EUROPEAN MOVEMENT

Regulation by Brussels? The Myths and The Challenges

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1. Introduction

The Eurosceptic press has long made the EU system of pooled sovereignty a major target of its anti-European propaganda. Laws and regulations which emerge from a system in which the British Government and British interests are represented at virtually every stage are made out to be outrageous impositions by faceless, unaccountable, foreign bureaucrats, mindlessly determined to regulate away Britain's way of life and constitution. *The Sun* expects things to get even worse if the Constitutional Treaty is adopted. "Once we sign the Constitution," says *The Sun*, "we will have to accept any law Europe inflicts on us... decisions that affect our lives will be made by people we have never met, can't elect, and can't get rid of." (Shackle Britain: Europe's Secret Plan, *The Sun*, December 2003).

This is nonsense. The Constitutional Treaty spells out more clearly than before where boundaries lie between national and supranational decision-making, and makes the pooled sovereignty law-making system more accountable by ensuring that power at the European level - at present overwhelmingly concentrated in the hands of national governments, not Eurocrats - is in future shared with the European Parliament and the National Parliaments (including the British Parliament).

The Sun's stories often seem credible simply because the level of public knowledge of European processes is so abysmally low. Successive British governments have failed to communicate to the public that we now have a dual law-making system: the traditional nation-state system, which continues to produce national legislation, and a pooled sovereignty system, in which the British nation-state cooperates with its EU partners to produce European, supranational, legislation. Britain and its EU partners have decided to exercise certain powers in common - to enable business to take place on level playing-fields, to adopt a common approach to international trade, to protect the environment, to conserve fish stocks, and so on. Until we have found a way of getting this point across, nationalism, with all its crude simplicities, will continue to hold sway in this country, and foreigners will continue to be held responsible for the shortcomings of our own system.

The aim of this pamphlet is to attack the myths about EU law, with the aim of moving beyond lazy nationalist thinking to a serious debate about the way the *British* political system handles EU law and regulation. **In general terms, we need to shift the ground of the debate from that of the nationalists - London vs. Brussels - to a more mature discussion about how EU laws, passed by the pooled sovereignty system, are made and implemented in this country.**

When asked about over-regulation, members of the government usually pass the buck to Brussels. They suggest that there is a massive amount of EU regulation over which they have no control, and, tongue-in-cheek, they tell Members of Parliament that they share their views about excessive regulation and will tackle the problem in Brussels. The line is that the British Government (i.e., the executive) has common cause with Parliament in fighting "over-regulation" from Brussels.

Indeed, it has become part of conventional wisdom, cited without further comment in the press and repeated frequently by Ministers, that half of the "regulation" coming on to the statute-book now comes from the EU. For example, the Prime Minister, in his address to the CBI, stated:

> **"Half of all our major new regulation comes from the EU."**
> *(Press release, 18 October 2004)*

while in his Pre-Budget Report to the House of Commons on 10 December 2003, the Chancellor of the Exchequer stated:

> **"Because half of regulations emanate from Europe, the coming Irish, Dutch, British and Luxembourg presidencies are proposing a joint initiative to drive forward deregulation..."**
> *(Official Report, 10 December 2003)*

And a Foreign and Commonwealth Office spokesman, reacting to a report produced by the Institute of Directors, recently stated:

> **"We are well aware that some regulations have been a burden to business and we will use our [EU] presidency to continue the work we have done to make the EU carefully assess the impact of any new regulation on business."**
> *(Press release, 31 August 2004)*

It is extraordinary that, in Britain, the EU - of which a single market is a vital component - should have become synonymous, in many peoples' minds, with its opposite - regulation and obstacles to free trade. This seems typical of the wholly unreal image of the EU presented by the Europhobes and their allies in the press.

It should therefore be no surprise that the whole area of EU-originating legislation - its conception, adoption and application - is shrouded in a fog of myths and legends. Attempts to ascertain the basis for the assertion that "half of all regulation comes from Brussels" have proved unsuccessful. No-one knows where the figure comes from, or how to substantiate it. **While there may have been years in the 1980s and 1990s when EU-originating legislation came forward in greater quantities, for the past five years - as we shall see - the figure is less than 10%.**

The real story is not over-regulation by Brussels, but the use made by the British Executive (i.e., the government) of the legislative powers it gained from Parliament in 1972 when the European Communities Act gave it the power to implement EU legislation, by producing "secondary" legislation outside the Parliamentary process.

2. Myths and Reality

How much EU regulation?

In December 2003 and January 2004, John Redwood MP asked a number of Parliamentary questions in an endeavour to establish what proportion of bills presented to Parliament by the different ministries was EU-related. All Ministers were asked to state what proportion of all the legislation their departments had sponsored during the Parliamentary session 2002-03 was EU-related.

Collated, the replies to Mr. Redwood by ministers in the different departments give the following picture:

Proportion of EU-related legislation as total of all legislation sponsored, by government department, 2002-03

Ministry or Department	Primary legislation (%)	Secondary legislation (%)
Defence	0	0
Transport	0	1
Trade and Industry	25	26
Environment, Food and Rural Affairs	50	57
Education and Skills	0	1.2
Work and Pensions	0	9.27
Office of the Deputy Prime Minister	0	0
Cabinet Office	0	0
Culture, Media and Sport	0	12
Home Office	226 pages out of 868	74 pages out of 438

Although these figures apply only to one Parliamentary session, there is no reason to believe that they are not typical. Clearly, Brussels-originating legislation is, by definition, concentrated in those areas of policy where Britain has joined with its partners in the EU to promote common policies, i.e., where the EU exercises competence. So it is hardly surprising that the ministries dealing with these subjects are those affected by EU legislation, and that no legislation at all came from the EU through those ministries whose mandates are unaffected by EU treaty agreements.

Does fifty percent of new British law come from Brussels?

It is clear that, in terms of primary legislation - laws placed before Parliament as bills and debated in the normal way - nothing like 50% originates from the EU. As for secondary (or implementing) legislation, the proportion which originates from the EU is around 9%.

So where does the figure of 50% come from? MPs have made several attempts to find out. Michael Connarty MP asked Ministers for the evidence for the assertion that half of British legislation now originates from the EU. The Minister of State in the Cabinet Office replied:

> **"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."**
> *(Hansard, Written Answers, 22 July 2004, 491W)*

Asked for detailed information, Ministers tend to stall. In December 2002, the Minister for Europe, Denis MacShane, replying to a parliamentary question, said:

> **"It would entail disproportionate cost to research and compile the number of legislative measures enacted each year in the UK directly implementing EC legislation."**
> *(Hansard, HC Deb, 17 December 2002, col. 756W).*

The Government's assertion about the proportion of UK law which emanates from Brussels is based on its own estimate of what is or is not "significant" in its impact. But it is also out of date. The Written Answer to Mr. Connarty refers to an analysis by the Cabinet Office. The study was published in 2002, so its data must have been drawn from previous years. It therefore seems to be the case that the Government's claim that half of British regulation emanates from Brussels is an extrapolation from those years - particularly following the signing of the Single European Act (1986), which established the Single Market - when there was indeed a large proportion of EU-originating legislation. This has not been the case for a number of years.

Primary and secondary EU law

The term "EU competence" is used to describe those fields of policy where the European partners have agreed to apply the "pooled sovereignty" system. The EU has "sole competence" in five areas of policy - rules for the single market, trade policy, customs union, conservation of marine resources under the common fisheries policy, and common monetary policy (which will apply to Britain only when and if she adopts the euro). In some other areas of policy, EU "competence" is shared with national governments, while in others the EU has a marginal or "supporting" role, or no role at all. Indeed, over a vast area of policy - including, at present, economic policy (including taxation), health, energy and defence - the UK system continues to legislate in its traditional way.

In those fields of policy where "pooled sovereignty" applies - that is, where the EU has "competence" - EU law is UK law. EU legal instruments can take three forms: Regulations, which become law, directly, throughout the EU; Decisions, which are binding on those to whom they are addressed; and Directives, which are binding as to the result to be achieved.

In the constitutional treaty, there are some changes in terminology. The fact that, once it has passed through the pooled sovereignty system, EU law becomes law in the EU member states - which has been the position in Britain since the passing of the European Communities Act (ECA) in 1972 - is clearly set out.

The Government's powers under the ECA to pass secondary legislation implementing directives are very broad. Although the ECA put some limits on government in the exercise of these law-making functions - the government could not introduce secondary legislation which imposed or increased taxation, had a retrospective effect, sub-delegated powers to legislate, or created certain criminal offences - the powers the Executive Branch took on, in 1972, were extraordinary and wide-ranging.

It is, of course, possible to count the number of EU-related measures as a proportion of the whole. In recent years, according to the House of Commons Library, the total number of legal instruments emanating from the EU has been stable, at between 1,400 and 1,900 per year. Within these totals, the number of directives has been small - averaging around 100 per year. Of the 1,300-1,800 other instruments, the regulations are more numerous than the decisions. But every year obsolete or redundant instruments are repealed - 833 in 2002, for example - and many are timebound and lapse automatically. **There is a consensus among Member States that more should be done to repeal, or lapse, obsolete EU legislation: the current Netherlands Presidency is setting targets for the repeal of more EU legislation.**

In terms of UK secondary legislation, according to *House of Commons Fact Sheet L7,* a total of 1,788 instruments were laid before the House in the session 2001-2, of which the vast majority were subject to the negative resolution procedure. This means that statutory instruments (SIs) become law automatically unless the House of Commons rules against them.

The House of Commons Library analysed the total number of SIs laid before Parliament in the four parliamentary sessions since 1999 as a consequence of the European Communities Act 1972 (the ECA). The figures were:

1999/2000	8.1%
2000/2001	8.7%
2001/2002	9.8%
2002/2003	7.6%

In other words, as a proportion of secondary legislation, EU-originating legislation totalled an average of around 8.5% of all legislation laid before the House of Commons in the four years 1999-2003.

A process over which Britain has no control?

As with domestic law in the UK, EU legislation goes through various stages, from drafting, through debate, amendment, and ultimately adoption as law. At every stage of the pooled sovereignty system of EU law-making, the UK Government, and UK interests, make their views felt. It is frequently said that, because of its exceptionally effective civil service, Britain tends to exert disproportionately large influence in this process.

In the EU system, the European executive - the European Commission - prepares draft legislation for the consideration of the principal legislators - the Council of Ministers and the European Parliament. When the Commission is preparing draft legislation for eventual submission to the European Parliament and to the Council, it consults widely and receives representations, not only from governments but also from a wide variety of professional lobbyists. They are likely to contact national governments, the Commission, and also Members of the European Parliament, as the draft legislation goes through its various stages.

At the drafting stage, EU civil servants are more accessible than their Whitehall counterparts. Lobbying, particularly by professional public affairs consultancies, has become increasingly important in Britain in the past thirty years, but in Brussels lobbying of officials has become a major industry. According to an article in the *Financial Times* (16 September 2004) Brussels has become, after Washington, the second largest centre for lobbyists in the world, with around 13,000 lobbyists operating there, with annual revenues estimated to be between £40 million and £60 million. Many individual companies or interest groups, as well as industry and trade associations, trade unions and other elements of civil society, also have a presence in Brussels; increasingly, British law firms maintain representative offices in Brussels. The *FT* saw Britain as having a more active lobby in Brussels than countries such as France and Germany, which have not yet developed a tradition of public affairs consultancy.

The lobbyists and trade associations in Brussels will make contact with those preparing the draft legislation, both direct and through the appropriate member of the European Commission and his or her cabinet, and hold discussions with officials up to and including those at the D-G (Director-General) level, to make their views felt. British (and other) diplomatic and government representatives also follow the drafting processes closely, sending drafts or outlines to their parent departments in London, and receiving instructions in return as to how they should respond.

To become law, draft EU legislation has to be approved by the Council of Ministers - in other words by the individual governments of the Member States - and, in many cases, also passed by the European Parliament. Under the proposed new arrangements set out in the constitutional treaty, "co-decision"- i.e., where both Council of Ministers and the European Parliament must give their approval - becomes the norm. Although these measures will give a greatly enhanced role to the European Parliament, including the power to block legislation, Governments, represented in the Council of Ministers, will still be able to decide whether draft legislation submitted to them by the Commission should be taken further.

Governments, whose Ministers meet in the Council of Ministers, take decisions either through unanimity or by qualified majority voting. Under QMV, the number of votes each country may cast roughly reflects the size of its population; from November this year Britain will have 29 votes. Under the proposed constitutional treaty a new system of voting will be introduced from 2009: for most legislation to pass in the Council, it will require the support of 55% of Member States representing 65% of the EU's population.

In a small but significant number of areas there will still be a requirement to have unanimity in the Council of Ministers. But the extension of QMV does not mean that Britain's influence will - as the Eurosceptics argue - be reduced. **The extension of QMV actually makes Britain's position stronger simply because there will be fewer instances where one country alone can block a policy which Britain supports. The reform of agriculture is a good example where proposals have been lost because of one country's consistent opposition.**

A loss of powers to Brussels?

Clearly the 1972 Act involved the loss of some of the powers of the British parliament. But those powers flowed not simply, as is commonly averred, to Brussels, - i.e., to the "pooled sovereignty" system in which Britain fully participates - but, given the large measure of discretion given to the Executive Branch in giving effect to EU directives, from parliament to the government. The position has been neatly summarised by one academic expert, Alan Page:

> **"On the one hand, it is a picture of an executive whose capacity for autonomous action is much diminished. The forum for decision-making on an immense range of issues, from trade to agriculture, from competition to consumer protection, from transport to energy, is now European rather than national. On the other hand, it is an executive whose freedom of action in relation to parliament is increased; which in turn puts a premium on the latter's capacity to exercise effective oversight of the executive in the absence of any formal role in EU decision-making."**
> *(in Philip Giddings and Gavin Drewry (eds.), Britain in the European Union: Law, Policy and Parliament, London, 2004)*

This was noted at the time of British accession. In its 1972-73 Report, the Select Committee on European Secondary Legislation stated:

> **"The Executive itself, by agreeing with the other member governments to a proposal for legislation, makes the law, i.e., has assumed the constitutional function and power of Parliament."**
> *(HC 463, 25 October 1973)*

3. The Challenges

Whitehall's temptation: over-elaboration or gold-plating

The conversion of EU Directives into UK legal instruments has become known as "transposition." But whereas some Member State governments may be content to introduce Directives into their domestic legislation by simply copying them out, including any ambiguities or omissions, the tendency of Whitehall is to seek to remedy any perceived failings or ambiguities by producing detailed and specific implementing legislation.

In the UK, Directives are usually transposed into secondary legislation, in the form of Statutory Instruments (SIs). Generally speaking, statutory instruments have been used to give detail considered too complex to include in the body of an Act. Secondary legislation can also be used to amend, update or enforce existing primary legislation.

"Gold-plating" occurs when the government, in implementing an EU directive, over-elaborates what is strictly required to implement the directive. Robin Bellis, whose study of EU legislation, carried out for the Foreign and Commonwealth Office, was published in November 2003, differentiates between elaboration of a Directive - expressing it in different or more precise terms - and gold-plating or over-elaboration.

There is overwhelming evidence of British gold-plating. A recent study published by the British Chambers of Commerce - *How Much Regulation is Gold Plate?* (by Tim Ambler, Francis Chittenden and Mikhail Obodovski) - concluded that there is an "elaboration ratio" for the UK of 334% - in other words, the British Government, rather than simply copying out EU directives, on average multiplies their size two and a third times. In some cases Whitehall adds points not in the original Directive for reasons of its own. While it might legitimately be argued that more text is required for instruments implementing a policy than for the instrument which sets it out in general terms, the scale of the problem suggests that, even so, Whitehall generally goes far further than it needs to. On the one hand, a Directive can simply be "copied out" - as Portugal did in 2000 in implementing one on agricultural measurement; on the other hand, detailed secondary legislation can be brought in - in Britain's case, in a total of 64 pages.

The BCC report suggests that this is essentially a British problem. On average, its authors found, the UK provides 2.6 implementing documents per Directive, compared with 1.0 in Germany and 0.89 in Portugal.

One of the most dramatic examples of "gold-plating" cited in the BCC study is Directive 2002/42/EC on the maximum levels of pesticide residues in certain foods. The original EU directive consists of 1,167 words, while the regulation for England and Wales implementing the directive (2002/2723) has 27,046 words. It is also reported that directive 70/157 on the sound level of exhaust systems of motor vehicles was implemented in the UK through 26 separate statutory instruments.

What does it all cost?

While we may pride ourselves on the thoroughness of our civil service, the fact is that many sectors of British commerce and industry now complain that Directives issued by the EU in Brussels through the pooled sovereignty system are being implemented by the British Government in a way that undermines British competitiveness vis-à-vis its European neighbours by imposing more regulation than is required by EU directives. **This is astonishing because the aim of the Brussels regulations is the reverse: to remove obstacles to trade and cooperation, to promote level playing-fields, ensure common environmental standards, and so on.**

There are, of course, some problems at the Brussels end. Concern has sometimes been expressed about the quality of the legal drafts produced by the Commission, particularly from a legal point of view. And in some cases there is evidence of inadequate consultation as legislation is being prepared. The 2001 Clinical Trials Directive is a case in point. It has been widely criticised across the EU on the grounds that the restrictions it places on the activities of researchers conducting clinical trials put the whole of the EU in a disadvantageous position in the rest of the world.

But British industry is concerned about the costs imposed on it by the *British* phenomenon of "gold-plating". Angela Knight, Chief Executive of the Association of Private Client Investment Managers and Stockbrokers, recently stated - in respect of the EC's Financial Services Action Plan:

> **"It is essential that the UK does not find itself at a competitive disadvantage to other countries due to additional requirements placed mostly - or only - on UK-quartered firms."**
> *(APCIMS Paper, May 2004)*

For the authors of the BCC study, "gold-plating" is damaging to British competitiveness because it imposes greater costs on businesses than would otherwise be the case if the Brussels legislation had simply been "copied out." Among those who share this view are British Telecom (who regard the UK Government as having over-implemented EU Communications Directives by awarding additional powers to OFCOM); the National Farmers' Union (which has accused the government of over-implementing the EU Water Framework Directive); the Federation of Small Businesses (who have complained about implementation in the UK of the Solvent Emissions Directive); and the National Association of Health Stores (who accused the Government of taking more measures to implement directives on food supplements than were required in the EU directives). Recently, the Country Land and Business Association (CLA) was reported as saying that UK implementation of a EU directive on the slaughter of calves had introduced a requirement *not* in the directive by requiring UK farmers to register births of all calves within 27 days, failing which they would be penalised. According to the CLA, there is no penalty for late registration in Ireland and Denmark, while the comparable deadline in Spain is six months.

The Director-General of the British Chambers of Commerce has claimed that the "regulatory burden" borne by British business added £30 billion of extra costs to the Chambers' member companies between 1997 and 2003. This is clearly a major issue for commerce; and the BCC, to give it its due, does not place all the blame on the EU. But others do. The anti-Europeans go one step further. They see bureaucratic regulation as a direct consequence of British membership of the EU, with the clear implication that British withdrawal from the EU would remove all the costly burdens about which businesses complain. Their nationalism seems to blind them from seeing the glaring fact that "gold-plating" is a British phenomenon, caused by "Brussels" only to the extent that it involves the misapplication by the British Government in the United Kingdom of measures agreed by the British Government in the EU. And of course, if Britain were to leave the EU, British firms exporting to the remaining EU countries would still have to comply with EU law.

Do the Government own up to "gold-plating"?

The Government's approach has been contradictory. On the one hand, as we have seen, there has been a strong temptation for spokesmen to attribute these problems to "Brussels red tape" rather to the British system itself. On the other hand, Jack Straw, the Foreign Secretary, seems to have understood that solutions may lie nearer to home. The commissioning of an official report into the issue (*Implementation of EU Legislation,* by Robin Bellis, FCO, November 2003) was a clear indicator of his concern; Mr. Bellis's recommendations are essentially aimed at Whitehall itself. More recently, the Foreign and Commonwealth Secretary has expressed disapproval of "gold-plating" and has stated that the Government will be vigilant against it.

Recently, the Prime Minister has recognised that "gold-plating", far from being a necessary consequence of EU regulation, is a home-grown British phenomenon. Indeed, he told the CBI on 18 October:

> **"We need to change the approach, to end gold-plating of European regulations, and rather than assuming everyone is a criminal who needs to be inspected to see if they are breaking the law, adopt a flexible approach to ensure we achieve our targets... as part of civil service reforms, we want to start rewarding those who devise ways of meeting our policy objectives without regulation."**
> *(Press release, 18 October 2004)*

Within Whitehall, the Cabinet Office has issued guidelines to departments on how they should handle the transposition process. Departments now attach impact assessments to draft EU legislation in which the cost of implementation is assessed. The Cabinet Office stresses the need for greater openness and consultation with the interests involved. A "transposition note" is now routinely produced when the implementation of a Directive is being considered. Some departments are becoming involved in detailed consultation processes on how directives should be transposed into UK legislation. In July 2002, DEFRA produced a "partial regulatory impact assessment" on the implementation of EU directives on the welfare of laying hens, which was particularly valuable because it contained information about what other Member States were proposing to do in implementing the EU legislation. More recently, HM Treasury has produced a consultation document on the implementation of an EU Directive on Insurance Accounts, affecting Lloyds of London, and is consulting interested parties on how the Directive should be implemented.

Scrutiny and accountability

Under the new constitutional treaty, national parliaments will have an enhanced role in the EU legislative process. They will be invited to comment on draft legislation; they will have six weeks in which to express their views; and national parliaments should consult, where appropriate, regional legislatures (such as the Scottish Parliament and Welsh Assembly). A protocol annexed to the Treaty enshrines the concept of **"subsidiarity"** - the idea that action should be taken at EU level only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the member states themselves. It also empowers national parliaments to pronounce on whether proposed EU laws breach the principle of subsidiarity, i.e., whether the EU is taking on powers or functions which are better handled at national level.

This is a major constitutional innovation. It has the potential to make the national parliaments the watchdogs over the powers of the Commission. In the British system this is a revolutionary development, in that the scope of EU legislation – hitherto, like all matters to do with EU legislation – the prerogative of the executive power - can now become subject to a measure of control by Parliament.

Further changes in legislative procedures at the Council of Ministers will be introduced in the constitutional treaty. In general, they will make processes more transparent and make the decision-makers more democratically accountable.

First, when the Council is considering and voting on new legislation, it will have to meet in public. At present, almost all meetings of the Council of Ministers are held behind closed doors. The change should help put an end to the "spinning" of meetings by national delegations (which sometimes has gone to the lengths of ministers appearing to disown decisions they helped to take, pretending not to know about what they decided, or giving the impression that decisions were forced upon them). Not all Council meetings will be open to the public, however; meetings other than those actually devoted to adopting draft EU legislation will continue to be held in private.

Second, in most cases legislation will in future be adopted only if both the Council of Ministers and the European Parliament give it their approval. The new treaty defines the functions of both the Council of Ministers and the European Parliament as "legislative and budgetary." The new powers given to the European Parliament will ensure that Europe's only directly-elected institution will become a vital player in European decision-making.

The UK Parliament's scrutiny role

Draft EU legislation proposed by the Commission is now "scrutinised" by the UK Parliament. The House of Commons European Scrutiny Committee may at this stage enter a "scrutiny reserve," specifying that British Ministers should not proceed to agree to the adoption of the draft legislation without clearance from the Committee. The House of Commons is currently considering possible changes to the scrutiny system to make it more effective.

The extent to which Parliamentary scrutiny is carried out effectively varies enormously among European states. The Danes have the most thorough system. In this country, parliamentarians examine Ministers before European Council meetings, as well as afterwards, to ensure that there is a high degree of awareness about European issues among Parliamentarians.

4. Conclusions and Recommendations

We need to be clear that there is a sphere of British law-making which is supranational, and that a new branch of law-making, tantamount to a new chapter in our constitution, has been developed in the thirty years of British EU membership. But, while experts understand this, the public does not. The Europhobes assert that Britain's relationship with the EU - in reality a fact of our constitution - is an optional matter of day-to-day policy which can be tinkered with, or discarded, at will.

The theme of "regulation by Brussels" needs to be put into perspective. First, despite what *The Sun* claims, the EU system of joint legislation is not one over which Britain has no control but one in which the British Government and British interests are deeply involved at all stages. Second, the obsession with "regulation by Brussels" obscures the fact that one consequence of British EU entry was to strengthen the power of the British Executive - i.e., Whitehall - at the expense of Parliament.

We should focus, therefore, not on a phantom regulator in Brussels, but on how the British government uses the legislative powers delegated to it by the EU accession legislation. This is, above all, a challenge for Parliament.

In addition

There is a need for better coverage of EU institutions, and in particular of EU legislative processes, in the British mass media.

More than just coverage, new concepts are required. We need a new, simple way of putting over the idea of "pooled sovereignty" which explains both the strengths and the limitations of the European enterprise - to make the processes more intelligible to the British public. Put more crudely, a massive re-positioning exercise is needed to convince people that Brussels is "us" not "them."

There is also a responsibility on Parliamentarians to take Europe more seriously and to give European issues the attention they deserve. In Westminster it is widely acknowledged that there is a dual challenge: scrutiny of EU documentation and of government decision-making needs to become more effective, and it must be conducted in a way which makes it capable of attracting high-level political and media interest. This will become even more important if the role of National Parliaments is enhanced by the implementation of the constitutional treaty.

European issues need to be "mainstreamed" into Westminster political life. It should be recognised that our EU role is now part of the constitution, not a branch of foreign policy, but integral to the domestic policy agenda. It follows that European policy ought to be debated and discussed in Parliament (both on the floor of the House of Commons and in its Select Committees) to a far greater extent than at present. There should be greater recognition of the expertise available in the House of Lords and an acknowledgment of the role of Peers, MPs and MEPs in parliamentary deliberations.

If the EU Constitutional Treaty is adopted, both Houses of Parliament will need to establish machinery to examine proposed legislation from the EU. Westminster will have to consult the Scottish Parliament and the Welsh Assembly.

The "transposition" process needs careful monitoring to avoid Whitehall over-elaboration when it introduces secondary legislation to implement EU Directives. There have been welcome improvements in the transposition process and greater willingness in Whitehall to examine, with industrial and other business interests, how directives should be implemented, as part of the transposition process. But the use to which the British Executive Branch (i.e., Whitehall) puts its extensive delegated legislative powers is insufficiently scrutinised.

Bibliography on Parliamentary Scrutiny of EU Legislation

The Scrutiny of European Union Business (Cm 4095, November 1998)

1 Cabinet Office:

White Paper on *Modernising Government* (Cm 4310, 30 March 1999)

Improving The Way The UK Handles European Legislation: Pilot Quality Assurance Study & Transposition Conference – Synthesis Report (October 2002)

a) Better Regulation Task Force (BRTF)

Principles of Good Regulation (October 2000 and 2003)

Imaginative Thinking for Better Regulation (17 September 2003)

Independent Regulators (15 October 2003)

Ministerial Written Statement, Cabinet Office, Government's Response to Better Regulation Task Force Report: *Independent Regulators* (9 February 2004)

b) Regulatory Impact Unit (RIU)

The Better Regulation Guide and Regulatory Impact Assessment (1998)

The Guide to Better European Regulation (21 July 1999)

Good Policy Making: A Guide to Regulatory Impact Assessment (August 2000)

Better Policy Making: A Guide to Regulatory Impact Assessment (Cm 5981, 28 January 2003)

A Quick Guide to Regulatory Impact Assessment (March 2003)

Transposition Guide: How To Implement European Directives Effectively (March 2003)

2. House of Commons

a) European Scrutiny Committee [Previously known as the Select Committee on European Legislation (Founded 7 May 1974) and originally known as the Select Committee on European Community Secondary Legislation **-** also known as the Foster Committee (Founded 21 December 1972)]

Session 1972-73, First and Second Reports (HC 143, 13 February 1973 and HC 463-I and II, 25 October 1973)

Session 1993-94, First Special Report: *Scrutiny After Maastricht* (HC 99, 8 December 1993)

Session 1993-94, Second Special Report: *Parliamentary Scrutiny of the Co-Decision Procedure and The Government's Reply to the First Special Report from the Committee: Scrutiny after Maastricht* (HC 739, 2 November 1994)

Session 1994-95, 24th Report: *The 1996 Inter-Governmental Conference: The Agenda, Democracy and Efficiency, The Role of National Parliaments* (HC 239-I and II, 17 July 1995) [Government Reply, Cm 3051, November 1995]

Session 1995-96, 27th Report: *The Scrutiny of European Business* (HC 51-xxvii, 18 July 1996)

Session 1995-96, 28th Report: *The Role of National Parliaments in the European Union* (HC 51-xxviii, 18 July 1996) [Government Reply, Cm 3440, October 1996]

Session 1996-97, First Special Report: *The Scrutiny of European Business and the Government's Reply to the Twenty-Seventh Report of Session 1995-96* (HC 140, 4 December 1996)

Session 2001-02, 30th Report: *European Scrutiny in the Commons* (HC 152-xxx, 22 May 2002)

Session 2001-02, 33rd Report: *Democracy and Accountability in the EU and the Role of National Parliaments* (HC 152-xxxiii-I and II, 12 June 2002)

Session 2001-02, Second Special Report: *European Scrutiny in the Commons: Government Observations on the Committee's Thirtieth Report of Session 2001-02* (HC 1256, 23 October 2002)

Session 2001-02, Third Special Report: *Democracy and Accountability in the EU and the Role of National Parliaments: Government Observations on the Committee's Thirty-Third Report of Session 2001-02* (HC 1257, 23 October 2002)

Session 2002-03, 24th Report, *The Convention on the Future of Europe and the Role of National Parliaments* (HC 63-xxiv, 5 June 2003)

b) Select Committee on Modernisation of the House of Commons

Session 1997-98, Seventh Report: *The Scrutiny of European Business* (HC 791, 9 June 1998)

c) Select Committee on Procedure

Session 1977-78, First Report (HC 588-I, II and III, 1978)

Session 1988-89, Fourth Report: *The Scrutiny of European Legislation* (HC 622-1 and II, 30 November, 1989) [Government Reply, Cm 1081, 21 May 1990]

Session 1996-97, Third Report: *European Business* (HC 77, 12 March 1997)

3 House of Lords

a) European Union Committee [Previously known as the Select Committee on the European Union and originally known as the European Communities Committee or Select Committee on the European Communities (Founded 10 April 1974)]

Session 1992-93, 28th Report: *House of Lords Scrutiny of the Inter-Governmental Pillars of the European Union* (HL 124, December 1993) [Government Reply, Cm 2471, February 1994]

Session 1997-98, 6th Report: *Enhancing Parliamentary Scrutiny of the Third Pillar* (HL 25, 31 July 1997)

Session 2001-02, 23rd Report: *The Scrutiny of European Union Business - Provisional Agreement in the Council of Ministers* (HL 135, 18 June 2002)

Session 2002-03, 1st Report: *Review of Scrutiny of European Legislation* (HL 15, 3 December 2002)

Session 2002-03, 20th Report: *Government Responses: Review of Scrutiny of European Legislation;* (HL 99, 29 April 2003)

Session 2002-03, 44th Report: *Annual Report* (HL 191, 18 November 2003)

b) Select Committee on Procedures for Scrutiny of Proposals for European Instruments (also known as the Maybray-King Committee)

Session 1972-73, 1st Report (HL 67, 8 March 1973)

Session 1972-73, 2nd Report (HL 194, 25 July 1973)

c) Select Committee on Procedure of the House

Session 2001-02, Fifth Report (HL 148, 10 July 2002)

d) Select Committee on the Constitution

Session 2003-04, 14th Report: *Parliament and the Legislative Process* (HL 173-I and II, 13 October 2004)

e) Committee on Working Practices of the House of Lords (also known as the 'Leader's Group')

Session 2001-02, First Report (HL 111, 24 April 2002)

4 National Audit Office (NAO)

Better Regulation: Making Good Use of Regulatory Impact Assessments (Session 2001-02, HC 329, 15 November 2001)

Evaluation of Regulatory Impact Assessments Compendium Report 2003-04 (Session 2003-04, HC 358, 4 March 2004)

5 European Commission

European Governance: A White Paper, Com (2001) 428 final (25 July 2001)

Communication from the Commission: Simplifying and Improving the Regulatory Environment, Com (2001) 726 final

Mandelkern Group *Report on Better Regulation*, final report (13 November 2001)

Action Plan on Better Law-making, Com (2002) 275 final (5 June 2002)

Communication from the Commission on Impact Assessment, Com (2002) 276 (5 June 2002)

Action Plan on Simplifying and Improving the Regulatory Environment, Com (2002) 278 final

Report on Better Law-making 2003, Com (2003) 770 final

Impact Assessment in the European Union, Quality and Good Regulatory Governance, European Commission, Conference Background Report, Brussels, 3 December 2003, prepared by Professor Claudio Radaelli

6 British Chambers of Commerce (BCC)

Tim Ambler et al., *Do Regulators Play by the Rules?: An audit of UK Regulatory Impact Assessments* (17 February 2003)

Tim Ambler et al., *Are Regulators Raising Their Game?: UK Regulatory Impact Assessments in 2002/03* (31 March 2004)

Tim Ambler et al., *How Much Regulation is Gold Plate?: A Study of UK Elaboration of EU Directives* (April 2004)

7 Conservative Party

Bryan Cassidy MEP, *Red Tape - Scourge of the 90s: An investigation into the burdens placed on business by Whitehall and Brussels* (Bow Group, 1994)

Bryan Cassidy MEP, *The Stifling of Enterprise: The Red Tape Obsession* (Conservatives in the European Parliament, March 1997)

Nirj Deva MEP, *Who Really Governs Britain?* (Bow Group, 2001)

Mark Reckless and John Tate, *The Drivers of Regulation*, (Policy Unit, Conservative Research and Development Department, April 2004)

John Tate and Greg Clark, *Reversing the Drivers of Regulation: The European Union* (Policy Unit, Conservative Research Department, August 2004)

8 Other Sources

Adam Fergusson, *Fiction Prize for Booker* (Action Centre for Europe, Occasional Paper, 1996)

Association of Private Client Investment Managers and Stockbrokers, *The Gilded Cage: gold plating EU legislation into UK law and regulation* (APCIMS, May 2004)

Robin Bellis, *Implementation of EU Legislation* (An independent study for the Foreign and Commonwealth Office, 24 November 2003)

Christopher Booker and Richard North, *The Mad Officials: How the Bureaucrats are Strangling Britain* (Constable, 1994)

Christopher Booker and Richard North, *The Castle of Lies: Why Britain Must Get Out of Europe* (Duckworth, 1996)

Simon Bulmer and Martin Burch, 'Organizing for Europe: Whitehall, the British State and European Union' (*Public Administration*, Vol. 76, Winter 1998)

Bill Cash MP and Bill Jamieson, *The Strangulation of Britain and British Business: Europe in our daily lives* (European Foundation, 29 March 2004)

Clifford Chance, Public Policy Briefing, *Implementation of EU Legislation: An independent study for the Foreign and Commonwealth Office by Robin Bellis* (March 2004)

Terence Daintith, *Implementing EC Law in the United Kingdom*: *Structures for Indirect Rule* (Chancery Law Publishing/Wiley, 1995)

Department of Trade and Industry, *Review of the Implementation and Enforcement of EC Law in the UK*: *An Efficiency Scrutiny Report commissioned by The President of the Board of Trade* (DTI, July 1993)

Federation of Small Businesses (FSB), *Better Regulation: Is it Better for Business?* (September 2004)

Philip Giddings and Gavin Drewry, *Westminster and Europe: The Impact of the European Union on the Westminster Parliament* (Macmillan, 1996)

Philip Giddings and Gavin Drewry, *Britain in the European Union: Law, Policy and Parliament* (Palgrave Macmillan, 2004)

Christopher Gill MP et al., *Dire Directives* (Nelson and Pollard, January 1996)

HM Treasury and Finance Ministries in Ireland, Luxembourg and the Netherlands, *Joint Initiative on Regulatory Reform: An initiative of the Irish, Dutch, Luxembourg and UK Presidencies of the European Union* (26 January 2004)

Giandomenico Majone, *Regulating Europe* (Routledge, 1996)

Alasdair Murray, *European Economic Reform: Tackling the Delivery Deficit*, Centre for European Reform (31 October 2002)

Edward C. Page, 'The Impact of European Legislation on British Public Policy Making: A Research Note' (*Public Administration*, Vol. 76, Winter 1998)

PLS Rambøll Management, Denmark, *Implementation and administrative costs – how to improve the regulatory environment for companies* (October 2003)

Frank Vibert, *The EU's New System of Regulatory Impact Assessment - A Scorecard* (European Policy Forum, March 2004)

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