

The Foreign Policy Centre



*The European Think Tank with a Global Outlook*



## **UK Parliamentary Scrutiny of EU Legislation**

Sir Digby Jones

*With a Preface by Dr Denis MacShane MP*

April 2005

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## **About the Author**

Sir Digby Jones became Director-General of the CBI on 1 January 2000 to serve a five year non-renewable term of office. In September 2003 this was extended at the request of CBI members to seven years, his term now ending on 31 December 2006.

As the Director-General of the UK's "Voice of Business", he regularly and repeatedly visits businesses around the UK and also the CBI offices in Brussels and Washington DC, taking their views back to those who make the rules within which UK business operates throughout the world.

Sir Digby was born in Birmingham in 1955 and won a major scholarship to Bromsgrove School. He gained a 2:1 honours degree in law at University College, London.

After some time in the Royal Navy, he started his career with Birmingham corporate law firm Edge & Ellison in 1978, making Partner in 1984. He was made Deputy Senior Partner in 1990 and Senior Partner in 1995. In 1998 he joined KPMG as Vice Chairman of Corporate Finance where he acted as close adviser to many public companies across the United Kingdom.

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The CBI is the UK's leading business organisation, speaking for some 240,000 businesses that together employ around a third of the private sector workforce.

Member companies, which decide all policy positions, include:

- 80 of the FTSE 100
- some 200,000 small and medium-size firms
- more than 20,000 manufacturers
- over 150 sectoral associations.

No other UK organisation represents as many major employers, small and medium-size firms or companies in the manufacturing or service sectors.

The CBI's broad-based membership gives it unrivalled influence with the UK government. The organisation is also the UK's official business representative in the European Union, which generates more than 50 per cent of regulation affecting British firms.

With offices across the UK as well as in London, Brussels and Washington, the CBI coordinates British business representation around the world.

For more information, please visit [www.cbi.org.uk](http://www.cbi.org.uk).

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## Preface

The accession of ten states to the European Union last year has transformed the politics and potential of the EU. It also requires vigorous thinking and strategies to maximise the United Kingdom's influence and leadership in this exciting new landscape. All elected politicians – those in Opposition parties as well as the Government – must consider afresh how they respond to this fundamentally changed context.

Britain invented parliamentary democracy. MPs remains a crucial link between local communities, businesses and voluntary organisations and the ministers that take decisions under parliamentary scrutiny. Both Houses of Parliament have committees that scrutinise EU legislation. But the time has come for a step change in the way MPs deal with European business on behalf of their constituencies.

Public apathy towards European politics remains a significant problem in the country, but so too does the parliamentary committee structure, which requires reform so that EU legislation may be scrutinised more comprehensively. No less important is the duty of individual MPs to keep themselves informed of how particular European directives may influence their constituents' lives.

In this pamphlet, Sir Digby Jones, the Director-General of the CBI, makes an eloquent and compelling case for better parliamentary oversight of European law, and identifies four key principles for reform: the examination of EU legislation must be swift, it must involve consultation of outside interest groups, it must be transparent, and it must be "joined up".

As Sir Digby Jones notes, the Government already takes this question very seriously. Jack Straw has put forward wide-ranging proposals to increase Parliamentary accountability including the proposal for a new Grand Committee for Europe, composed of MPs and peers, which would meet to hear evidence from ministers and EU commissioners. Peter Hain is conducting an inquiry into Parliament's scrutiny of EU matters as part of the work of the Modernisation Committee set up by

the Commons. On the initiative of the Foreign Office, Parliament now allows MPs to travel to European capitals to meet with their opposite numbers. It is a mistake to think that all EU policies and directives emanate from Brussels or Strasbourg. The home of the European Commission and the European Parliament are often the last staging post in a process that begins in national capitals. In today's network Europe, 25 proud sovereign nation states and their legislators seek to get the EU to adopt ideas or proposals or to block or alter directives which the UK believes are in our national and European interest. Hence it is in Paris, Warsaw, Berlin, Stockholm, Prague and other EU capitals that British policy-makers need to have ears and voices in order to either head off bad ideas or encourage good ones.

MEPs play an important role though some appear to prefer ideological grand-standing about Britain's EU membership and role rather than getting on with directly helping their constituents. Under current treaties, and even more so under the new constitutional treaty, the European Parliament has growing powers. Therefore the business community needs to understand how the European Parliament works and get to know and meet MEPs on a regional and local basis so that they can understand the needs of British business.

But the European Parliament is but one sitting alongside the many national parliaments and their chambers, as well as key regional parliaments, like the German Land assemblies, which play a part in shaping the policy of the new Europe. It is time for British MPs who want to represent the interests of their local business community to start networking in Europe.

Jack Straw is encouraging EU Commissioners to come and give evidence to Select Committees of the House of Commons. Many have responded with alacrity. They are mostly all former senior practising politicians and know how important it is to justify and explain policies to parliamentarians. Can we go further and have more Commons Committees meeting in Brussels and in other national capitals to take evidence and ask tough questions *sur place*, as it were? I appear regularly on French, German and Spanish media to explain and justify British policy and EU positions and would welcome the chance of giving evidence to a committee of the French or German parliaments

so that colleagues could here first hand what the British position is. I hope Sir Digby Jones would make his voice heard in the national capitals of Europe because the common sense of the CBI, reflecting the economic success story of Britain in recent years, deserves to be heard more widely in Europe.

Sir Digby Jones rightly observes that politicians across the spectrum need to travel more on the continent and increase their direct contact with EU politics and commercial policy. In the same spirit, I believe that businesses, trade unions, local authorities and NGOs should work together at regional and local level to enhance and enrich their engagement with the EU. Every chamber of commerce and regional TUC should nominate local MPs to represent their specific interests in Europe.

Whatever duties the proposed Grand Committee might undertake in the future, the existing parliamentary committees should also meet in Brussels and other EU capitals to take evidence: Westminster should not be afraid to take to the road. Each government department could have a EU designated minister who works the Brussels-Strasbourg circuit and gets to know opposite numbers on a first-name, mobile-phone number basis as well as the key Commissioners. I would go further and suggest that each department should have a European Parliamentary Private Secretary working exclusively on European issues, linking up with business, unions and other interest groups and informing ministers directly on how the EU is affecting government policy and legislation. This is not a Labour or Conservative or Liberal-Democrat plea. It is about raising our collective knowledge-threshold about the EU and being able, thus armed better, to promote UK interests across the board. The symbolic importance of such appointments would be obvious, but they would also have immense practical significance.

Alongside such structural changes, we need to look at procedures, and ways in which Parliament could devote more time to debating EU issues, and bringing them alive to the public. At present, the electorate knows too little and cares less.

In this context, I believe strongly that there is scope for greater cross-party co-operation on these matters. The differences which exist between the main parties on European policy remain serious, and this is not the place to restate them. Even so, on many issues those differences should be transcended by the indisputable UK interest which is at stake – CAP reform, opening up of markets, travel rights are obvious examples. There may well be a place for a formal forum in which such common interests could be identified and debated.

The politics of the EU have never been so exciting and rich with possibility. I am delighted that the director-general of the CBI is taking such a dynamic and practical lead in the unfolding debate.

Dr Denis MacShane MP  
*Minister of State for Europe*  
March 2005

## Scrutiny: Why does it matter?

Half of all UK legislation which imposes burdens on businesses originates from the European Union.<sup>1</sup> And this figure will continue to grow, as new and different policy fields are drawn into the area of European competence. From its beginnings as a coal and steel community, the EU has now grown to cover not just common agricultural and fisheries policies, but a single market in goods and services and a single financial market, which is currently being implemented. The EU is active in almost all areas of interest to business: competition policy; international trade; transport; employment; environment; health and safety; e-business; intellectual property; contract, consumer and company law; corporate governance; and accounting standards.

So from the business point of view, there is hardly any important policy area outside the control of Brussels. In order for Britain's membership of the European Union to be beneficial for the people of this country, she must be a powerful presence at the European table and a key figure in guiding and influencing the policy making process. For British business there is a great deal at stake. The achievement of the goals set out in the Lisbon agenda – to make Europe the most competitive and knowledge-based economy in the world – would be a golden goose for UK plc. But, on the other side of the coin, the removal of the

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<sup>1</sup>Cabinet Office publication, 'Improving UK handling of European legislation' (October 2002), <http://www.cabinetoffice.gov.uk/regulation/docs/europe/word/pgagsrep.doc>. This figure was clarified in a Written Answer on 22<sup>nd</sup> July 2004:

Mr. Connarty: To ask the Minister for the Cabinet Office what the evidential basis was for the statement in the Cabinet Office Syntheses Report of October 2002, Improving the Way the UK handles European Legislation, page 2, that around 50 per cent of significant legislation enacted in the UK originates from the European Union. [184992]

Mr. Alexander: The evidential base for this statement was an analysis of Regulatory Impact Assessments (RIAs), which showed that about half of all measures that imposed non-negligible costs on business, charities and the voluntary sector originated from the European Union.

UK's opt-out of the Working Time Directive, or the adoption of the Temporary Agency Workers Directive as it is currently written, would inflict a crippling blow to Britain's flexible labour market and *ipso facto* her competitiveness. Equally damaging, is the gold-plating of European legislation during transposition into UK law, as a consequence of which British businesses find themselves bound by tighter rules than their continental competitors.

And yet, given the depth of involvement of the EU in the UK's regulatory regime, the British public are shockingly ignorant about the European Union, its policies and institutions. A YouGov poll in 2004<sup>2</sup> showed that whilst 64 per cent of respondents claimed to know the name of their MP, this figure dropped to 16 per cent when asked about local MEPs. More worrying still, is that this is echoed by MPs themselves who, with their hectic schedules, seem to have neither the time nor the inclination to keep abreast of events across the Channel. Unsurprisingly, as their constituents remain relatively uninspired by all matters 'European', it is rarely a major priority for our elected representatives. The result is a huge democratic deficit. Measures that will affect millions of people and cost millions of pounds pass through UK formalities, en route to being implemented into UK law, whilst barely causing a ripple.

With the accession of ten new states to the European Union,<sup>3</sup> the UK can no longer afford to rely upon 'winks and nudges' between old alliances as a means of leading Europe in the right direction. We need to have sturdy parliamentary systems in place – committees to conduct rigorous inquiries and organised debates on the floor of the House - to ensure that thorough and timely scrutiny occurs not just in Brussels, but simultaneously in Westminster. With important legislation establishing a single market not subject to a national veto, the need for clear lines and negotiating stances to establish alliances is ever more essential. A position from the UK Parliament would provide a yardstick against which to measure how a Minister performs in Council

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<sup>2</sup>[http://www.yougov.com/yougov\\_website/asp\\_besPollArchives/pdf/TSU030101003\\_1.pdf](http://www.yougov.com/yougov_website/asp_besPollArchives/pdf/TSU030101003_1.pdf).

<sup>3</sup> Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovak Republic, and Slovenia.

negotiations and would, in addition, serve to set out in advance the potential impact of a piece of European legislation. In this way the Minister can be in no doubt when he or she disembarks from the Eurostar precisely how the land lies back at home.

## The Scrutiny System at present

Of course, there are systems in place for the UK Parliament to scrutinise EU legislation already. In both the House of Commons and the House of Lords there are committees responsible for sifting through the volumes of documents produced each year by the European Union. Given the gargantuan size of their task, these committees do a sterling job, but their work is often not give the attention it deserves, neither in Parliament or further afield.

The committee structure is as follows.

In the Commons, the European Scrutiny Committee receives all documents<sup>4</sup> produced by the EU – approximately 1,000 each year – accompanied by the relevant government department's explanatory memorandum. The committee reviews whether the documents are legally and/or politically important, and if so, the committee will report on it in a weekly Report. Furthermore, if deemed necessary, the Scrutiny Committee will send it to one of three Standing Committees (A-C) for further consideration (approximately 53 documents in an average year), or very occasionally to the Floor of the House (3 documents in an average year).

In the Lords, these documents are received by the European Union Committee. Each week the Chairman of the committee sorts through the documents and decides whether it can be cleared immediately, or

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<sup>4</sup> According to *A short guide for Members of Parliament by the staff of the European Scrutiny Committee* this includes: "[by the Council or the Council acting jointly with the European Parliament] drafts of Regulations,...of Directives, ...of Decisions of the Council and budgetary documents... [and usually from the Commission]... Green Papers and White Papers ... Communications to the Council...Commission reports...and draft Council Recommendations, Resolutions, and Conclusions. A full list of documents can be found on: <http://www.parliament.uk/documents/upload/ESC%20GreenGuide.pdf>.

whether it requires further examination. This process is known as the 'Chairman's Sift'. Further examination will be conducted by one of the seven policy based sub-committees. These sub-committees can either decide to launch an inquiry, with a period of evidence gathering culminating in the publication of a report, or draft letters to be sent from the Chairman of the Select Committee to the Minister.

In both Houses, the underpinning of parliamentary scrutiny is a power known as the scrutiny reserve. This is an undertaking by Ministers that, bar exceptional circumstances, they will not agree to anything in the Council until it has been cleared through parliament. Whenever the scrutiny reserve is over-ridden, the Minister must write immediately to the appropriate committee explaining why this was the case, and risks being brought in front of the committee for questioning.

## Positive Aspects of the System

It has already been noted that the members of the committees in both Houses do the best job possible in the circumstances. But beyond the dedication of this selection of MPs and Peers, there are other elements of the system that work well, and thus are worthy of note. The House of Lords performs a vital role scrutinising EU legislation and the sub-committees regularly produce high quality reports. This seems largely attributable to the specialisation that having a larger number of sub-committees allows. The sub-committees are divided into: Economic and Financial Affairs, and International Trade; Internal Market; Foreign Affairs and Defence, and Development Aid; Agriculture and the Environment; Law and Institutions; Home Affairs; and Social Policy and Consumer Affairs. For example, in 2004 Sub-committee A not only scrutinised the stream of minor and technical documents that was referred to it by the EU Committee, but was able to publish several more strategic reports, such as *The World Trade Organisation: the role of the EU post-Cancun*. The members of these sub-committees are chosen on the basis of their background in the appropriate field, and thus the sub-committees are able to draw on an impressive range of expertise.

What is more, over the past couple of years, a momentum has already been gathering towards reforming the Parliamentary committee structure so that it is better equipped to deal with the volume of documents coming from the European Union. Peter Hain, the Leader of the Commons, and Chairman of the Modernisation of the House of Commons Select Committee, which is currently conducting an inquiry into UK Parliament's Scrutiny of EU Matters, has suggested that there be a new Joint Grand Committee for Europe. This would be made up of members of both houses and meet quarterly to hear evidence from appropriate Ministers, and Commissioners. This would be a welcome change as it would serve to raise the profile of Europe in UK Parliament, but clearly such an infrequently-meeting committee could not launch an inquiry, or examine an issue in any detail, and thus would not contribute significantly to the scrutiny process.

There has also been a move towards giving MPs a broader perspective on Europe through the use of travel schemes and language training, and increasing the interaction between MPs and MEPs. These are all steps in the right direction. There must be regular and in-depth communication between local MPs and MEPs so that each are fully aware of legislation – whether home-grown or European – that will have an impact upon their constituents.

Finally, there are early signs that Ministers are increasingly reluctant to over-ride the scrutiny reserve. For Parliamentary scrutiny to have any real value, it must have a solid grounding in the scrutiny reserve. Whilst it is neither realistic nor desirable to completely tie a Minister's hands, requiring them to await a decision by the UK Parliament whatever the circumstances, MPs should have the right and power, in the vast majority of cases, to voice their concerns.

## **Limitations of the System**

Nevertheless there is plenty of work still to do. There are a number of flaws in the current system that need to be addressed as a matter of urgency. At present any scrutiny that takes place, in either the Commons or the Lords, is document-based. This means scrutiny can only begin when a policy document is issued by the appropriate

European Institution. To a large extent there is no getting around this, as it is not possible to scrutinise solely on the base of speculation: the committee must have something before them to work on. The downside is that by the time a policy document has been produced, it is already fairly late in the policy-formulating day. Opinions in Brussels have been sufficiently set, to agree upon the text of a document, and changing them at this stage can present quite a challenge. Ideally Parliament needs to get in on the act at a much earlier stage, whilst the Commission is still working on a proposal. This can be achieved by establishing a network in Brussels and sharing intelligence on what is in the pipeline.

Public apathy to all matters European cannot be blamed upon the UK Parliament, but there is more that parliamentarians could do. The Scrutiny Committee spends the majority of its time 'deliberating' documents rather than hearing evidence, so unlike other Select Committees, the majority of its meetings are not held in public. The agendas<sup>5</sup> for the twice-weekly meetings are only published the day before the committee meets, and do not give any indication as to which day an item will be discussed. As a matter of course, specific outside interest groups are not informed when an issue relevant to them is going to be debated. Even if members of the public wanted to follow the course of the scrutiny of a European document through the UK Parliament, they would find it very difficult indeed. The House of Lords European Union committee are currently installing an email-notification system to alert interested parties of upcoming sessions, and this will go some way to plugging a gap.

The standing committees in the Commons, which should play a critical part in examining the detail of European proposals, are unpopular amongst Members and symptomatic of the whole problem. In Peter Hain's own words:

*"..the sad fact is that European Scrutiny is something of a minority interest: the great majority of Members take little interest in the reports*

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<sup>5</sup> 'Remaining Business' paper  
[http://www.parliament.uk/parliamentary\\_committees/european\\_scrutiny/remaining\\_business.cfm](http://www.parliament.uk/parliamentary_committees/european_scrutiny/remaining_business.cfm).

*of the European Scrutiny Committee or in the debates which it recommends. Meetings of the European Standing Committees to which it refers some documents are badly attended and seen to be irrelevant. European issues are seen as something separate and avoidable, while they should be in the mainstream of our political life."*

The figures paint a similar picture. In 2002-3 the Scrutiny Committee sent only 3.5 per cent of the documents it received to the standing committees, and only 5 were ever debated on the floor of the House.

One of the difficulties is that, with only 3 standing committees, each has to handle an extremely large remit, covering between them policy areas ranging from Asylum to Nanotechnology. This prevents any real specialisation, so, when time-pressured Members are expected to sit on a committee looking into a policy area that in no way interests them, nor is relevant to their constituents, it is unsurprising that they may become disillusioned. Better, surely, for those MPs already specialising in a policy field, to concern themselves with proposals coming from both Brussels and Westminster. Not only does this serve to give policy specialists a more complete picture in their field of expertise, but also takes away the need to have a group of MPs dealing with 'European' policy matters, an approach which is both too broad and too shallow to be effective.

## **Four Principles of Better European Scrutiny**

It follows that any changes to the existing system of parliamentary scrutiny must be carefully thought through. It is no good simply bringing about change for change's sake. There are four principles that must be met in order to meet the challenge of effective scrutiny of European proposals:

- It must be early
- It must involve consultation with outside interest groups
- It must be transparent
- It must be joined up.

***It must be early***

The scrutiny system in the UK Parliament should not rely so heavily upon documents sent out by the European institutions. Inevitably this will always be a significant aspect of scrutiny, but, where a matter is of particular importance, it should be supplemented by information gathering in advance of the drafting stage. This would allow a more proactive position to be taken, rather than constantly reacting to policy announcements once minds have already been made up. It would also enable appropriate committees in the Commons and Lords to timetable more effectively, and ensure that sufficient time is set aside to debate the crucial documents, such as Action Plans. Information gathering would almost certainly involve having a greater presence in Brussels, and building up a network of contacts so that, instead of being one step behind, UK parliamentary committees are intimately aware of what's on the horizon.

***It must involve consultation with outside interest groups***

In the House of Commons at present there is very little consultation with outside interest groups on European matters. Whilst departmental Select Committees regularly issue calls for evidence, inviting any interested party to contribute their views on domestic legislation, this is not the case with the Scrutiny Committee. Indeed the standing committees do not even have the power to hear witnesses. The European Committees in the Lords can and do hear evidence, but they are alone in doing this. This should be changed. To achieve a complete understanding of the impact of a piece of European legislation it is essential that our parliamentarians engage in a regular and extensive dialogue with the parties that will be affected. Sometimes a full consultation will not be possible, especially when time is tight, but this should not prevent inviting outside organisations to submit their opinions where time permits.

***It must be transparent***

For the public to have confidence in the job that MPs are doing, the scrutiny system must be accessible and transparent. An agenda setting out what is going to be discussed in the Committee – and when

– should be made available at the earliest possible opportunity and revised as necessary. The vast majority of meetings should be open to the public. This is standard practice for departmental select committees and an exception should not be made for the Scrutiny Committee. Maintaining a secretive approach not only risks public mistrust, but worse still, nurtures public apathy and the associated democratic deficit.

### ***It must be joined up***

‘Joined-upness’ in this context has two overlapping elements. The first applies to people. Members of the UK Parliament, Members of the European Parliament, officials and civil servants in both London and Brussels need to talk to each other more than they do at present. A Grand Committee may achieve this to a limited extent, but this should be taken further by creating additional opportunities for dialogue to occur. As was stressed above, both MPs and MEPs must be fully aware of legislation – whether home-grown or European – that will have an impact upon their constituents.

The second is policy. It is entirely artificial to have a policy specialist examining only domestic or European-based legislation. A scrutiny system in the UK Parliament must be designed to reflect this. The tendency at present is to siphon off all Brussels issues into a category of their own. Whilst there needs to be a co-ordinating committee which deals with overarching issues, such as the Constitution, on specific policy matters ‘Europe’ cannot be put into a separate box or considered separately. The result is a short-sighted and incomplete perspective in areas that are crucial for the health of the British economy.

## **Conclusion**

There is a growing consensus that the UK Parliament is not sufficiently scrutinising European proposals, and that the necessary systems are not in place to encourage this. We need to harness this swell of support for change and take advantage of it, to bring about a process of domestic scrutiny that is thorough and timely. A revised system

would smooth both the formulation and implementation of EU legislation in this country. Not only would this serve to identify and generate solutions to problems at an early stage, but vitally it would contribute to the necessary process of explaining to the British public how the European Union really operates.

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Edited by Phoebe Griffith and Jack Thurston

November 2004

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