HOUSE OF COMMONS

European Scrutiny Committee

Oral evidence: Regulating after Brexit, HC 125

Wednesday 26 October 2022

Ordered by the House of Commons to be published on 26 October 2022.

Watch the meeting

Members present: Sir William Cash (Chair); Mr John Baron; Jon Cruddas; Geraint Davies; Richard Drax; Margaret Ferrier; Craig Mackinlay; Gavin Robinson; Greg Smith.

Questions 44 to 77

Witnesses

I: Joël Reland, Research Associate, UK in a Changing Europe; and Barney Reynolds, Partner and Head of Financial Institutions, Shearman & Sterling LLP.

Examination of witnesses

Witnesses: Joël Reland and Barney Reynolds.

Chair: On behalf of the Committee, I welcome Mr Reynolds and Mr Reland. Thank you for appearing in person to give evidence this afternoon.

This is the first session of our inquiry into regulating after Brexit. During today's panel, we will cover, first, the complexities of the EU's legal and regulatory framework and how we can begin structuring our own; secondly, areas of potential regulatory divergence from the EU; thirdly, the Northern Ireland Protocol in terms of regulatory constraints; and finally, potential challenges for the devolved nations. Before we start, and for those watching at home, would our witnesses please introduce themselves briefly?

Barney Reynolds: I am Barney Reynolds, a lawyer in private practice at a firm called Shearman & Sterling. I specialise in UK and EU financial regulation. I head the financial institutions group and the global regulatory group as well.

Joël Reland: Hi. I am Joël Reland, a research associate at UK in a Changing Europe, which is an independent academic organisation based at King's College London. My main area of focus is UK-EU regulatory divergence.

Q44 **Chair:** Thank you very much indeed. I will ask the first question, which is for both of you. The EU's legal and regulatory framework is considerable, with a significant number of legal acts adopted each year, covering all sectors of the economy. In what ways did that framework constrain the UK's regulatory autonomy?

Joël Reland: The European Union is first and foremost a legal institution. If you look in particular at the development of the customs union and the single market from the 1980s onwards, it is about convergence of regulation on everything from VAT and external tariffs to consumer standards, worker rights and those kinds of things, to facilitate the free movement of people and goods within the single market, and to have a common external trade policy. That is by definition what it was trying to do, and that obviously put a very significant level of restriction on the UK's regulatory autonomy as an EU member. I will not go through all the areas—we would be here all day.

It is also worth reflecting on that in a couple of ways. First, the UK was a proponent of a lot of this stuff in the 1980s. It was one of the member states that saw potential advantages in the ways a common market would facilitate trade and minimise certain non-tariff barriers when you are trying to move goods into France or any other part of the European Union. There was an ability to shape the thinking of the European Union from within, so although there was some restriction on what the UK could do,

Comment [CG]: <TimeTag ServerDate="26 October 2022" ServerTime="14:46:49" ServerTimeZone="14:46:49" LocalTime="GMT" />

Comment [CG]: <TimeTag ServerDate="26 October 2022" ServerTime="14:47:10" ServerTimeZone="14:47:10" LocalTime="GMT" />

there was also an ability to have an influence over this regulatory behemoth, if you like.

A second thing worth bearing in mind is that the European Union was not the only actor in the room when we were an EU member state. A lot of the regulation imposed from the EU level was drawing from obligations and standards that we would have been tied into had we not been an EU member, be it at the WTO level on trading arrangements or vehicle safety standards, for example, which come from conventions that supersede the EU. It was not the be-all and end-all of regulation. A lot of the stuff that we have now downloaded post Brexit, effectively the EU was drawing from other international agreements.

Q45 **Chair:** So there are global implications, which create other obligations or other parts of the standards system?

Joël Reland: Exactly; I was about to stop there.

Q46 **Chair:** Mr Reynolds?

Barney Reynolds: I will take financial services, the area I specialise in, as an example, because it is probably the most detailed of the EU legal and regulatory areas. From 1989 onwards, there has been a roll-out of EU law under the first scheme for a passport where firms could operate under UK rules that meet certain high-level standards, and then when they are doing business cross-border within the EU, their conduct would be regulated in the state that the customer is based.

Then from 1999 onward, with the financial services action plan and the de Larosière report, there was a roll-out of 40 measures for financial services as a whole, covering most industry activity. There was also a legal method of regulating their so-called level 1 text, which is legislation passed in the Parliament and the Council and proposed by the Commission. Level 2, which is one level down, is produced by the Commission, and level 3 is to do with harmonisation—the concept of harmonised interpretations.

Then from 2007 onwards, when the narrative in Brussels was that the UK methods did not work properly for financial services—that Anglo-Saxon techniques did not work—and for the first time we did not have a UK financial services commissioner, Monsieur Barnier from France was appointed. There was a roll-out of a massive blanket of rules, filling in all the gaps, to be interpreted as a single rule book at an EU level, not a UK level. That was then to be applied by firms in deciding what they can and cannot do and by the regulators in overseeing them.

Using the financial services example, it is said by some that the UK had a huge influence in writing those rules in the rule book, but they are very different from anything we would have written ourselves, not least because they are interpreted under continental—Franco-German—legal methods of interpretation based on the purposive method. In that method, you look at what the purpose of the legislator was in making a rule—but of course there is no evidence of that in many cases, so it leads to the

Comment [NS]: <TimeTag ServerDate="26 October 2022" ServerTime="14:50:13" ServerTimeZone="14:50:13" LocalTime="GMT" />

Comment [NS]: <TimeTag ServerDate="26 October 2022" ServerTime="14:50:21" ServerTimeZone="14:50:21" LocalTime="GMT" />

officials, the regulators, having massive discretion in asserting purposes ex post facto.

Also, on specific measures, things were just done differently because of sensitivities elsewhere among other member states. For instance, with Solvency II, a well-known controversial area, a lot of the thinking behind many elements of it came from the UK, but because of German sensitivities over delegating too much power to the regulators to make rules, which is something that happens in common law systems such as our own, the rules were baked into level 1 texts, meaning legislation. So they are sort of immutable and ossified from the moment of being made, and they do not adjust to the circumstances, so that is where a lot of the controversy comes from. It is the technique as well as the substance.

In addition, I would say that AIFMD measures were introduced, for instance for alternative investment fund managers and wholesale fund managers, which the UK did not think were necessary at the time, or in order to protect the eurozone. A lot of regulation under the Barnier regime to do with credit ratings and the short selling of member Government bonds and so on were introduced in order to buttress the eurozone, including also—and this predates that—the notion that the member state Government bonds are sovereign, when in law they are not, because they cannot print more money to repay their debts. Essentially, we have been dragged along within the EU into a conceptual framework that does not entirely reflect policies that would have been made in the EU, and it is not accurate to say that we came up with all this.

Even more significantly, and this is really subtle, it does not reflect our methods of lawmaking. Our system is simpler, clearer and more intuitive—in other words, it is more self-evident what the rules are, so you do not have to ask people what the laws are. Let us take GDPR as an example. When we are making laws, we come up with things that everyday people empathise with, whereas with GDPR, made through the other technique on the continent, you start with things like a data processor and a controller. I have been on hours of calls with data protection lawyers, and they will be debating whether someone is a processor or a controller. Often it is not clear; sometimes people can be both. It is almost a conceptualisation of a library, rather than intuitive, and that has a drag on the system.

We believe in clarity and certainty. In the financial markets, for example, there is a massive premium placed on legal certainty. There is a committee that was originally formed by the Bank of England called the Financial Markets Law Committee, which I sit on. It is a group of lawyers trying to identify any points of legal uncertainty and to assist in ironing them out. That is something uniquely prized in our system, in my view.

There are other countries around the world—in the Gulf, in particular—that are seeking out our system and our way of legislating and regulating when working out how to make their own markets more competitive, because they see our methods as inherently more competitive. Our methods harness the discipline of the markets, sometimes using industry codes and standards where economic incentives are aligned, and the regulators make

rules cautiously against identified risk. They do not seek—this is the other difference—to make a blanket of rules covering every single possible eventuality, even those which are not in evidence in the market at the time. That is another fundamental issue. We proceed cautiously and iteratively, by court decision in many areas, and then through regulation where we see risks emerging. It is a fundamentally different approach, but as I say, other countries around the world are seeking it out when looking at what to do.

Q47 **Chair:** Before Mr Robinson comes in, there is a question that I would be grateful if you could both deal with. If we look at the manner in which the legislation is passed, it is in the Council of Ministers, by common consent; it happens behind closed doors, by majority vote, and there is no transcript. How would anybody be able to justify that as a system of law when we have left the European Union?

Joël Reland: There are a couple of points to reflect on. The first one, in terms of how we take on law-making functions post Brexit, particularly—

Chair: I am not suggesting that we would be back in, of course. I am talking about the manner in which the legislation was made in the first place and the extent to which we would want to retain it in those circumstances.

Joël Reland: That is clearly a concern that is manifested in the retained EU law Bill and this idea that the Government want to do away with regulations that are inherited from the EU on the basis of the argument you are making about the fact that they were not necessarily devised with the UK's best interests at heart. Attention needs to be paid to the detail of that retained EU law Bill and the extent to which Parliament will have a say in the regulations that are being reformed or repealed under the new Act, because there is a risk, if you look at those powers, that Government have significant power to remove things via secondary legislation without going through significant levels of parliamentary scrutiny.

Q48 **Chair:** Is that not how it came in in the first place?

Joël Reland: Yes, I do not dispute that. I am just saying that if we are looking for something that is more thoroughly put through our own Parliament, some questions might need to be raised about the present structure of the retained EU law Bill.

Barney Reynolds: The fact that the EU system of law making is less democratic is partly answerable for why it is less intuitive. It is a really technocratic body of rules.

I want to pick up on the earlier point about international standards. Yes, there are supranational bodies, such as the Basel Committee in the financial markets context, that make standards. But in the case of the Basel Committee, they are non-binding. The US did not sign up to Basel II—we are now beyond that—but it interprets these in a different way from Europe. The EU takes the standards, makes them into legislation, adjusts them for various member state interests, and then makes them binding

for everyone. In the financial markets, I believe the regulators are now seeing the merit in loosening those standards for smaller banks and going back towards the international standard.

It is not right to say that we are bound by international standards in many respects. Yes, there are some, but we need to dig into that. A really detailed legal question is the extent to which we are bound by those standards and what the rules mean, because the method of interpretation, the method of drafting, and whether they are high level or more detailed—all those go to what we are there to implement, so it would be lazy thinking just to say, "They have sought to implement international standards. Therefore, we keep what the EU does."

On the difference, what is interesting is that there was an Open Europe analysis in 2015 that said the most significant 100 EU measures cost the UK £33.3 billion in the 2014-15 tax year. It has also been estimated—*The Sun* newspaper went through this, or had someone do it, in December 2015—that the EU-inherited acquis at that moment in time was as high as Nelson's column, at almost 170,000 pages. There is obviously more of it since then. MiFID II in the financial markets, which relates to a very specific area of investment banking, has 1.7 million provisions. It is just not how we would do things. It is beyond human comprehension to remember one's way around that body of law accurately, which obviously undermines legal certainty, which is one of our basic premises and tenets that I mentioned.

Finally, there is some US economic research from 1999 onwards by people such as La Porta, Mahoney and so on, which shows that the common law method leads to greater economic growth and is more of a magnet for financial business. I think all of those need taking into account.

Geraint Davies: May I ask a supplementary?

Chair: You certainly can.

Geraint Davies: You are very kind, and it is lovely to see you again.

Chair: Always a pleasure.

Q49 **Geraint Davies:** On the point you made about creating conditions for growth, you will know that statistics have been aired to suggest that the UK economy was something like 90% of the size of Germany's in 2016, and now it is less than 70%. I appreciate that there are some sterling issues here, but on the central question about our regulatory autonomy, wouldn't you accept that the balance between regulatory autonomy and harmony—in the sense that we are moving away from the set of rules that we were operating in—will make it more difficult to trade with our biggest trading partner, the EU? How do you respond to that, Barney?

Barney Reynolds: So far, we have not deregulated. I am using that as a shorthand to mean removing unnecessary EU red tape and rewriting those rules, which remain in common law-style. That is where the real

Comment [JE]: <TimeTag ServerDate="26 October 2022" ServerTime="15:02:15" ServerTimeZone="15:02:15" LocalTime="GMT" />

Comment [JE]: <TimeTag ServerDate="26 October 2022" ServerTime="15:03:14" ServerTimeZone="15:03:14" LocalTime="GMT" />

competition and growth possibilities come through the law, and they are very significant.

Q50 **Geraint Davies:** Trade outside the EU, you mean.

Barney Reynolds: No, anywhere. The devil is in the detail. There are endless different types of rules and laws. There are rules for how you set up a business, how you run yourself, how you employ people and so on. Those are very prescriptive in the EU. If you are selling to someone else, those rules do not apply, generally speaking.

There are then the rules—if you are selling goods—about the products you are selling, which obviously need to comply with the standards of the country you are selling into. That is a smaller subset of rules. If you take financial services, an awful lot of business can be done cross-border by staying here. The City of London has been a financial centre for generations on the basis that customers come to the market.

You are right: there are all sorts of quibbles that one could have about the comparison—you are making the economic comparison—but I would note that it is a comparison against the backdrop that the UK has not started doing anything yet. If you come out of the single market and presume that it has some sort of impact, and then you do not materially do anything to our laws, that is obviously the worst of both worlds-type situation.

If you come out of the EU system and address the legal system, you do not need to have the same laws as the countries you are selling into in order to compete—quite the contrary. For goods alone, the WTO looks predominantly at the standards of the receiving country for the specific good, not at how it got there. For many services, as I say, the customers come to the market.

The question is far, far more complicated and nuanced, and I think we need to look at each area of rule. There is an issue about matching up rules in certain specific instances, such as data, for which one needs to look at the benefits and the opportunity to create them by going a different way.

Geraint Davies: May I make a further point on this, Chair?

Chair: Very briefly.

Q51 **Geraint Davies:** I should reveal that I am the trade rapporteur of the Council of Europe, and I have just come back from the WTO. Of course, the situation is that the EU is clearly a much bigger player in forging trade deals, so it will set the standards. We are not in the EU, but in many instances it would be easier for us to do a trade deal along similar lines, because the groundwork would already have been done by the EU, and we are obviously in less of a position to change the rules of the WTO.

The idea that we can independently and autonomously have a load of set rules and hope that someone will trade with us is ridiculous. They will want to conform with their rules, which may already conform with the EU

following their negotiations. Isn't this just some sort of pipe dream?

Barney Reynolds: No. I think the devil is in the detail of each specific type of rule. There are countries that successfully trade all over the world with their own home standards, selling to other people under their host state's standards, so it is not impossible. I think one needs to get into the detail of every single rule.

It may be that in certain cases it is sensible and advantageous for us to manufacture particular types of products in a particular way because we are selling predominantly into the EU—or some of the manufacturers are—but that all needs to be examined case by case. I just do not think it is possible to come up with 10,000-foot propositions about it being automatically better to do things in a particular way.

Chair: I call Mr Robinson to ask the questions on the Northern Ireland Protocol.

Q52 **Gavin Robinson:** Thank you very much, Chair. Good afternoon, gentlemen. Perhaps I can start with you, Mr Reland. On regulatory autonomy, how big a constraint is the Northern Ireland Protocol if the UK wishes to regulate for its entirety?

Joël Reland: It is already clearly a significant constraint on the UK to regulate as a single nation. First, there are regulations that the UK is seeking to impose—changes that cannot apply to Northern Ireland because of the Protocol. The reforms to—or, as it was presented by the Government, the rationalisation of—alcohol duties, which will not apply in NI, are an example of that. That creates not only the issue of different regulations, which has its own sensitivities, but the issue of potentially engendering new checks and paperwork at the GB-NI border because, for example, you might have to pay a different duty on a bottle of wine if you are exporting from GB to NI. There are those implications.

There are also the implications where NI has to follow EU regulations that come in in a large number of areas. We are already seeing it in waste management, pollutants and those kinds of technical issues. Businesses in Northern Ireland are having to follow different regulations from their counterparts in Great Britain, and that can put them at a competitive disadvantage if the EU regulations are more strenuous than in GB, or if they need to follow different regulations depending on whether they are selling into the GB or EU markets. A lot is being brought out here.

In terms of how we deal with that question, we need to look at where the implications are in a slightly nuanced manner. First, the UK Government could be doing a better job of preparing themselves for some of the changes coming down the line from the Brussels end. As far as I can tell, very little work is being done at UKMis Brussels, or in Whitehall, that is trying to fastidiously track what is coming down on the EU side and saying, "Where is this going to most significantly impact the regulatory border in the Irish sea? Where do we want to make minor technical amendments in order to minimise trade disruptions?" I think that is an

important role that the Government are going to have to keep playing as long as the Protocol exists in its current form.

The other point I would add is that this is not only about Northern Ireland. When the UK was in the EU single market, that is what effectively maintained common standards between the four nations of the United Kingdom. Now that we have left, there is significant autonomy for Scotland and Wales as well, in terms of how they regulate on environmental standards, for example. It goes into lots of different areas. That is also going to be something that has to be managed going forward. It is not just Northern Ireland.

Chair: I think you said UKREP—I think you meant the UK Mission.

Joël Reland: Yes.

Q53 **Chair:** You also said something about how they do things. I think you implied that they weren't doing a very good job; I'm not quite sure.

Joël Reland: I don't know the nth detail of the situation, but my impression is that there is limited emphasis on either trying to influence any member state decision-making within the EU, or systematically reporting back on regulatory changes coming down the line from Brussels that are going to have an impact on the regulatory border in the Irish sea.

I am saying there may be more work for Government to do in systematising those processes so that they see them coming beforehand and can either adapt regulations or prepare Northern Irish and British business for those changes as they are coming.

Chair: Okay; no doubt they will have a comment to make on that.

Q54 **Gavin Robinson:** Mr Reynolds, broadly, do you agree with that? Moving the questioning on, you will know the Government published a White Paper in July and outlined the prospect of a dual regulatory system that they see as the solution to the Protocol constraints on regulation. How do you feel that would work? Would it work? Would it solve the clear barrier there is for the UK Government regulating for the entirety of its own country?

Barney Reynolds: First of all, I do agree that the Protocol creates barriers within the UK at the moment for goods and agriproducts, where EU law applies in Northern Ireland. At the moment, because we haven't diverged that much, they are not as significant as they will be, when, for instance, the REUL Bill comes in at the end of 2023 or whatever deadline is chosen for that.

I think it is relevant to paint a picture of the sort of things that the UK would then look at doing in order to revert to our common law method. It would be looking at provisions of the inherited EU law that deal with liabilities, where generally we rely on the courts; statements of common sense, where we rely on case law; statements of rights, where people are presumptively free; verbose and unnecessary drafting; aspects of the law

Comment [SL]: <TimeTag ServerDate="26 October 2022" ServerTime="15:11:33" ServerTimeZone="15:11:33" LocalTime="GMT" />

Comment [SL]: <TimeTag ServerDate="26 October 2022" ServerTime="15:12:18" ServerTimeZone="15:12:18" LocalTime="GMT" />

that derive from the cross-border or financial arrangements of the single market—I mean, in financial services, which is not totally unpointless to override, but there are a lot of them; and then the greater use of industry codes and statements of standards.

I do not think we would necessarily adopt the precautionary principle in quite the same way as the EU, or at all. It is a different way of looking at inventions and so on. Then there is the purposive method of interpretation that I have mentioned, as applied by the EU.

Rolling forward, to the end of 2023 or whenever, we are going to have a very different scheme in GB. Unless an adjustment is made to the Protocol, it is going to be dramatically different going across the Irish Sea to Northern Ireland, and visibly different in due course.

On dual regulation, this was of course because there are three possible ways that anyone has come up with to solve for an invisible north-south border on the island of Ireland. There are alternative arrangements, which the EU has rejected on theoretical grounds, without engaging with the practicalities on the ground, in terms of trying things out, which is more of a common law method. There is mutual enforcement, which is like a legal guarantee—we do the job for you and effectively pay fines if things go in breach, and you do the same, so it is mutual.

There is then the scheme that has been adopted, where EU law applies in Northern Ireland. All that does, however, is shunt the border to the Irish Sea, which creates the problems we are talking about. Dual regulation only partially solves that, and I think it is ill conceived. In a way, the devil is in the detail of what people actually mean by it.

The Command Paper was not fully fleshed out, but appeared to mean that particular manufacturers in Northern Ireland—ones that form part of EU supply chains, send things across the north-south border a lot, do not want any checks at all and want to continue the Protocol methods—would be able to opt into an EU law zone. The EU would then have no need to impose any checks at the border at all, whether under mutual enforcement or alternative arrangements.

Actually, however, all that means is that you then have to ensure that EU law—not just the good standard of things crossing the border, but how they are made in the factory and how everything is done on British or UK soil—is complied with. Who is going to do that? It seems a stretch to imagine that the EU will accept that working in any way where the UK is the sole arbiter of whether the EU's standards are complied with. Also, on the point of interpretation, the EU is likely to insist that that will be back into the ECJ.

More so, the EU is likely to insist that EU state aid law applies—the so-called level playing field mechanic, which is highly politicised in the EU. The mechanic is designed to ensure that there is no improper subsidisation that would give people in the north, for example, an advantage over people in the south.

Comment [WJG]: <TimeTag ServerDate="26 October 2022" ServerTime="15:14:58" ServerTimeZone="15:14:58" LocalTime="GMT" />

Comment [WJG]: <TimeTag ServerDate="26 October 2022" ServerTime="15:15:15" ServerTimeZone="15:15:15" LocalTime="GMT" />

Comment [WJG]: <TimeTag ServerDate="26 October 2022" ServerTime="15:15:44" ServerTimeZone="15:15:44" LocalTime="GMT" />

Comment [WJG]: <TimeTag ServerDate="26 October 2022" ServerTime="15:16:07" ServerTimeZone="15:16:07" LocalTime="GMT" />

Comment [WJG]: <TimeTag ServerDate="26 October 2022" ServerTime="15:16:24" ServerTimeZone="15:16:24" LocalTime="GMT" />

Comment [WJG]: <TimeTag ServerDate="26 October 2022" ServerTime="15:16:42" ServerTimeZone="15:16:42" LocalTime="GMT" />

Where you then are is back into the current problems with the Protocol in relation to those zones, but with additional points. You would have an additional point of who is in charge of the zone. Where does it start and stop? Is it fenced off? How do you deal with perimeter issues? What about things that cross from one to another? If someone drives from the zone across UK territory into Northern Ireland, what happens if the truck stops on the way?

If you are going to approach this theoretically, with a civil code-based method, you will tie yourself in knots on conceptual issues. On the state aid front, you will also tie yourself in knots. For example, if the UK builds a new motorway to the new EU law zone—for whatever reason—is that state aid subsidisation of manufacturers in that zone which then needs to be controlled by the Commission? On the face of the concept or notion of state aid, yes.

What about the perimeter? Will there be fences? Who is going to police the perimeter to ensure that things do not seep—that we do not have smuggling—in and out of the zone? All you are doing with the EU zone idea, it seems to me, is creating the same problems in microcosm, but because it is in microcosm within the same territory, it is even more complicated than otherwise and exceedingly difficult to unpick. I don't think it is a good idea at all.

Q55 **Chair:** Mr Reland, will you be kind enough to comment on that?

Joël Reland: The Protocol and its solutions are pushing the extent of my research area. I would point you to the fact that we as an organisation have recently published a report on the Protocol, with various solutions that might exist for managing it. I would direct the Committee towards that.

Chair: Very kind—thank you. We have to move on, because we are running out of time. Mr Smith.

Q56 **Greg Smith:** Good afternoon. Some of the comments you made in answer to the Chair's first questions might get repeated, but I will try to form my question in a way that will get some new evidence for the Committee. As has been acknowledged, we have kept in the form of retained EU law many of the rules that applied while we were a member state and we have empowered our own regulators to perform functions previously undertaken by EU agencies.

Notwithstanding some of the comments made, in particular by you, Mr Reynolds, with your views on the UK's better—to bring this down to its lowest common denominator—system than the EU's, is it even desirable to replicate the EU system that we were part of? In answer to those questions, could you reflect on whether or why a simplified framework would work better for the UK? Inherent to that, what difficulties might we face regulating from scratch? Let's start with Mr Reynolds.

Barney Reynolds: I do not see it as being sensible to carry on the EU scheme; we are inevitably moving out of it anyway. At the moment we

Comment [WJG]: <TimeTag ServerDate="26 October 2022" ServerTime="15:17:08" ServerTimeZone="15:17:08" LocalTime="GMT" />

Comment [WJG]: <TimeTag ServerDate="26 October 2022" ServerTime="15:17:12" ServerTimeZone="15:17:12" LocalTime="GMT" />

Comment [WJG]: <TimeTag ServerDate="26 October 2022" ServerTime="15:17:39" ServerTimeZone="15:17:39" LocalTime="GMT" />

Comment [WJG]: <TimeTag ServerDate="26 October 2022" ServerTime="15:18:20" ServerTimeZone="15:18:20" LocalTime="GMT" />

Comment [WJG]: <TimeTag ServerDate="26 October 2022" ServerTime="15:18:41" ServerTimeZone="15:18:41" LocalTime="GMT" />

Comment [ME]: <TimeTag ServerDate="26 October 2022" ServerTime="15:19:53" ServerTimeZone="15:19:53" LocalTime="GMT" />

have a common law system that we are running for post-EU statutes and bits of case law that are nothing to do with the EU acquis. Then we have an inherited EU scheme, which is interpreted under entirely different methods, as I have touched on—not just the purposive method but other aspects as well, and how it has been produced.

We have two systems sitting side by side. The policy intention, I presume, under the REUL Bill, is to remove the EU bit and replace it with common law bits. Part of the way it does that is to remove the purposive method of interpretation as applied by the EU and inherited EU principles, and so on. That inevitably means that we are transitioning. Whether we like it or not, there is a transition.

You then have a scheme of law created under different circumstances, by different people and for different purposes, being applied side by side with our scheme. The courts are then faced with interpretation issues, where they will have regard to EU decisions and so on. That is a recipe for a bit of a mess, quite apart from the fact that it is a wasted opportunity for something much cleaner, clearer and crisper that attains legal certainty in the way that only the common law system can achieve. That is why these countries that have the choice and want to seek competitiveness through law are coming to use our system. Why do we not have faith in it ourselves?

Joël Reland: There is an assumption that simplified regulation is always better regulation. That needs to be tempered against the regulatory reality, which is that the EU is a hegemony in the area of the world that we exist in. A lot of the rules that it sets become the global standard, or certainly the regional standard, whether we actively conform to them or not.

There may be an argument that, for example, GDPR is sub-optimal for the UK: it imposes excessive restrictions on small businesses in particular, and it is quite bureaucratic. We need to think carefully about what the flip side of reforming GDPR is: you would likely lose the adequacy agreement that we have with the EU, which would complicate life for a number of businesses that share personal data across the EU border.

There are costs that inevitably come with diverging from the EU rulebook. They need to be weighed up carefully by Government as they go through the process of reviewing EU law. That is why I think that the deadline of 2023 for the retained EU law Bill is quite ambitious, because it gives quite constrained time for civil servants to go through and make full assessments of the potential impacts of divergence. A lot of the reforms currently in train have been going on for a year or two, maybe even three. We have not necessarily come to full conclusions on the replacement legislation that we would like.

The idea of trying to condense so much simplification into a timeline of just over a year seems to carry significant risks that you end up with replacement legislation that is sub-optimally designed, because it has not

Comment [ME]: <TimeTag ServerDate="26 October 2022" ServerTime="15:24:47" ServerTimeZone="15:24:47" LocalTime="GMT" />

Comment [ME]: <TimeTag ServerDate="26 October 2022" ServerTime="15:21:49" ServerTimeZone="15:21:49" LocalTime="GMT" />

been given due time to be reviewed by all necessary parties, and you may have unwanted implications down the line.

Q57 **Greg Smith:** May I briefly ask you a supplementary question? That is a clear argument within the setting of our relationship with the European Union, but the UK is forging trade deals in goods and services—we have Australia and New Zealand going through at the moment, and a much bigger trade deal with Israel happening. On the other side of that coin, if we simplified into regulation in the UK interest, or went to the common law system that Mr Reynolds spoke about, would that not create a barrier in our relationship with existing trade partners outside the EU and new trading partners as the new trade deals come through?

Joël Reland: Potentially, yes. A good example might be what we want to do with gene-editing regulations. We are reviewing that at the moment, as is the EU. There is a possibility that we come out with a reformed set of rules that are closer to, say, Argentina's or America's than the European Union's.

Yes, one side might trade more with the US than the EU as a consequence, but a finely balanced judgment must be made in each case about whether the benefits of, perhaps, enhanced trade with the US in a particular area will justify diminished trade with the European Union. We need to think carefully about who the more important partner for businesses is in those particular contexts.

Businesses in general value stability and predictability, so reform and change for the sake of it is something they would rather avoid. Again, if we come back to this 2023 deadline, there are a lot of businesses that do not know what rules they will be working to in a year's time. There are international businesses that may not know what standards they will have to meet to import into the UK or establish new connections in the UK, and that creates uncertainty and detracts from investment.

Again, there may be a lot of ideas that, in theory, look good and facilitate new opportunities, but have more mundane and everyday costs for businesses, which is something that the Government need to be alive to as the central concern.

Q58 **Greg Smith:** Mr Reynolds, I sense you have a view on that, too.

Barney Reynolds: This is all, in a way, legal science because ultimately these are legal provisions. We have the people who can do this quickly. We have a very significant, international and market-leading legal services sector, and we have the people who can do this quickly. It is not doing it for the sake of it.

On GDPR, we need to be careful of on/off switch-type judgment calls. It is not a question of "Stay still and you get this" or "Change and you get that"; it is much more subtle than that. Hence, other countries, when looking to craft their regimes, are paying heed to some of these issues, but they are frozen in aspic with their rules saying, "Oh, we don't dare change this because these people will be upset with us." It does require

Comment [ME]: <TimeTag ServerDate="26 October 2022" ServerTime="15:23:57" ServerTimeZone="15:23:57" LocalTime="GMT" />

Comment [ME]: <TimeTag ServerDate="26 October 2022" ServerTime="15:24:44" ServerTimeZone="15:24:44" LocalTime="GMT" />

Comment [MA]: <TimeTag ServerDate="26 October 2022" ServerTime="15:26:24" ServerTimeZone="15:26:24" LocalTime="GMT" />

Comment [MA]: <TimeTag ServerDate="26 October 2022" ServerTime="15:26:25" ServerTimeZone="15:26:25" LocalTime="GMT" />

very granular analysis and a lot of care, attention and discussions, but it is just not the case that we cannot change things.

Financial services equivalence is another area where the EU may, at some point, be interested in equivalence arrangements for financial services, but, as drafted, its equivalence rules are based on outcomes, not a line-by-line, copy-out method. The devil is in the detail. Copying out and doing exactly the same thing is not necessary, and we need people to do this quickly who have a grasp of the difference between what we are obliged to do internationally, what international bodies might like us to, what we do not have to do, what other countries are doing and, obviously, what other jurisdictions like the EU are doing.

On timing, the other thing is that we do need to do it all at once. There are some people who say, "Well, let's nibble away at this over years". India has only just got rid of its version of the Companies Act 1948 from the UK. As a fellow common-law country, we are effectively living with an alien situation operating on different methods. You can argue about whether there were benefits from that alien system, but it is an alien system. It does not seem sensible to leave this. It all needs to be looked at once.

For industry that is worried about change, this is predominately to do with lightening standards and getting legal certainty, which industry really wants. It is not to do with adding new points to the EU acquis, generally speaking. It is not the case that industry will be faced with new costs. If it is done right, there will be new competition, but that will be for the good of everyone. The consumer, industry players and everyone will step up, compete and do better here on our playing field. Then they will be innovating and being entrepreneurial here alongside all sorts of other people, rather like Silicon Valley.

One final point on GDPR: you don't really see big data businesses in the UK, so there is a massive cost to some of this panoply of rules that we are not even talking about. Why is America so far ahead on data? Because it has a far more nuanced data protection regime, and some of these 10,000-foot pronouncements about the Californian equivalent being the same as GDPR and so on are just incorrect.

Q59 **Chair:** Would you not agree that the idea of having two separate statute books, one of which is governed by the supremacy of EU law, as I said in my contribution last night, and another one based on the post-Brexit situation where we have our own law making—two statute books and two sets of decisions taken by what effectively would be one apparent legal system—is completely contradictory and more likely to generate uncertainty?

There is another thing, if I may put the question to Mr Reland. On the accreditation of standards issues, I have been very intrigued by the fact that we have got a brilliant set of standards systems that are available to the whole world, many of which turn out to be the rules that are ultimately adopted by the WTO and all the rest. So, for practical purposes, it is not just a binary question between the EU and the UK. It is

Comment [BD]: <TimeTag ServerDate="26 October 2022" ServerTime="15:31:05" ServerTimeZone="15:31:05" LocalTime="GMT" />

the fact that there is a system of standards accreditation, which is British-based, and countries all over the world use the British system, anyway, so that is where the origin of this is. I just wondered whether you had any comment to make on that before we move on to Margaret Ferrier.

Joël Reland: On the two theories of law and having these two sets of laws derived from different origins, I question whether the notion of common law on the one hand and EU-derived law on the other is really what is preoccupying businesses. I think they are more concerned with very significant procedural shifts rather than those technical origins. It is about what they are dealing with in their day to day which matters most. There is clear evidence that this is causing difficulty for companies.

Chemicals in particular would be a good example of where we have created this UK REACH system, which largely replicates what the EU REACH chemicals regulation system was doing. I think it cost £500 million for companies to comply and register with the EU system originally. The estimated cost of now transitioning to this new British system and copying databases over is estimated to be a minimum of £1.5 billion, so there is a major cost to businesses from making this move, and it is not necessarily going to substantively change very much in terms of how we regulate chemicals.

Again, we need to come back to this question of how significant is the material, practical regulatory gain for a business versus how big are those material, practical regulatory changes. I would say that is what is at the forefront of people's minds.

On the standards question, it is possible that I am not quite following what you are getting at, Chair.

Q60 **Chair:** We have a body in existence here in the United Kingdom to do with accreditation of standards, and the methodology that lies behind it, which is universally not only welcomed but is used, is at the heart of an awful lot of the international regulatory systems on standards throughout the whole world. That is the point I am making. So we have an indigenous, extremely high-calibre accreditation system that is adopted throughout the world. We are home and dry on that one. There are systems available for the United Kingdom to create its own standards, and that is basically what we are helping the rest of the world to do as well.

Joël Reland: Yes, I think there is a desire to have common standards as far as possible. That is what business generally hankers after. Again, I am possibly not quite familiar with the exact details that you are talking about, but, in general, if we look at something like medical devices and new regulation, the UK is pushing forward with a regime that aims to establish world-leading standards, with some of the highest regulatory systems in place for assuring the quality of products, and that is likely to be aligned with what is being pursued in other jurisdictions. It is likely to set standards that are going to be followed by others, but, again, the

Comment [BD]: <TimeTag ServerDate="26 October 2022" ServerTime="15:30:10" ServerTimeZone="15:30:10" LocalTime="GMT" />

Comment [BD]: <TimeTag ServerDate="26 October 2022" ServerTime="15:34:47" ServerTimeZone="15:34:47" LocalTime="GMT" />

Comment [BD]: <TimeTag ServerDate="26 October 2022" ServerTime="15:32:43" ServerTimeZone="15:32:43" LocalTime="GMT" />

Comment [BD]: <TimeTag ServerDate="26 October 2022" ServerTime="15:33:48" ServerTimeZone="15:33:48" LocalTime="GMT" />

thread that comes back to that is that you are having a unifying system between the UK and the EU, and potentially other jurisdictions as well. The idea is that you make them as replicable as possible. The risk of divergences when they are not replicable is when you have the problems.

Chair: I mentioned the AstraZeneca vaccine in the debate last night. That was a world-beater from the beginning, and other countries came up with their own versions. What the EU actually did was attempt to stop AstraZeneca's from being able to be sold, on some pretext that it came up with, with a regulation. Admittedly, the EU abandoned it because it was such a dreadful thing to do, because it would actually prevent lives being saved.

That did get abandoned, but that is what concerns a lot of people, and quite rightly so. We came up with a world-beating standard, then the EU intervened with a regulation, saying at the beginning of that process that it was prohibited from being supplied to the UK. The EU abandoned it within a couple of days, but that does not alter the fact that it demonstrated that it did not really want the competition of the UK, and we had difficulties with the French over that as well. I just make that as a general point. I am sure you recall that rather extraordinary situation. It did not last very long, but it is indicative.

Q61 **Margaret Ferrier:** Mr Reynolds, in which policy areas are the EU most active and therefore pass a lot of laws that affect member states? How easy or difficult will it be for the UK to legislate for those relevant sectors of the economy, moving forward, and will it need to?

Barney Reynolds: Financial services is a good example of that. There are massive swathes of pan-EU law, which we had a hand in, but, for the reasons I have explained, are not representative of our methods. That area continues to be built out, in our absence, in a way that is more obviously inconsistent with our methods. It is even more controlling of the market and seeks to control where jobs are through regulation and so on. I think that we have the capacity to do very well in that area, and others, by doing our own thing.

Going back to the last point, I differentiate between things that arise, of necessity, as a result of Brexit, which one could take a view on either way, and then, once we have our own system—which seems to be inevitable, whether we would like it or not—what we do with it. What we do with it in financial services, with our methods—this is represented in the Financial Services and Markets Bill—is that we are devolving the inherited acquis down to the regulators' rulebooks, so that the regulators can manage those rulebooks and remove or amend any of those rules. It will be far more nimble.

I think that, if we do it properly—that means getting going now and being thorough—we can have fewer rules, achieving the same standards, with greater clarity and more market activity, innovation and entrepreneurialism here. I really do think that. That will be true in many other high-end services sectors, and even in other areas.

Comment [DJ]: <TimeTag ServerDate="26 October 2022" ServerTime="15:36:19" ServerTimeZone="15:36:19" LocalTime="GMT" />

Comment [DJ]: <TimeTag ServerDate="26 October 2022" ServerTime="15:36:37" ServerTimeZone="15:36:37" LocalTime="GMT" />

Comment [DJ]: <TimeTag ServerDate="26 October 2022" ServerTime="15:38:21" ServerTimeZone="15:38:21" LocalTime="GMT" />

Q62 **Margaret Ferrier:** Mr Reland?

Joël Reland: Where is the EU's regulation most significant—was that the question?

Margaret Ferrier: Yes.

Joël Reland: Well, I mean, there are many areas. Anywhere in particular—as I was saying at the start—that affects the function of the single market and the customs union, there is a blanket or large degree of regulation, which has to be conformed with. If we are looking at where the UK might make its own policy, I think that, naturally, the areas that are easiest to develop UK-specific regulation are those where the EU regulation is least. That is just intuitive, because there is less for business to move away from, less that it is accustomed to, and potentially less risk of international companies not wanting to move on to the British system because they are already accustomed to the EU system.

The greatest opportunities for reform lie where EU regulation is most minimal. Where might that be? I think that some of the most interesting areas are to do with AI and cryptocurrency, and those kinds of areas. Again, the EU is planning a regulatory framework—as we are—on AI, so the UK has an opportunity to impose regulations before the EU. It is a single country, rather than a 27-member bloc. That gives a certain degree of flexibility to move more quickly.

I was talking before about the EU as a regulatory hegemon; generally, businesses comply with EU regulation first, because it is a bigger market for them. But in terms of AI in particular there is a need to develop AI goods before they go finally on to the market. You need to be testing and refining them. The way that the EU is approaching AI regulation is very much a comprehensive framework. They want to set definitions about what constitutes certain types of technology and what constitutes a risk.

The UK approach is more flexible. It is meant to be growing more organically with more autonomy for sectoral-specific regulators and is therefore more easily updated as technology evolves. The UK might make itself a more attractive environment for AI software development, because you have that slightly more flexible regime.

At the end of the day, big AI companies are still going to want to sell into the EU single market. That is ultimately a much bigger global market for finished goods. But as they move towards that, the UK could be the slightly lighter-touch regulator on the border, potentially, which has similar but not the same regulations to the EU. There you have an element of potential symbiosis that comes from the fact that they have separate but complementary regulatory systems that are being developed as we speak. It is much harder to do that when the EU systems are already in place and are already fully adhered to by international companies.

Q63 **Margaret Ferrier:** Coming back to you, Mr Reynolds, and turning it on its head, are there any retained EU laws that you would single out as worth retaining, and why?

Comment [DJ]: <TimeTag ServerDate="26 October 2022" ServerTime="15:38:21" ServerTimeZone="15:38:21" LocalTime="GMT" />

Comment [DJ]: <TimeTag ServerDate="26 October 2022" ServerTime="15:38:28" ServerTimeZone="15:38:28" LocalTime="GMT" />

Comment [DJ]: <TimeTag ServerDate="26 October 2022" ServerTime="15:39:32" ServerTimeZone="15:39:32" LocalTime="GMT" />

Comment [SL]: <TimeTag ServerDate="26 October 2022" ServerTime="15:41:20" ServerTimeZone="15:41:20" LocalTime="GMT" />

Comment [SL]: <TimeTag ServerDate="26 October 2022" ServerTime="15:41:20" ServerTimeZone="15:41:20" LocalTime="GMT" />

Barney Reynolds: I believe we should now commence a process of evaluating every single bit of inherited EU law. We have got the people to do it, and we can do it quickly. I wouldn't prejudge the results of that, but we should look at every single bit of it and think about these questions.

I don't think there is an obvious bit that we should retain, because of this fundamental point that it is produced on a different method. I don't think that should be underestimated, as to the implications of having laws using a different method in our system—our system is not very good at coping with that—and having it side-by-side with ours. I would look on the basis of presumptively moving back to the common-law method for everything, but if there is something where it makes sense, as Mr Davies has suggested, to maintain a particular approach, even with the same wording—that is a question—then we can look at that.

Q64 **Chair:** And would that not also apply to the system of interpretation, as was discussed in the debate last night? Namely, you can adopt a parallel law where it is seen to be beneficial, because we could have produced it ourselves. Therefore, if we are able to do so, there would not be any harm in adopting a similar law, but applying a different system of interpretation because, on that basis, you then have the certainty that comes with the quality of our judicial system.

Barney Reynolds: I agree, and the additional thing I would do is, when we get to exporters and exports, I would look at whether we have two regimes in certain industries—one for people doing things here, innovating and being entrepreneurial and incubating products, and another, where they want to then sell, where there is a compliance check and conformity assessment for the specific things required for that sale.

It is incredibly nuanced, but I don't think we should start on the basis that there are whole swathes of law that are somehow fine. We need to dig into that and find out whether that is really true. All of this economic research is not there for nothing. It demonstrates that there is a fundamental economic difference between the two methods. Why aren't we using our own one? Why aren't we prepared to move back properly to ours? As part of that, we need to evaluate everything and think about it very carefully, but with lawyers, as well as with policy people. Ultimately, this is law. We have got the people who can do all of that.

Chair: I think a Division is coming up very soon. If Richard Drax would be kind enough to wait a little bit, I will call John Baron, who asked if he could come back in.

Q65 **Mr Baron:** First, I declare an interest, and I refer Members to my entry in the Register of Members' Financial Interests. I worked in the City before coming to this place, and I still have a keen interest in a form of investment fund called an investment trust. You may be aware that on the continent, and in the EU, they do not exist, but the EU attempted to regulate for them—clumsily, according to our people, who include the FCA, the AIC and so forth. This is all part of the PRIIPS regime, as you will be aware. It has been clumsy; it has added a layer of bureaucracy; it

has not helped. If anything, it has been misleading, in terms of how risk is assessed, relative to return. We are talking about close-ended investment trust companies with a limited number of shares.

We have some very big investment trusts in the economy; two are FTSE 100 companies, and they account for myriad FTSE 250 companies. That is the background. I suppose my question is this: when you say, "Let's look at this," there is an underlying assumption that our regulators are up to speed. The whole industry is up in arms about this, and is on the side of the investor. This is an example of where these questions are pertinent. Are our regulators following through? It has been pretty slow going.

Barney Reynolds: The answer is yes, and you are right that there is a concern there. Our system has not shifted its mindset from before to after. We are debating micro-points among ourselves, rather than accepting that there is a big shift, embracing it, and engaging with it. The way to get that to happen is through parliamentary scrutiny and through Select Committees.

On the regulators—I have written separately on this—I believe that the courts should be brought in. At the moment, apart from parliamentary scrutiny, which is inevitably quite high level, there is no ability for a person to complain that a rule was not clearly drafted, or is being applied unfairly or unequally. The courts need to be brought in on that discipline as a matter of separation of powers. If the regulators are required to be predictable and consistent in the application and drafting of their own rules, that will make a lot of the change self-executing.

Q66 **Mr Baron:** Do you sense that there is almost a certain reluctance to take on these responsibilities in certain sectors of our regulatory framework, or is it a question of lethargy?

Barney Reynolds: I am not sure it is either. I think it is a massive intellectual shift—a shift to an entirely different scheme of thought. The regulators do not have many lawyers in them. The FCA has 4,000 people, and out of them—I looked a while back—something like 70 are lawyers. Perhaps it has more now, but it is a tiny proportion. It therefore does not necessarily have the resource to execute the shift.

Once the shift is done, and it is used to it, I think it can keep the whole thing going under the new scheme, but identifying what needs doing, understanding it and doing it properly is a shift that is beyond a business-as-usual infrastructure.

Mr Baron: Mr Reland, do you have anything to add?

Joël Reland: On the very technical financial services elements, no. I do not know the granularity of that. If you have a more general question on financial services regulation, or regulators more broadly, I would be happy to answer.

Q67 **Mr Baron:** That leads me on to my next question. Are there examples of non-EU states with comparable economies regulating differently from

Brussels, and how successful has that been? Is that something you can run with?

Joël Reland: Yes. If we look at the general gravity of movement on the European continent, it is very much towards the European Union. If you look at what is happening with the countries being brought into this European political community, as it is being called—countries such as Ukraine and Moldova—generally the way of engaging with them has been to sign agreements that bring them into a greater amount of EU legal acquis over time, the idea being that you are preparing them for ultimate membership.

That is generally how things have been moving in eastern Europe in particular. There is more flexibility in Norway and Switzerland—those are the two most obvious examples. Norway is part of the single market but has an opt-out around fisheries and more flexibility.

The key thing when you are looking at the nuances of those kinds of regulatory relationships is that the EU has never dealt with a member state that has left and then tried to rebuild the relationship. Norway has opted in over time to parts of the EU regulatory orbit and has built carve-outs within that. That is not totally dissimilar to the way the UK initially joined the European Union. You have stuff like the rebate and opt-outs on issues like home affairs and justice, which Denmark still enjoys on foreign and security policy. That flexibility comes when you are moving in a direction closer to the EU.

There is nowhere quite comparable, in the sense that you come out, you rewrite your relationship and then you rebuild from there. We are in uncharted waters. An interesting question, not just for the next year or two but for the next five or 10, is how future Governments will approach it. Presumably they might want a slightly different flavour of relationship, but I do not know whether anyone will be willing to reopen the TCA, as opposed to tinkering around the edges with SPS agreements—that more technical stuff. It has never been done before, so it is the art of guessing there.

Q68 **Mr Baron:** I have one final, slightly broader question. The financial services of this country—not just the City, but across the United Kingdom—are obviously very strong, but there is a feeling in the market, and certainly in the City, that there has not been a level playing field with regard to access to markets. What do you think the trade-off is between that and what we are seeing and hearing from the EU at the moment? Is there a trade-off? There usually is, but can you give us a bit more detail?

Barney Reynolds: After we left, the EU have become more controlling of financial regulation than before, because we had a tempering effect on that. There is a trade-off between access, particularly on-the-ground access—having marketing people on the continent in a light-touch, cheap way—and the regulatory standards that we apply, most likely because the EU want us to adopt their standard even to consider equivalence arrangements, which would allow that access to be easy. As against that,

Comment [HJP]: <TimeTag ServerDate="26 October 2022" ServerTime="15:51:37" ServerTimeZone="15:51:37" LocalTime="GMT" />

Comment [HJP]: <TimeTag ServerDate="26 October 2022" ServerTime="15:52:08" ServerTimeZone="15:52:08" LocalTime="GMT" />

there is no indication that they are prepared to grant equivalence on any basis, so it is somewhat of an academic question.

That is why we need to embrace our own techniques properly. So far, we haven't. We were becoming steadily less competitive before Brexit because of these EU rules anyway. It was quite a noticeable phenomenon, because it was too much of a wet blanket of rules and no air pockets to get through on the way. If we make ourselves a centre for entrepreneurialism again, people will seek out the cheapest capital and the best liquidity, and the customers will come back to the market. That is what we should be focusing on.

There are two other things. On the systems for joining the EU readily, one needs to look at the underlying legal method. The main methods in the world are the common law method, and there are two code-based methods: the French one and the German one, which are similar in many ways. Most countries in the world follow one or other of those two methods. The UK and Ireland are the only common law countries that were in the EU—Ireland is still there—so there is a massive affinity in law-making technique between code-based countries and the EU system, and they probably don't think of it as such a major thing.

Looking around the world, Singapore and Hong Kong, which are much smaller economies, do very well in financial markets on the "customer comes to the market" phenomenon. That is where we have historically played, and I think we should do so again. Then bigger economies include Japan.

Q69 **Geraint Davies:** I want to come back to something that Barney Reynolds said about how now, in the financial services sector, we will have more flexibility, innovation, sovereignty and all the rest of it. Am I not right in saying that, while we were in the EU, the European Banking Authority—about 150 people—was based in London? Obviously, there was the European Securities and Markets Authority—150—based in Paris. But on top of that, we had the Bank of England, with about 2,000 people, and the FCA, with about 3,000—I think you just upgraded it to 4,000—and they were basically doing all the heavy lifting on all the financial directives.

In other words, we were the drivers of the regime in which financial services were working in Europe. Now, we are in a situation where they are making up their own laws and so, far from being in a better position, we are in a worse position, aren't we, in so far as we have to follow their leads and therefore we have to resort to unlimited bankers' bonuses and all this sort of stuff?

Barney Reynolds: But that's disconnected. The bankers' bonus cap is a separate policy—

Geraint Davies: What I mean is that there has been a huge leakage of financial services experts from London into Frankfurt and Paris.

Comment [BE]: <TimeTag ServerDate="26 October 2022" ServerTime="15:55:31" ServerTimeZone="15:55:31" LocalTime="GMT" />

Comment [BE]: <TimeTag ServerDate="26 October 2022" ServerTime="15:55:35" ServerTimeZone="15:55:35" LocalTime="GMT" />

Comment [BE]: <TimeTag ServerDate="26 October 2022" ServerTime="15:55:43" ServerTimeZone="15:55:43" LocalTime="GMT" />

Barney Reynolds: Well, we mishandled Brexit in the sense that we bought into a phoney narrative of a cliff edge and assisted in the moving to the EU of over £1 trillion of assets and thousands of jobs that didn't need to happen. That was an unfortunate moment in our history. We didn't need to do that.

Q70 **Chair:** You are referring there to Project Fear rather than to anything else.

Barney Reynolds: Yes, and that's just unfortunate.

In terms of where we were, financial services regulations were made by the European Commission. Our regulators had some input, but they did not wield the pen or draft it; they were not in charge of it. The process in the EU system is that the Commission makes the rules that are level 1 texts. That then goes through the European Parliament and Council.

In terms of ESMA, the EBA and EIOPA, which are the three so-called European supervisory agencies, one—the EBA—was based in London, as you say. One was based in Paris with, in fact, more relevant powers given to it, for entirely political reasons, than the EBA; an example is powers over derivatives, which would logically have been with the EBA. The other, for insurance and pensions, was based in Frankfurt.

But just because the EBA was here did not mean that we controlled it—quite the contrary. It was an EU regulatory agency here and its purpose, alongside ESMA and EIOPA, was to ensure that our regulators were not taking a different view on common provisions—the common rulebook. It is not the case that we somehow controlled this and if we had more people here, we would be more in charge. That is not right.

The other point I would say is on the direction of travel of EU regulation. If you look at the three-step process—the first version of the passports, the financial services action plan in 1999 and then the 2007-08 roll-out—that led to these three ESAs being introduced in order to stop regulators taking different views, the direction of travel increasingly, as we are seeing in terms of money laundering, is to have a pan-EU agency making the decisions.

If we had stayed in, there might been some disciplines in London, but again, it wouldn't have been UK controlled. That is not how the EU legal architecture works. There is a jobs aspect and then there is a control aspect, but already the common rulebook was common; it was not our rulebook. It was a complete fiction to think we were somehow controlling this market.

Q71 **Geraint Davies:** But we cannot get access to that market so easily now, can we?

Barney Reynolds: It depends what for. You can get access. If the customers come to the market, as it were—there is the concept of reverse list station, where anyone in the EU can reach out from under the blanket

Comment [BE]: <TimeTag ServerDate="26 October 2022" ServerTime="15:56:00" ServerTimeZone="15:56:00" LocalTime="GMT" />

Comment [BE]: <TimeTag ServerDate="26 October 2022" ServerTime="15:56:03" ServerTimeZone="15:56:03" LocalTime="GMT" />

Comment [BE]: <TimeTag ServerDate="26 October 2022" ServerTime="15:56:24" ServerTimeZone="15:56:24" LocalTime="GMT" />

Comment [BE]: <TimeTag ServerDate="26 October 2022" ServerTime="15:57:14" ServerTimeZone="15:57:14" LocalTime="GMT" />

Comment [BE]: <TimeTag ServerDate="26 October 2022" ServerTime="15:58:02" ServerTimeZone="15:58:02" LocalTime="GMT" />

Comment [BE]: <TimeTag ServerDate="26 October 2022" ServerTime="15:58:06" ServerTimeZone="15:58:06" LocalTime="GMT" />

of EU law and opt to be treated solely under UK or anyone else's law and regulation.

Q72 **Chair:** Would I be right in saying that in fact the financial services provided by the City of London are anyway back at the very top of the world—subject only, perhaps, to New York? Is that more or less the situation?

Barney Reynolds: In the latest survey, we are, I think, second to New York.

Chair: Despite all the doom and gloom—

Barney Reynolds: Despite the doom and gloom. Our real competitor for financial services is New York, another commonwealth centre, not the continent, but there are ways in which continental customers can access the City, as they have done for centuries. They do so by coming here, in the modern world—through this reverse list concept—virtually. That is particularly relevant to crypto-assets. It is not the case that it all has to be done on the ground, although there are some bits of business that are still done in that way—where those rules require elements to be done there.

Chair: John, Richard Drax is being incredibly patient.

Mr Baron: I will buy him a beer later; don't worry.

Chair: Would you like to ask a quick one, John, and then we'll go to Richard? Thank you, Richard; you are very patient.

Q73 **Mr Baron:** There are areas, like financing for start-ups and so forth, in which the City is increasing its lead, but let me perhaps reinforce what you have said, Mr Reynolds. This relates to the question that I asked earlier. When it came to the control aspect, we—the FCA and the AIC—did input on all the PRIIPs regime, but what came back was totally alien to what we wanted. Investors are now being quite literally—this is the language used by the AIC—misled with regard to risk profile relative to reward. We had no control over that whatever, despite lobbying very hard.

Barney Reynolds: That is right. The PRIIPS example is a good one, and it is in level 1 text. Even if it is in level 2, you cannot change it, except through some further process of legislative change. It is a constant process of negotiating texts, which, like in the case of crypto for MiCA, the crypto regulation fee is pretty much out of date as soon as it is passed.

Mr Baron: Thank you very much.

Q74 **Richard Drax:** Good afternoon to you both. My first question is on the regulators and the second is on parliamentary scrutiny. My first question is to you both. Do UK regulators have the resources needed to take on the extra responsibilities that they have been given since the UK's exit from the EU? If not, what can the Government do to help? In an answer you gave earlier, Mr Reynolds, I think you said it can be done pretty quickly.

Comment [BE]: <TimeTag ServerDate="26 October 2022" ServerTime="15:58:36" ServerTimeZone="15:58:36" LocalTime="GMT" />

Comment [BE]: <TimeTag ServerDate="26 October 2022" ServerTime="15:58:44" ServerTimeZone="15:58:44" LocalTime="GMT" />

Comment [BE]: <TimeTag ServerDate="26 October 2022" ServerTime="15:59:17" ServerTimeZone="15:59:17" LocalTime="GMT" />

Comment [BE]: <TimeTag ServerDate="26 October 2022" ServerTime="15:59:17" ServerTimeZone="15:59:17" LocalTime="GMT" />

Comment [BE]: <TimeTag ServerDate="26 October 2022" ServerTime="15:59:26" ServerTimeZone="15:59:26" LocalTime="GMT" />

Comment [BE]: <TimeTag ServerDate="26 October 2022" ServerTime="15:59:16" ServerTimeZone="15:59:16" LocalTime="GMT" />

Comment [BD]: <TimeTag ServerDate="26 October 2022" ServerTime="16:00:01" ServerTimeZone="16:00:01" LocalTime="GMT" />

Comment [BD]: <TimeTag ServerDate="26 October 2022" ServerTime="16:00:32" ServerTimeZone="16:00:32" LocalTime="GMT" />

Comment [BD]: <TimeTag ServerDate="26 October 2022" ServerTime="16:00:37" ServerTimeZone="16:00:37" LocalTime="GMT" />

Comment [BD]: <TimeTag ServerDate="26 October 2022" ServerTime="16:01:07" ServerTimeZone="16:01:07" LocalTime="GMT" />

Barney Reynolds: Yes. There is the getting from A to B point. We are coming out of one system and going into another—inevitably, whether we like it or not—and they might need some help in terms of resourcing, from lawyers in particular, to reconceive the inherited system in a new way, but that process could take a year or so if we put enough resource into it. It could even take nine months with huge resource into it.

There is the business-as-usual aspect, which is managing the new scheme under B, as it were, once we are there, where I do not think they need new resource. They are well set up and they have very good people. It is really just the mountain to climb of getting to the destination. I do not think any organisation is necessarily set up for that level of change in a short space of time.

Q75 **Richard Drax:** The Government would obviously help with this.

Barney Reynolds: I think it should do. I do not know what is planned in that regard, but if we leave it to the regulators to do it themselves, it will be a much slower process.

Q76 **Chair:** By comparison, if I may ask a question at this point regarding the amount of money that might be involved compared with the other billions of pounds that are being spent on other things, would you say that it was a relatively small amount of money in terms of the billions that are being talked about in other fields?

Barney Reynolds: Yes. On the economic upside of moving to our system, we would not have to pay everyone involved because a lot of people would give their time for free, but, to do the whole economy, I imagine it would cost in the low hundreds of millions. You would have to bring in extra parliamentary counsel who might be retired, or Commonwealth retired parliamentary counsel, for instance, for the drafting, and they will need paying. You would potentially have to bring in people to draft the first cut of redrafted schemes and so on. There will be a lot of people.

Where you are asking people to spend two, three or four weeks, and then a lot more, to do nothing else but this, and give up their job to do it, you will have to pay, but a lot of other people could chip in for not very much.

By combining the civil service and our regulators with the private sector, it should not cost more than the low hundreds of millions, and could cost a lot less than that. The benefits could be very significant because you would have a system where businesses can go and innovate. They would know whether they can do something or not and what to avoid, and you do not have that at the moment.

Q77 **Richard Drax:** Hence, as you said earlier, the sooner we get this done, the better.

Barney Reynolds: Speed is of the essence, and I would do the whole lot at once, because it is all entwined and interconnected. If you just take a bit of it, you miss other bits.

Richard Drax: And it will be very disjointed. Mr Reland—*[Interruption.]*

Comment [BD]: <TimeTag ServerDate="26 October 2022" ServerTime="16:01:11" ServerTimeZone="16:01:11" LocalTime="GMT" />

Comment [BD]: <TimeTag ServerDate="26 October 2022" ServerTime="16:01:30" ServerTimeZone="16:01:30" LocalTime="GMT" />

Comment [BD]: <TimeTag ServerDate="26 October 2022" ServerTime="16:01:54" ServerTimeZone="16:01:54" LocalTime="GMT" />

Comment [BD]: <TimeTag ServerDate="26 October 2022" ServerTime="16:01:57" ServerTimeZone="16:01:57" LocalTime="GMT" />

Comment [BD]: <TimeTag ServerDate="26 October 2022" ServerTime="16:02:26" ServerTimeZone="16:02:26" LocalTime="GMT" />

Comment [BD]: <TimeTag ServerDate="26 October 2022" ServerTime="16:03:36" ServerTimeZone="16:03:36" LocalTime="GMT" />

Comment [BD]: <TimeTag ServerDate="26 October 2022" ServerTime="16:03:36" ServerTimeZone="16:03:36" LocalTime="GMT" />

Comment [BD]: <TimeTag ServerDate="26 October 2022" ServerTime="16:03:36" ServerTimeZone="16:03:36" LocalTime="GMT" />

Comment [BD]: <TimeTag ServerDate="26 October 2022" ServerTime="16:03:40" ServerTimeZone="16:03:40" LocalTime="GMT" />

Comment [BD]: <TimeTag ServerDate="26 October 2022" ServerTime="16:03:49" ServerTimeZone="16:03:49" LocalTime="GMT" />

Chair: I am terribly sorry; we have a Division. Mr Drax, you have been cut off at the moment of delivery. We will have to suspend. It usually takes about 10 minutes. We will rejoin one another in 10 minutes' time if that is okay with everybody. Please come back, anyway.

Sitting suspended for Divisions in the House.

On resuming—

Chair: I am so sorry to have inconvenienced you, Mr Reland and Mr Reynolds, but I am afraid that this is how Parliament sometimes works. We have had several votes and we are now in the middle, just before another one. We have a Division on, which we have voted in apparently—I have, certainly.

We have covered almost all the ground so, in the circumstances, rather than going inquorate, I hope you will understand that we have to bring the proceedings to an end. Thank you all for coming, and thank you to the Members who turned up to ensure that we are quorate to deal with the matter. I will be happy to receive any written representations you might like to make on any questions you wanted to raise. Thank you.

Comment [WJG]: <TimeTag ServerDate="26 October 2022" ServerTime="16:39:19" ServerTimeZone="16:39:19" LocalTime="GMT" />