



European Scrutiny Committee

House of Commons 7 Millbank London SW1P 3JA

Tel (020) 7219 5465/3292 Fax (020) 7219 2509 Email escom@parliament.uk Website www.parliament.uk/escom

From: Mr William Cash MP

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Mr Jose Manuel Barroso
President of the European Commission
European Commission
Rue de la Loi 200
1049 Brussels
Belgium

**Draft Directive on deposit guarantee schemes (recast)
(12386/10)**

I am writing as the Chairman of the European Scrutiny Committee in the House of Commons to inform you of the outcome of the Committee's consideration of the Commission's proposal for a (recast) Directive on deposit guarantee schemes.

The Lisbon Treaty confers a new power to issue a "reasoned opinion" if a national parliament, or chamber thereof, considers that draft EU legislation breaches the principle of subsidiarity. However, the Parliamentary timetable did not permit the House of Commons to issue a reasoned opinion within the eight-week deadline, even if my Committee had been minded to recommend that it should do so in this case.

The Committee agreed, however, that it should write to the presidents of the three EU institutions concerned to their attention to its view. Our view is contained in the Committee's opinion, which I attach to this letter.

In our Inquiry on *Subsidiarity, National Parliaments and the Lisbon Treaty* the former Commissioner for Institutional Relations and Communications Strategy (Mrs Margot Wallström) said that the Commission would listen to the views of national parliaments even if there was an insufficient number of

reasoned opinions to require the Commission formally to review its draft legislation.¹ It is in this spirit of a consensus-seeking approach by the EU institutions that I am informing you of the views of my Committee on the subsidiarity implications of this draft Directive. I am writing in similar terms to the Presidents of the European Parliament and the Council.

*Yours,
Barroso*

CHAIRMAN

¹ See HC 563 (2007-08), paragraph 24, p.8.

Opinion of the European Scrutiny Committee of the House of Commons

Submitted to the Presidents of the European Parliament, the Council and the Commission, in the spirit of Article 6 of Protocol (No 2) on the Application of the Principles of Subsidiarity and Proportionality

Draft Directive on deposit guarantee schemes (recast) (12386/10)

Relevant Treaty provision

1. Article 5(3) of the Treaty on European Union (TEU) states:

“Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

“The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality. National Parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in that Protocol.”

2. Article 12(b) TEU further states that:

“National Parliaments contribute actively to the good functioning of the Union [...] by seeing to it that the principle of subsidiarity is respected in accordance with the procedures provided for in the Protocol on the application of the principles of subsidiarity and proportionality”.

Aspects of the Directive which do not comply with the principle of subsidiarity

3. The European Scrutiny Committee of the House of Commons considers that the draft Directive on deposit guarantee schemes (recast) does not comply with the principle of subsidiarity in the following respect: *the borrowing mechanism between national schemes* in Article 10 does not fulfil an objective that can “be better achieved at Union level”.

Reasons

4. In its explanatory memorandum, the Commission gives no justification for establishing a borrowing mechanism between Member State deposit guarantee schemes.

5. The European Scrutiny Committee of the House of Commons considers it likely that a primary objective of the draft Directive — to ensure “that depositors always have a claim against a scheme and that all schemes must be soundly financed” [emphasis added] — will not be achieved. This is because such a borrowing mechanism could introduce moral hazard in deposit taking services, the logic being there is a higher risk of a national scheme underwriting inappropriate, careless or risky investments when it knows that it can rely on a back-up source of credit. The European Scrutiny Committee of the House of Commons considers that neither the assessment of borrowing requests by the European Banking Authority nor the obligation to repay the loan within five years will mitigate this risk.

6. To avoid introducing moral hazard it would be better not to have recourse to other Member States’ schemes, but, consistent with the principle of subsidiarity, for each Member State to ensure that members of the deposit guarantee scheme take full responsibility themselves. Like Sweden’s Riksdag the European Scrutiny Committee of the House of Commons considers that, in order to achieve depositor protection and confidence, there must be an incentive for compensation schemes of this kind to be adequately funded at national level; and it must be for central governments to ensure that a depositor compensation scheme can fulfil its commitments. In addition, the House of Commons considers that, as a general rule, risk should be guaranteed *where it arises* because that is where it is best assessed and where action may be taken in relation to it.

7. In light of the observations above, and in the absence of qualitative and quantitative indicators provided by the Commission to the contrary, the House of Commons cannot see why, by reason of its scale or effects, action by the EU in the form of the compulsory borrowing mechanism, as opposed to separate action by Member States, would better fulfil the objective of giving greater protection to depositors and promoting confidence in deposit taking services. On the contrary, the proposed borrowing mechanism may lead to less protection for depositors and less confidence in deposit taking services. This aspect of the draft Directive would not therefore produce a result that was “better achieved at Union level” and does not comply with the principle of subsidiarity.