYM

The Rt Hon Humphrey Atkins, MP
Lord Privy Seal
Foreign and Commonwealth Office
Downing Street
LONDON

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Handwritten notes:
 1. ~~MOSBA~~ ~~to see~~
 2. PA
 MS 10/5

Foreign and Commonwealth Office
London SW1

Parliament.

7 May 1980

Handwritten signature: *Norman St John-Stevas*

PARLIAMENTARY SCRUTINY OF EC LEGISLATION

There have been a number of criticisms in the House recently over the provision of Community documents for scrutiny, especially in cases where legislative proposals have been considered by the Council before a depositable document (i.e. one which can be submitted to Parliament for scrutiny) has been received.

I had an exchange with Nigel Spearing on this subject on 16 April, and he has tabled another similar question, with particular reference to the First Special Report from the Select Committee on European Legislation for 14 May.

Some Departments have, in the past, issued an unnumbered Explanatory Memorandum (EM) to keep the Scrutiny Committees informed on matters where no depositable document is available before decision by the Council. Officials are enshrining this practice in new guidance which is currently being prepared, and which we shall have an opportunity to consider in due course. But meanwhile I think it would be helpful to us in answering criticisms of the Commission's failure to supply depositable documents in time if we could make a public commitment on unnumbered EMs without delay.

Subject to colleagues' agreement, I would therefore like to tell Mr Spearing on 14 May that, where the Commission do not produce a document which can be deposited before a legislative proposal is /considered

The Rt Hon Norman St John-Stevas MP
Chancellor of the Duchy of Lancaster
Privy Council Office
Whitehall

considered by the Council, we shall, wherever possible, ensure that the Scrutiny Committee is kept fully informed by the use of unnumbered explanatory memoranda.

I should be grateful to know by 12 May whether you, and other colleagues in OD(E) to whom I am copying this letter, agree with this proposal.

Yours ✓
lan



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