

European Scrutiny Committee

Oral evidence: [EU-UK relations in preparation for Brexit](#), HC 791

Wednesday 26 October 2016

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Members present: Sir William Cash (Chair); Geraint Davies; Richard Drax; Peter Grant; Kate Green; Stephen Kinnock; Mr Jacob Rees-Mogg; Andrew Turner

Questions 1-48

Witness

I: Rt Hon Mr David Jones MP, Minister of State, Department for Exiting the European Union

Examination of witness

Witness: Rt Hon Mr David Jones MP.

Q1 Chair: Thank you very much indeed, Minister, for coming to see us this afternoon. I think the best thing to do is for me to kick off, and I will do so. I have two questions to ask to begin with. One of them is quite long, but it is to do with the tenor of where we are going.

The Secretary of State promised that the UK Parliament would have access to negotiating material that was at least as good as the European Parliament and that administrative procedures had already been established to that effect. I will go through agreements requiring the consent of the European Parliament. They include: draft amendments to adopted negotiating directives, draft negotiating texts, agreed articles, the agreed date for initialling the agreement and the text of the agreement to be initialled. The Commission shall also transmit to Parliament, as it does to the Council, or to a special committee appointed by the Council, any relevant documents received from third parties, subject to the originator's consent.

This is therefore the procedural background for ensuring that we have got all of the relevant material on the same range and scale as the European Parliament. Naturally, we are interested to know whether you will be supplying all of these documents to Members, and what procedures will be in place to ensure the supply of these documents so that we are not at a disadvantage, as compared to the European Parliament.

Mr Jones: Thank you, Chair. Yes, the Secretary of State has made it clear that he intends to provide British parliamentarians with at least as much information as European parliamentarians receive. You have identified a number of documents and issues that would need to be considered in that context. It is fair to say that at present we are actually working out how that would be translated into practice.

It ought to be made clear, too, that the negotiations that we will be entering into will be subject to guidelines that are published in due course by the European Council. They, of course, have not published those guidelines yet, simply because the process of renegotiation has not yet been commenced by the service of the Article 50 notice. Much, of course, depends on the guidelines. I would imagine that much of the documentation that is provided would, again, depend on the context and the content of the guidelines.

All that I can say at the moment is that, as I say, we are working through the practice, but there is a clear commitment from the Secretary of State that British parliamentarians will not be at a disadvantage as compared with European parliamentarians.

Q2 Chair: Of course, the premise on which we have been talking for the last



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few years has been that there has been increasing emphasis on the role of national parliaments. The question therefore naturally arises: are we in fact going to be put into a position where, as national parliaments, particularly having regard to the fact that we are leaving the European Union, which would regain sovereignty for this Parliament, we are in a position to know as much as the European Parliament, which we will be leaving? I put it in that context, because it is really important, as a matter of appreciation of our sovereignty, and also appreciation of the necessity to be properly informed.

This Committee is the longest-standing Committee. It was founded in 1972, with regard to scrutiny. We have a lot of experience and knowledge. We need to have the documents. We do not want to put in the position by some – let's put it this way round – technique or device that might be employed, by putting the word "limité", for example, on documents, which in some way might prevent us from having information that most people would regard as naturally should be made available to us. I just ask it in the broadest sense. I am not asking you to answer specifically. I gather from the way you have approached this that in those guidelines you will be sure to insist that the sovereignty of this Parliament will be adhered to in relation to the supply of documents.

Mr Jones: Indeed, Chair. Of course, part of the process that we are engaged in is to confer full sovereignty upon this Parliament.

Chair: Thank you.

Q3 **Geraint Davies:** Welcome, Minister. Just so we are clear on this, as the Chair said, we have open access and scrutiny of documents. However, the Prime Minister has suggested that a lot of the negotiations will be done behind closed doors. I am just wondering to what extent we will be included and involved in seeing the nuts and bolts of what we are talking about and repositioning ourselves as we move towards a Brexit.

Mr Jones: We have to bear in mind that what we are seeking to do is to strike a balance between transparency and confidentiality, so that the negotiations themselves are not imperilled. In fact, the need to strike such a balance was made clear in the report of the Lords Committee that was published on Thursday of last week. As I indicated, we are seeking to be as transparent as possible. The Secretary of State has made a commitment that Members of this Parliament will not be at any disadvantage to any members of the European Parliament, for example. However, there will clearly be a necessity to ensure that confidentiality is maintained at the same time as transparency is preferred.

Q4 **Geraint Davies:** Insofar as people want continuity and predictability, for example in the area of environmental law that we will continue our standards or whatever it is, and insofar as the plan is to cut and paste existing EU law into British law, there will be no confidentiality about that, presumably. You will tell us all about that.

Mr Jones: If that were indeed the case, certainly, but we are still working through the process. I will be absolutely frank about that. Our



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aim is to provide as much transparency as we possibly can, whilst at the same time not prejudicing the negotiation procedure.

Q5 Peter Grant: Good afternoon, Minister. You mentioned sovereignty of Parliament a few minutes ago. "Sovereignty" means taking decisions, not just being involved in the discussions. The Prime Minister's statement earlier in the week gave assurances about debates on the floor of the House, and general debates in particular. The first of them is now scheduled for the week after next. After a general debate, it is unusual, if not unheard of, for the House to come to a decision. It certainly does not come to a binding decision. At what point, between now and the date that the UK leaves, do you envisage there being a chance for Parliament to approve or not approve the path that the Government intend to follow?

Mr Jones: Do you mean in terms of the outcome of the negotiation, or do you mean in terms of preparations for the negotiation?

Q6 Peter Grant: Either. If we expect now that some time around March 2019 Brexit happens, between now and that day—we have been given an indication that we will have lots of chances to talk and express opinions—at what stages will the Government be saying that they will accede to the role of the House? They will let Parliament decide what happens next, as opposed to talking about it and leaving it for the Government to decide.

Mr Jones: You are right. There will be a series of debates. We have made that clear. There are also innumerable other opportunities for engagement, both on the floor of the House in Westminster or through questions in Committee. I have had several Committee appearances, made or scheduled already. At the end of the process, if in fact the renegotiation culminates in a treaty, then as you are probably aware CRAG would provide that the treaty itself should be laid before both Houses. Both Houses will then have an opportunity for a debate on the outcome of the negotiations. We fully intend, of course, to comply with our obligations under CRAG.

Q7 Geraint Davies: The majority voted for Brexit with an idea that there would be lower costs, market access and lower migration. If, at the end of all the negotiations, the package does not resemble their reasonable expectations, for whatever reason, because of the way the negotiations or the economy moves, will there be an opportunity for Parliament to say, "Well, hold on. We understand people wanted these things, but this is not represented in what we are looking at, so we will vote it down and we will not Brexit"? Is that right?

Mr Jones: All I can do is draw your attention to CRAG, which sets out very clearly what the provisions would be in the event of the conclusion of a new treaty. There would very likely be debates both in the House of Lords and the House of Commons.

Q8 Geraint Davies: If the great majority of the House of Commons felt that the deal just did not represent what anybody really had wanted, and they in good faith wanted less immigration, lower cost and market access—fair enough—and Brexit, would the House be in a position to say, "Well,



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actually, that does not look like what we thought. We will stay in the EU”.

Mr Jones: All I can do is refer you again to CRAG, and what is set out in CRAG. The position is very clear. The treaty would have to be laid before both Houses, and then there would be 21 days in which debates could be held before ratification. You have to understand, and I am sure you do, that there is a lot of negotiation to be conducted between now and then. I think it is rather difficult to contemplate what the outcome of the negotiation is going to be before it has even started.

Geraint Davies: But we can see the cracks already, by the sound of it.

Q9 **Chair:** Your responsibility is set out as follows, in terms of the statements that are made to the public at large. It says, “The Minister of State” — that is you, of course — “will support the work of the Department for Exiting the European Union”. What does that mean in practice, as compared to the Secretary of State?

Mr Jones: The precise roles of each member of the ministerial team are set out on the website. Actually, in expectation of a question such as this, I have brought a copy of it, which I can hand to your clerk.

Q10 **Chair:** So that lists all the bits and pieces.

Mr Jones: Yes. I do not think it is exclusive, however. We do maintain a very collegiate approach to the business of the Department. For example, my responsibilities include: co-ordinating work to make sure the UK is prepared for exit; co-ordinating the development of a negotiation position on migration, security and justice issues; and co-ordinating cross-Government work to ensure the views of stakeholders in the agricultural, fisheries, manufacturing, engineering and goods sectors are fed into the negotiation strategy. The roles of the other ministers are set out in the same document, which I will hand to your clerks.

Q11 **Chair:** That is very kind. Then, of course, there is a cross-over, with respect to the Foreign and Commonwealth Office. Is there a boundary that is set out in these website guidelines that will help us to understand?

Mr Jones: No, but essentially, what was the responsibility of the former Minister for Europe is now something that I discharge.

Chair: Excellent. Thank you very much indeed.

Q12 **Richard Drax:** Minister, good afternoon. To coin the phrase “Brexit means Brexit”, and just to pick up points on my colleagues have asked you earlier, as I understand it, the British people voted to leave the European Union, full stop. There is no “soft” or “middle”, or “hard”. It is, “We will leave”, and that is it. Is that your understanding of Brexit meaning Brexit?

Mr Jones: Yes. The British electorate voted to leave the European Union. We, having done so, the Government have to take certain steps, which are prescribed by Article 50. Article 50 is quite clear as to the



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process we will have to undergo. Certainly, at the end of that process, we will leave the European Union. That is potentially a two-year negotiation after we have served the notice under Article 50.

- Q13 **Richard Drax:** Leading on from the first question, the framework agreement also requires the Commission to take account of Parliament's comments throughout the negotiations. How are the Government going to take account of the UK Parliament's views?

Mr Jones: As I indicated, there will be a number of engagements with Parliament, both on the floor of the House and in other fora, importantly including this Committee, the Lords EU Committee and, of course, the new Exiting the European Union Committee. The Rt Hon Hilary Benn, of course, has been elected Chair. I believe that the election for other committee members is being held this afternoon.

- Q14 **Richard Drax:** Most departments have an interest in Brexit-related policy. Is the Government approaching policy development with a set of overarching principles? If it is, what are they and how do you ensure they are implemented across all policies?

Mr Jones: I suppose that the overarching principle, quite clearly, is that we must leave the European Union on the best possible terms. That being the case, my Department is involved in various analyses. We are analysing over 50 sectors and that includes, of course, engaging very closely with other Government departments so that we can establish what we consider to be the best possible terms for departure. That, of course, will inform our negotiation once it starts.

- Q15 **Richard Drax:** I am assuming that, when decisions have to be made, there will be meetings with other departments to ensure that the other parts of Government are all happy with the approach that you are making, albeit I understand in confidence initially because of the need for negotiation.

Mr Jones: Certainly, there will be meetings, but the overall agreed position will be established by the relevant Cabinet Committee, which is chaired by the Prime Minister herself.

Richard Drax: Thank you.

- Q16 **Stephen Kinnock:** Welcome, Minister. The UK's permanent representation in Brussels is, of course, a very important part of the machinery, and will play a central role in the negotiations. I understand that it now reports to both the Department for Exiting the EU and the FCO. How will that work in practice? Is that not a recipe for confusion?

Mr Jones: We have not found it to be so, so far. UKREP has been extremely helpful in its support of my Department. I now attend, for example, General Affairs Councils, and I am finding that UKREP support is invaluable. We have access to approximately 120 very high-calibre officials there. They are very experienced. I do not think that they experience any confusion at all in the new arrangements.

- Q17 **Stephen Kinnock:** Just thinking about UKREP and the kind of hand that



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they will have to play, you will have seen the Prime Minister's comments at Morgan Stanley, where she said, before the Brexit referendum, "I think the economic arguments are clear. I think being part of a 500-million trading bloc is significant for us. I think, as I was saying to you a little earlier, one of the issues is a lot of people will invest here in the UK, because it is the UK in Europe. If we were not in Europe, I think there would be firms and companies who would be looking to say, do they need to develop a mainland Europe presence, rather than a UK presence? So I think there are definite benefits for us, in economic terms", meaning by staying in the EU.

That is what she said before the referendum. Looking at UKREP and other parts of Government, do you not feel that the fact that the Prime Minister stated that position will be weakening their hand, in terms of engaging with the rest of the European Union?

Mr Jones: I think, really, that the battle of the referendum is now over. Various members of the Government, and, indeed, various members of Parliament, adopted various positions during the referendum campaign. The fact is that the Government are now determined to deliver British withdrawal from the European Union, and we have the fullest possible support of all elements of the Civil Service in achieving that.

Q18 **Chair:** That is very interesting. Could I refer you back to a very important report that we gave, in respect of the scrutiny of UKREP and COREPER, before the referendum took place, but which still is most emphatically on the table? The evidence that we came to, although it was largely ignored by certain parts of the broadcast media, actually was seminal.

It transpired, on the basis of evidence that we received, that many decisions are in fact taken by UKREP through COREPER, and nodded through by Ministers. Naturally, there is a great deal of concern about the degree to which decisions have been previously taken by consensus. When you are making a decision by consensus, because you are in the European Union and you are going to stay in there, clearly you are looking to a situation where you will be wanting to try to accommodate the other Member States.

However, we now have a vote to leave, which was a transfer of the consent, deliberately and expressly given by the UK Parliament to the people of this country, which is sacrosanct, not only a sovereign Act of Parliament, but also a decision that was taken by the people themselves, whom we represent. Will you be giving instructions to UKREP to ensure that we do not have decisions that are arrived at by consensus, which would not stand up by reference to the vote to leave? At least, you would either get a vote against or you would get an abstention, but certainly not something which was fundamentally inconsistent with the vote of the British people. That is an instruction given by Government to the representatives of the Government in their UKREP meeting.

I will make one last remark. If you were to look at our evidence, you



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would see that there has been an increasing tendency for decisions to be taken by UKREP which even Ministers have not been asked to tick off. There is a range of matters, and I am putting this to you in the broadest sense, because we will be watching this, and we want to be absolutely sure that UKREP do not get up to, shall we call it, machinery, which effectively lands the British Parliament with the outcome of the decision that is made in the Council of Ministers that is inconsistent with the vote to leave.

Mr Jones: Yes, Chair. In the first place, can I say that I am aware that we have not yet responded to your report? We do intend to do so.

Chair: Could you bear what I have just said in mind when you do so?

Mr Jones: I will certainly bear that in mind very strongly, in the context of replying to your report. The issue of ministerial oversight is actually key to this process. We believe that arrangements are in place to ensure continued ministerial oversight of any such decisions.

Q19 **Chair:** I did raise it with the Cabinet Secretary in a meeting I had with him, actually. I made this point. The Treasury Solicitor himself was there. I just wanted to get it on the record, because we are going to be watching this. It is one thing to decide what you are going to do in practice. Either you are going to vote against, or you are going to abstain. But if you go along with consensus, because of the lack of transparency, which we established was there, within the framework of UKREP and the COREPER process, it really is important that people do not have an opaque outcome, not realising that actually it was in defiance of what one might have expected in respect of the vote to leave itself. I am asking the Minister to respond first.

Mr Jones: Yes, if I could just come back on that point, can I repeat that I will address the points that you have just made in our formal response?

Chair: That is very kind.

Mr Jones: But in addition to that, can I also say that we are determined that no such binding decisions will be arrived at without ministerial oversight.

Chair: Excellent.

Q20 **Geraint Davies:** You said earlier that your ambition, as it were, was to leave on the best terms for Britain. Would you not agree that, contrary to what the Chair said, if the attitude of the British as they leave is to be the awkward squad and to disagree with these block things, and this sort of thing, for whatever reason, that will not achieve anything but to stop the Europeans doing what they want to do and to give us a worse deal? That will not achieve our objectives of getting the best exit deal.

Mr Jones: Let me assure you that until the moment that we depart, we are going to be very active members of the European Union.

Geraint Davies: But positive ones.

Mr Jones: I was going to give you an example of the extraordinary level



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of positivity with which we have approached this. We have been very strong supporters, for example, of CETA, which we believe is very much in the interests of both Canada and the European Union. Only last week, at the General Affairs Council, I reiterated British support for CETA, which we felt would be in the interests of the EU.

- Q21 **Geraint Davies:** On CETA, may I ask, as you have mentioned it: are you aware, of course, that if CETA is signed up for as an EU-Canada agreement, we will be bound by that for the next 20 years? You are, of course, aware of that. We cannot just then, after we leave, have a different deal. The arbitration court that we are bound by, etc., will apply for 20 years. You are aware of that.

Mr Jones: That would be very interesting, because in such circumstances I would expect that this country would reap the benefits of CETA too. I think that that remains to be ascertained.

- Q22 **Geraint Davies:** But you are happy, as a Brexit Minister, not to wait for our own bespoke deal, but just to sign up for a European deal, with binding additions, for 20 years, which will bind future governments, even though we have left the EU. Is that right?

Mr Jones: The point I am making is that I am not sure that I actually agree with the point that you have made. I think that our European colleagues might require some persuasion that we would still have the benefits of CETA after we leave. The point that I am making is that, notwithstanding that doubt, we have been extremely strong supporters of CETA as being in the interests of the European Union.

- Q23 **Geraint Davies:** As signatories, we would be bound, vis-a-vis Canada, to those agreements.

Chair: Well, I think what you are doing, in fact, is making an assumption about what the legal position is.

Geraint Davies: No, I am stating the fact. I know from legal counsel, Chair.

Chair: I know that that is a view that you express, and you did it in the previous session.

Geraint Davies: It is not a view; it is a fact.

Chair: It is a matter of law, actually.

Geraint Davies: I know. I am expressing legal counsel.

Chair: We do not yet know. I am simply saying we do not actually have the precise details of the Repeal Bill. We know that it is intended that there will be a transposition of law. I, though I am somewhat responsible for the fact that the Repeal Bill has actually been put forward in the shape and form that it is, nonetheless will not be prepared to say that I know what the outcome will be. I think we can park this one.

Geraint Davies: I am just saying what the CETA agreement says.

Chair: Let's just wait and see. I think that would be the best thing. I do



not think the Minister can be expected to give a formal legal opinion on something which as yet will be dependent on the manner in which the Repeal Bill is itself constructed.

- Q24 **Peter Grant:** Minister, you have referred a couple of times to the obvious overarching priority to leave the European Union on the best possible terms for the United Kingdom, pointing to the referendum result. Whether it is one national mandate or four national mandates is a discussion for another day. Within that, at some point the Government will have to develop quite clear policy objectives on a whole number of policy areas. I can understand that you do not want to disclose where the Government's thinking on these is just now.

However, for example, there is the "people" question, about the rights of UK citizens currently living elsewhere in the EU, the rights of EU citizens who are here, what provisions will apply to the movement of people between Britain and the EU after we leave, what rules will apply to students, and so on. At some point, the Government will have to come to a fairly clear policy decision as to what it wants to get out of the negotiations in that regard, and in regard to trade with the EU, and so on. The mandate to leave is coming from the referendum. The referendum ballot paper did not say anything about immigration, UK-EU citizens, or trade deals. Where will the Government claim their mandate for the detailed negotiating position that they adopt in relation to these policy areas?

Mr Jones: The position is that we have a mandate, as you rightly say, from the British people to leave the European Union. Clearly, I would have thought it is implicit in that mandate that we will have to negotiate the terms of our withdrawal. The reason it is implicit is because the only basis upon which we can withdraw is under the terms of Article 50, which does actually set out provisions on the face of it for such negotiations to take place. Those negotiations will continue, and, as I indicated earlier on, at the end of the process it is very likely that there will be a treaty. The consequence of that will be the provisions of CRAG will kick in, and it is very likely that there will be debates in both the House of Commons and in the House of Lords.

- Q25 **Peter Grant:** What I am asking is about before it gets to that stage, because at that stage, it is "take the whole deal, or do not take the whole deal". If we do not take the whole deal, who knows what kind of constitutional mess we end up in?

There were people who voted to leave, and there were petitions raised and debated in Westminster Hall recently, who wanted "leave" to mean "all immigration from the EU stops now". There were other people who voted to leave who have said they want to leave the European Union, but they do not want any change to the bilateral rights of citizens to live and work and move in one another's countries. I do not know where the balance of those views is, among the 17 million people that voted to leave, and neither does anybody.



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How will the Government be able to be sure they have a mandate to put together a deal based on one particular option for the movement of citizens, one particular option for trade or one particular option for customs or no customs? None of that can have a mandate from the referendum because, although it was talked about in the referendum, the Government made it perfectly clear that promises made during the referendum do not bind the Government. Where will the Government's mandate come from for those very important but detailed policy positions that will eventually be put into a single agreement?

Mr Jones: The Government, as I say, will enter into negotiation with the European Council. The outcome of that negotiation will be subject to a vote of the European Parliament. It will be the European Council who agrees it on the part of the EU. So far as we are concerned, our own domestic legislation, CRAG, provides that the terms of the treaty and the withdrawal will have to be placed before Parliament and both Houses of Parliament will have the opportunity to debate the outcome of the negotiation. The Government have a duty, as a government, to make a judgment. The Government clearly will make the judgment, based upon the best evidence.

Chair: Thank you very much.

Q26 **Mr Turner:** This Committee has a specific role to scrutinise negotiations on existing EU dossiers. To what extent do the Department for Exiting the European Union officials take an interest in the routine negotiations on existing EU dossiers? Would your Department have a role in agreeing negotiating strategies?

Mr Jones: To deal with the second question, yes, the purpose of my Department is to co-ordinate the negotiating position of the British Government. So far as the existing dossiers are concerned, as I said earlier, we fully intend, so far as possible, for it to be business as usual. Therefore, they will be treated in the manner in which they are currently treated.

Q27 **Mr Turner:** If at some stage we find something is becoming European law, although we, for instance, have voted against it, we will still have to push those things through, although it is unpopular in this country.

Mr Jones: I would imagine there have been quite a few such measures that have been unpopular in this country, but yes, we will be continuing business as usual right up to the point of withdrawal. That includes treating dossiers in precisely the same way as they are treated at the moment. One slight caveat is that, of course, it may well be that, as European business progresses, there may be matters of some sensitivity that will have to be dealt with with sensitivity, in which case, of course, we will be liaising closely with this Committee and the Chair.

Q28 **Chair:** On the question of COREPER, which we are now going to move on to, I am going to ask Geraint Davies to ask an important question. Could I just preface it by slightly going back to what I was talking about just now? While all legislation must be formally agreed by the Council, and



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most people in this country hear about majority voting and they assume that there are votes taking place, and actually it is not true at all. Votes do not necessarily, and quite often do not, take place. In fact, more often than not, because they know in advance before the Council meets what the outcome is going to be. I want to get that on the record.

While all legislation must be formally agreed by the Council, the great majority of legislation is agreed without any debate at all. It sounds pretty undemocratic, particularly given the fact that under Section 2 of the European Communities Act, which we will remain in until we leave, that legislation will be binding on us through our commitment to Section 2 at the moment, but not after leaving. The position is that the majority of that legislation is agreed without any debate at ministerial level, having previously been negotiated by officials in the Council's preparatory bodies, working groups and COREPER.

If they are working to instructions from you as the Minister responsible for this, there is going to be an important question that is going to have to be answered to satisfy democratic requirements. It has been estimated that most decisions, around 70%, are in practice made before reaching the Council level, and are proposed by COREPER for adoption as items. I would like Geraint Davies to ask a question about this, because it is really important that we understand, and the public understands as a result of this session, what the actual mechanics really are.

Geraint Davies: Given that, I simply wanted to ask how robustly we were engaging at the moment in COREPER. On the one hand, the EU is carrying on as an entity and the question, as I say, is how robustly we are engaging in that, given that we are on a trajectory to leave, and how you balance those up. While I am at it, you did mention that we would have this process come to a situation where there would be the shape of the exit package, and then we would have a big debate. There was no suggestion, was there, if there was a debate and everybody was very unhappy, that we could go back to the people and ask them, "Is this what you had in mind?", so that they could have a final say on their exit package?

Mr Jones: I understand you have a Private Member's Bill, Mr Davies.

Q29 **Geraint Davies:** Yes. Are you going to sign up for that or are you not allowed to?

Mr Jones: I think that it is highly unlikely.

Geraint Davies: There you are.

Mr Jones: I am sorry. I think I have to give the same answer I did previously. A lot depends on the outcome of the negotiation. To try to predict at this distance out what the outcome of the negotiation may be is impossible. Tempting as it is, I do not think I am going to be drawn down that avenue.

Q30 **Geraint Davies:** Coming back to the Chair's question on COREPER, is the plan to be fully engaged in COREPER, or to actually ease back a bit,



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as we move towards the exit door?

Mr Jones: No, it will be necessary to be fully engaged through COREPER. I do want to reiterate the degree of ministerial oversight that will be exercised. It is probably the case, in answer to the point made by the Chair, that given our current position in the course of exiting from the European Union, it is more important than ever that such ministerial oversight should be engaged. I can say quite clearly that it will be.

- Q31 **Geraint Davies:** You will be pleased to know I am going, but at the moment we have got background EU law. That operates, and we have got our own national law. The short-term plan, I suppose, is to cut and paste that, and then have the right to change it over time. Do you think that will create a condition where, over time, Ministers in Britain will come along and change this, and change that—say, for example, on environmental law—and then there will be a problem? In the past, we had a certain amount of certainty and predictability, because there was stability, but in a situation where things are changing and moving around, it is becoming inconsistent, and it becomes a bit of a pig's breakfast, a bit like we have seen with the NHS being changed every few years.

Stephen Kinnock: A pig's Brexit.

Geraint Davies: A pig's Brexit, exactly.

Mr Jones: The position, of course, is that we are introducing a Repeal Bill, in the next session of Parliament. The purpose of that bill is to incorporate into domestic British law the whole volume of EU law that has developed over the years.

- Q32 **Geraint Davies:** Then fiddle around with it.

Mr Jones: It has a very noble precedent, which, of course, is what happened when we left India. I understand that, indeed, some British Indian legislation is still on the Indian statute books. It may well be that a lot of EU legislation remains on the British statute books. The point is that we need to ensure operability of the British legal system.

Geraint Davies: I will leave you. I am looking forward to seeing you in your Gandhi loincloth.

Chair: Geraint has now got another engagement, so we will say goodbye, and look forward to seeing you at the next meeting. As a matter of fact, on the historical analogy, I am told that in 1789, or thereabouts, the United States, when they left the United Kingdom as a result of their rebellion and independence, did exactly the same. They adopted English law, and then dealt with it subsequently in their new constitutional arrangements.

- Q33 **Peter Grant:** Minister, I know that as part of your responsibilities, you now attend the General Affairs Council. I understand you attended the emergency meeting of the Foreign Affairs Council last week as well. Have you been aware of any difference in the approach other EU Member States are taking to UK Ministers, as a result of the vote to leave?



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Mr Jones: In terms of difference, of course, I was not there before we voted to leave the EU. What I can say is that all my EU colleagues on the General Affairs Council have been extremely co-operative, have treated me with the utmost courtesy and have been more than willing to work with me. I do not think that it has caused any difficulties, in practice.

Q34 **Peter Grant:** Thank you. In the statement that you issued on Monday of this week, on your return from those councils, one of the things that you said was that the UK, presumably through your good self, confirmed its support for Council decisions on signing, provisional application and conclusion of CETA. Can you clarify further, having confirmed support for everything, including the conclusion of CETA, is that now binding? Is it irreversible? Is it something that, having agreed to, we can now go back on, or is it done and dusted?

Mr Jones: Yes, that would be an override, but, of course, it would be subject to the usual procedures and terms of overrides. Having said that, when you say "done and dusted", I think you are aware of the practical difficulties that are still, I understand, prevailing in respect of CETA.

Q35 **Peter Grant:** Does it concern you that your future attendance at those meetings might be more difficult if, having agreed on behalf of the UK to see this through to this conclusion, Parliament was then to say, "No, we are not doing it"? Is that something that would give you difficulties in future agreements?

Mr Jones: It was felt at the time that that was a matter of urgency. It was an extraordinary meeting of the Foreign Affairs Council (Trade), and it was regarded as a matter in both the interests of the EU and the British national interest that we should proceed the way that we did.

Q36 **Peter Grant:** Despite the fact that the European Scrutiny Committee had made it clear that we were not agreeing to lift the scrutiny on the final stage.

Mr Jones: That was decision that was made at ministerial level. I believe it was the right one.

Q37 **Mr Turner:** We issued a consultation on how our scrutiny should change in the context of Brexit. Some respondents suggested every EM should include a Brexit section, including information about what is likely to be retained post-Brexit. What changes do you propose, in terms of the type of information provided in Explanatory Memoranda and in correspondence?

Mr Jones: At the moment, we are in course of working up new guidance in respect of Explanatory Memoranda. You have highlighted an issue that is of importance. I think that, in all fairness, I cannot give you a full answer now, but what I can do is to say that I will write to the Chair of the Committee.

Q38 **Chair:** The Committee has the option of recommending Reasoned Opinions on particular documents. In fact, we are in the process of doing one right now. The Commission has to reconsider if enough Parliaments



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agree to such a Reasoned Opinion. We have said that we will assess whether to issue a Reasoned Opinion on a case-by-case basis. Obviously, we understand that you do not want to tell the Committee what to do, but we would be interested to know your view on how the Committee might carry out its scrutiny task in this respect. Do you think there is a case for the Committee simply to decline to recommend Reasoned Opinions altogether?

Mr Jones: I would suggest that that is a matter for the Committee, Chair. I do not really think it is part of my function to advise you how to proceed. What I could say, if it is helpful, is that we have further discussions between officials and the clerks of the Committee on this very point.

Q39 **Chair:** Successive reports from this committee have suggested various reforms. We have been pretty diligent over the last six years on this. Even without reform, the system does not work unless departments take their work and their scrutiny obligations seriously, and provide the Committee with full and prompt information that we need in order to assess documents. Have you had any engagement with departments on improving the manner in which this operates in practice?

Mr Jones: Yes, my Department is doing just that. You are absolutely right. It is important that there be improvements, and we are trying to achieve that.

Chair: That is very helpful indeed.

Q40 **Stephen Kinnock:** If I may, I will just very briefly go back to the questions around the mood music in Brussels, and getting a sense of whether the United Kingdom still really has a seat at the table in these discussions and negotiations. Manfred Weber, who leads the European People's Party in the European Parliament, is very close to Angela Merkel and is a very senior member of the CDU. He issued a statement recently where he said, "Boris Johnson is an unscrupulous careerist and an opportunist without conviction. If he has any decency, he will step down". Do you think with our senior German counterparts issuing those kinds of statements that the British are still being listened to in Brussels?

Mr Jones: I assume that the Foreign Secretary is not on his Christmas card list any more, certainly.

Stephen Kinnock: I think you are probably right there.

Mr Jones: You ask about the mood music, and I will give you my assessment of the mood music. Immediately after the vote, there was undoubtedly a sense of shock that prevailed not only in the EU but also, I would suggest, in parts of the United Kingdom. That was something that I certainly detected when I was first appointed to this position. I have now attended three General Affairs Councils, one informal, two formal. I am not detecting anything of that sort in my dealings with colleagues from the European Union. I do not know the gentleman in question, but it may well be that he regrets the tenor of his remarks, because they do



seem to me to be colourful, to say the least.

- Q41 **Stephen Kinnock:** I have not yet seen a statement expressing regret for those remarks, but if I will certainly keep an eye out for that. I understand it is a difficult position to read the tea leaves and say which way the negotiations are going to go, but there is a decision coming up very soon in the European Commission about mandating the European Union's representative on the WTO with regard to market economy status for China.

You will know that this is vitally important to the British steel industry. If China is granted market economy status in the WTO, it will become almost impossible for us to impose measures against illegally dumped Chinese steel. The Commission will next month be deciding on how to mandate the EU representative on the WTO. That is happening very soon indeed. It is not a long-term thing. How will the UK Commissioner be voting in that vote in the Commission? Perhaps you could say a little bit about your views on whether or not China should have market economy status.

Mr Jones: I think actually this is going the bounds of what I feel competent to discuss in the context of this Committee. I do not think that it is a role for me. The UK Commissioner will undoubtedly make his decision on the basis of what he considers is in the best interests of the European Union.

- Q42 **Stephen Kinnock:** So he will not be mandated by the British Government.

Mr Jones: I reserve my position on that, because I am unsighted on the position. I am prepared to write to the Committee Chair if it is helpful.

Stephen Kinnock: Thank you. That would be very helpful indeed. Some time ago, back in July 2016, this Committee recommended proposals for a directive on the ports sector. That is now likely to go to the European Parliament for agreement in December, and to return to Council for a decision shortly after, which it seems to us would be a serious scrutiny override. What is your department doing to ensure those kinds of overrides do not happen in future?

Mr Jones: We are trying to reduce the number of overrides, as you will be aware. In fact, we have driven down the number of overrides by about 40% since 2010. I think that it is right to say that between January and June of 2016, there were 37% overrides on EU documents and 74% of overrides related to restrictive measures. Clearly, we are trying to drive down the number of overrides, and I think we have done so reasonably successfully.

- Q43 **Chair:** Just for the benefit of people who are watching this session, because it may well be going out in the Parliament programme, an override is where the Government decide that, notwithstanding our Standing Orders, for urgent reasons they are going to go ahead and make a decision in the Council of Ministers, although we still retain the



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right to be able to ensure that there is a debate for legal and political reasons.

I just wanted to put that in context, because this ports issue has not just a chequered history but a disastrous history. You may or may not be familiar with the detail of it, but it goes like this. There are 47 port employers, and every single one of them is against this ports directive. Every single trade union involved in ports activities is against the directive. The present Government are against it, and the previous Government were against it. Yet, despite all that, it has still been making its way through the whole process. We actually had a European Standing Committee on this, and the Chairman of the Committee had to actually suspend the Committee, because it was absolutely clear that the whole process was completely and utterly unacceptable. So it has gone on.

It would be astonishing, if I may say so, given the present situation of our leaving the European Union, that, with such a combination of people on all sides of the debate being completely against it, we would actually allow this to continue. I am just interested to know what your Department is going to be doing in respect of that, as we move to the next stage of it.

Mr Jones: Thank you, Chair. I have to say that I am unsighted on the issue that you have raised. However, I acknowledge its significance. The best service I can perform to this Committee is to write to the Committee.

Q44 Peter Grant: A much more recent override is the CETA agreement, where the Committee agreed a conditional waiver on signing the agreement. To the best of my knowledge, the Government have not yet complied in full with the conditions attached to that waiver. The Committee did not agree to waive the second stage, which was provisional application, which I understand from your colleague earlier this afternoon that the Government have signed up to.

From the requirement of the Scrutiny Reserve Resolution, as regards scrutiny waivers and overrides, I am assuming that there is no suggestion that CETA was "routine or trivial", so that part of the provision would not apply. The Minister can override scrutiny if there are special reasons why agreement should be given, but that those reasons should be explained at the earliest opportunity to the House, because the item has been submitted for debate on the floor of the House. Can you tell us when you propose to explain your reasons in full to the entire House? Do you have a date set for that?

Mr Jones: No, but it will be as soon as possible.

Q45 Peter Grant: Can you explain why three days later, and after the business for next week has been set, it is two full weeks after the scrutiny of this Committee was overridden? Do you consider that two weeks after such a vital piece of substantial business that is subject to scrutiny override is soon enough, "as soon as possible"?



Mr Jones: That is my view. Having said that, it may not be the view of other honourable Members. But it will be as soon as possible.

Chair: Could I just make the point that, of course, the Minister here would not have seen or heard what the Secretary of State for Trade said about an hour and a half ago on this subject? I think in the circumstances it would be unfair to expect you to answer a question that he answered himself, even though I rather think that Peter Grant still has reservations about it. You cannot have the Minister responsible or the Secretary of State responsible saying something which can be evaluated, and then, as it were, for you to be put in the position, as I would put it, in fairness to you, which you are unsighted on.

Q46 **Richard Drax:** Minister, in the debate on 12 October, the Secretary of State promised a series of debates on EU-related issues. Is this not an opportunity to deal with some of the outstanding ESC debate references, such as that on the free movement of EU citizens, which has been outstanding now for nearly three years?

Mr Jones: Yes. There are a number of debates that are outstanding, I understand. I believe that two have recently now been scheduled. These debates are intended to be discrete debates about issues that are likely to arise in the context of the exit negotiations. I am not entirely sure whether the debate that you mentioned would fit neatly into that pattern. However, I am aware that there are, I think, 11 debates that are outstanding. That is something that I intend to address, and I hope I will be able to address quickly.

Chair: Could I add a rider to that? There was a time when we were given to understand from, let's say, informal soundings that Number 10 was getting involved in those questions of what should be debated and what should not, which we should great exception to, under the previous Government. All I am saying is I think that it would important just to bear that in mind, that this is an issue in front of the Committee.

Q47 **Peter Grant:** It seems to me that the matter that you felt the Minister could not be aware of because it had been mentioned in a session that he was not present at, are matters of fact and of public record. Can I frame in a different way, then, to the Minister, just for clarity? Minister, do you consider that your actions on CETA at the Foreign Affairs Council constituted in any way an override of scrutiny?

Mr Jones: I do, yes. I do.

Q48 **Peter Grant:** Thank you. Can you give us an indication as to when you intend to explain your reasons for doing that to the entire House?

Mr Jones: As soon as possible.

Chair: Thank you very much indeed. Minister, thank you for coming. We look forward, no doubt, to seeing you again, bearing in mind there will, by five o'clock, be, I imagine, a declaration as to who is on the Exiting the European Union Committee. Of course, I am sure you are mindful of the fact that as the European Scrutiny Committee, under own



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standing orders, not only has a long tenure going back to 1972, but in addition to that has an enormous amount of knowledge, expertise and track record in relation to these questions. We will be able to demand opinions from the other Committees, because we will effectively be monitoring the scrutiny process as a whole. I will just leave you with that thought.

Mr Jones: Yes. Clearly, it would be helpful if the clerks to the Committee could keep my officials informed as to the working arrangements that are agreed with other Committees with regard to this.

Chair: That is very helpful. Thank you all very much for coming. Thank you for attending.