

Committee on the Future Relationship with the European Union

Oral evidence: Progress of the negotiations on the
UK's Future Relationship with the EU, HC 203

Thursday 17 December 2020

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Members present: Hilary Benn (Chair); Mr Peter Bone; Joanna Cherry; Sally-Ann Hart; Antony Higginbotham; Dr Rupa Huq; Stephen Kinnock; Seema Malhotra; Nigel Mills; Nicola Richards; Mr Barry Sheerman; Jane Stevenson; Dr Philippa Whitford.

Questions 1062 - 1143

Witnesses

I: The Rt Hon Michael Gove MP, Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office; Emma Churchill, Head of Border Delivery Group, Cabinet Office; and Brendan Threlfall, Director, Transition Task Force Northern Ireland.



Examination of witnesses

Witnesses: Michael Gove, Emma Churchill and Brendan Threlfall.

Q1062 **Chair:** Good afternoon and welcome to this meeting of the Committee on the Future Relationship with the European Union. Could I begin by asking our three witnesses to introduce themselves for the record, starting with you, Michael Gove?

Michael Gove: I am Michael Gove, Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office.

Emma Churchill: I am Emma Churchill, director general of the border and protocol delivery group.

Brendan Threlfall: I am Brendan Threlfall, director in the transition taskforce on withdrawal agreement issues.

Q1063 **Chair:** Thank you very much indeed. We understand, of course, that Lord Frost is not able to join us today because he is otherwise engaged.

We often hear that about 95% of the potential agreement has already been reached. I just wanted to ask you, Mr Gove, what areas it covers. I am not asking you to specify the precise detail; these are really very simple questions to do with topics, and a yes/no will suffice as an answer. Does what has been agreed so far cover something on mutual recognition of type approvals in relation to automotive products?

Michael Gove: I don't know.

Q1064 **Chair:** You don't know?

Michael Gove: I don't know.

Q1065 **Chair:** Right. What about trade in organic products?

Michael Gove: Yes, I believe it does.

Q1066 **Chair:** Right. SPS measures?

Michael Gove: Yes, I believe it does.

Q1067 **Chair:** Thank you. Customs and trade facilitation?

Michael Gove: Yes, I believe it does.

Q1068 **Chair:** International road transport?

Michael Gove: Yes.

Q1069 **Chair:** Cross-border trade in services?

Michael Gove: Yes.

Q1070 **Chair:** Mutual recognition of professional qualifications?

Michael Gove: Yes.

Q1071 **Chair:** Audio-visual services?

Michael Gove: I believe so.

Q1072 **Chair:** You believe so. Digital services?

Michael Gove: Yes.

Q1073 **Chair:** Intellectual property?

Michael Gove: Again, I believe so.

Q1074 **Chair:** Energy?

Michael Gove: Yes.

Q1075 **Chair:** Mobility and social security co-ordination?

Michael Gove: Yes.

Q1076 **Chair:** Very good. Participation in programmes such as Horizon Europe and Erasmus?

Michael Gove: Yes.

Q1077 **Chair:** Thank you. Participation in the EU's Copernicus satellite programme?

Michael Gove: I do not think we are going to be participating in Copernicus.

Q1078 **Chair:** You don't? What about technical barriers to trade, such as marking and labelling?

Michael Gove: Yes, they should be addressed.

Q1079 **Chair:** They should be addressed. Of all of those, I think the one you said you do not know is mutual recognition of type approval for automotive products.

Michael Gove: I don't, but I will get on to it and see if I can give you an answer before the end of the hour.

Q1080 **Chair:** That would be fantastically helpful. I am extremely grateful to you.

Can I just ask one other question, about infrastructure, before I turn to colleagues? It has been reported that the Sevington inland border facility will not be ready until February. Is that correct?

Michael Gove: We hope that it may be ready in time, but we have alternative facilities at the Ashford Waterbrook site, which should be sufficient.

Emma Churchill: If I may, CDL, the position is that Sevington will be ready for 1 January for the purpose of traffic management, which is one of the purposes that it is being prepared for. You are correct to say that, for HMRC functions—that is, transit and other HMRC functions—we will be using Waterbrook for the month of January, but Sevington will be ready for traffic management purposes from 1 January.

Q1081 **Chair:** By traffic management, presumably you mean parking up lorries to handle the flow?

Emma Churchill: What I mean is if there is disruption and it is required for that purpose, yes.

Q1082 **Chair:** Okay. Are there any other sites that you had hoped would be ready by 1 January that will not be ready in time?

Emma Churchill: No.

Q1083 **Chair:** There are no others? Right. Have you now come to a clear decision and put plans in place for the inland border facility at Holyhead?

Michael Gove: Yes, we do have plans, and Lord Agnew has been in negotiations with the owner of the appropriate site.

Emma Churchill: HMRC and Welsh Government colleagues have been working on that. No announcement has yet been made, however.

Q1084 **Chair:** Ah, okay. That was why I was asking. Lastly, it was reported yesterday that the ports infrastructure fund was quite considerably over-subscribed. Are you going to review the amount of money you are making available? Some of the ports that did not get what they were hoping for are very disappointed, so is that going to impact on their ability to do what is necessary?

Michael Gove: It is certainly the case that there were some ports that received less than they had hoped. Other ports were happy with the amount allocated. I think the most conspicuous example of a port which expressed disappointment was Dover, but much of the infrastructure that Dover sought to bid for was infrastructure that would not have been in place anyway until, I think, around 2023. We are continuing to work with Dover in order to make sure that appropriate investment can be secured for that additional infrastructure.

Another port that I understand expressed disappointment was Portsmouth. It is the case that we are looking with colleagues in other Government Departments to see if we can find other ways of providing the appropriate infrastructure that the port of Portsmouth and the local authority believe is required.

Q1085 **Chair:** Finally from me, following up the question I asked you in the House earlier, Mr Gove, how soon after the text of any agreement, if one is reached, is available can we expect to see the detail of the legislation that would be required to give effect to parts of it?

Michael Gove: We hope within a couple of days.

Chair: Okay, thank you. That's really helpful. Peter Bone.

Q1086 **Mr Bone:** Good afternoon, Secretary of State. The Prime Minister has made it clear that the United Kingdom will thrive whether we have a free trade deal with the European Union or whether we trade on WTO rules, or Australian-style. Would you agree with the Prime Minister that we will



thrive in either case?

Michael Gove: Yes.

Q1087 **Mr Bone:** Given that we know that trading on WTO rules ticks all the boxes from the referendum—it returns control of our trade, returns control of our laws and returns control of our borders—why have we not opted for that, given that we are now on 17 December and the European Union said the latest date that an agreement could be made was 31 October?

Michael Gove: We want to make sure that if we can secure a free trade agreement, we do. You are quite right that, at the moment, the most likely outcome is that we will leave on WTO terms—that we will have an Australian-style outcome—but of course a free trade agreement, removing as it would tariffs on UK exporters, is certainly something to be desired. Of course, were we able to secure the agreement that we want to, we would be the only third country to have a zero-tariff, zero-quota trade agreement with the EU. On the whole—although obviously not at any price—securing free trade agreements with other countries is a good thing. Our colleague the Secretary of State for International Trade has managed to conclude more than 50 free trade agreements during the course of this year, all of which I think are win-wins for the UK.

Q1088 **Mr Bone:** Secretary of State—*[Interruption.]* Sorry about that. Somehow, somebody managed to intervene on our call from outside, which we don't want to happen.

Given that 31 October was the due date and that nothing has changed—there is nothing new—why on earth have we not concluded a deal or accepted that there will be a no deal? Nothing has changed between now and 31 October that could possibly have changed anybody's mind. It is just that either the EU won't say what its final position is or the UK won't. It is not fair on business that we carry on through such a lengthy period, so why are we carrying on, when nothing has changed? Why are we carrying on if there are no new developments?

Michael Gove: The process of negotiations has managed to narrow down areas of difference, and it is certainly the case that there are fewer areas of difference now than there were in October, or indeed July. The areas of difference are still significant—we might have an opportunity to go into them—and they do go to the very heart of the mandate, which you quite rightly referred to, that the country gave the Government in 2016. But again, if we can secure a free trade agreement, that would be preferable.

One of the other things I would say is that overall—and there are divergent views in business—I think a majority of business voices would prefer a free trade agreement to not. But again, businesses are also getting prepared—and are very prepared in most circumstances—for whichever outcome we have. Whether or not we secure a free trade agreement, as we know, we will be outside the single market and outside the customs union, and businesses have got ready for many of the steps that that will entail.

Q1089 **Mr Bone:** Yes, Secretary of State, that is absolutely correct, but on 31



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October, if you had said that that was the absolute deadline, all the things that you have talked about that have been agreed after 31 October would have been agreed on 31 October, because there is no fundamental change in either the UK's position or the EU's. All we have done is make things worse for business. It looks to me a little bit silly that we are carrying on and letting business down like this.

Michael Gove: I can entirely understand your point of view. I think it is the case that business would rather that we went the extra mile. That is certainly the Prime Minister's view and my view. But, of course, we will know definitively by 31 December, because at that point the transition period ends and that is a fixed point in law.

Q1090 **Mr Bone:** Thank you so much, Secretary of State. I wish you and Lord Frost every success.

Michael Gove: Thank you very much, Peter.

Chair: Thank you very much, Peter. Nigel Mills.

Q1091 **Nigel Mills:** So that is a fixed point of law, Secretary of State. Does that mean there are no situations where talks would continue past the end of the year? If there is no deal by then, that is it for a long time.

Michael Gove: Yes.

Q1092 **Nigel Mills:** So there is absolute certainty that there would not be any agreement next year and we wouldn't go back to the negotiating table.

Michael Gove: I think the view has been expressed by some that if there is no agreement by 31 December, we would go back to the negotiating table in a month, two months or three months' time. That would be it. We would have left on WTO terms. It is still the case, of course, that there would be contact between the UK and European nations and politicians, as one would expect, but what we would not be doing is attempting to negotiate a new deal—no.

Q1093 **Nigel Mills:** Thank you. Can I just ask a few questions about the level playing field? Is that the stickiest point of the negotiations or has a way through been found on this not ow?

Michael Gove: There are three areas, which I think everybody knows, that are particularly sticky: the level playing field, what is called governance—or the capacity of either side to take retaliatory measures, if observance of the level playing field is considered not to be adhered to—and fisheries.

Q1094 **Nigel Mills:** Which one is the stickiest? The media report that ways through have been found on the level playing field and enforcement. Is that the case?

Michael Gove: There is lots of media reporting and lots of speculation. I must maintain the integrity of the negotiating process and the confidences that are there. There are some things, understandably, that have been agreed, and I mentioned some of those to the Chair. I will do my best to



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provide additional clarity, but what I cannot do is provide a minute-by-minute update on what has been happening in the negotiations, because, as you will appreciate, serious attempts are being made by good people on both sides to find a resolution. I can say a little bit more about what the nature of the problem is, if that is helpful.

Q1095 Nigel Mills: Please do on the level playing field.

Michael Gove: On the level playing field, the particular issue that we have had difficulty with is a presumption on the EU side that if the EU were to diverge from where we are now—if the EU were to produce new rules, regulations, directives and so on, and they were to be adopted at a European level—and the EU then felt that their adoption of these new standards meant that there was an impact on trade or investment, they could then take measures against the UK, through tariff or other barriers, in order to try to re-level what they might consider to be an unlevel playing field. From our point of view, it is wrong to have a situation where the EU say to us, “You must follow our rules and regulations, which we have adopted autonomously, or we will deny you market access.” So that is the heart of the issue.

Q1096 Nigel Mills: Do you recognise the irony, Mr Gove, that we may end up with tariffs and quotas on the whole of the economy from 1 January to avoid the risk that at some point in the future we might end up with a tariff on a single part of the economy? Many would think that is a slightly pyrrhic victory to achieve in some situations.

Michael Gove: I entirely understand that point of view, but I think it is also very important that we are not placed in a position where we cannot have a degree of certainty over what retaliatory measures may be taken, and also where we have a fundamental inequality there as well, where we have said that the EU can have full access to our market and then suddenly we find that the EU is erecting unilateral tariff or other barriers on our economy because of an autonomous decision that it has taken. I entirely understand your point of view, but we cannot have a situation where we are being invited to follow suit or face heavy penalties.

Nigel Mills: I did not say that was my point of view.

Michael Gove: No, no.

Q1097 Nigel Mills: Can you just confirm that the areas we are talking about for a level playing field are just the half a dozen or so that were referenced in the political declaration a year ago, or has the scope of that expanded into other regulatory issues?

Michael Gove: It is essentially the same area, but one of the things that is the case with the EU—and I don’t mean this in a disrespectful way—is that you can sometimes find that regulations which were brigaded under one headline can find their way into another. So things that might have been termed employment rights can find themselves brigaded under health and safety at different points. But the broad outlines are correct.

Q1098 Nigel Mills: That would sound, a little, to be approaching bad faith if they



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were to try that kind of thing, I suppose, in future. Do you think these talks have been conducted in a spirit of both sides acting in good faith, or do you think some of the movement in the EU demands has taken us beyond that?

Michael Gove: I think—and I will dodge the question—a judgment can be made at the end of the process. I think there have been moments of strain and difficulty, but the negotiators are working hard at the moment, so I would not want to make their job any more difficult by providing any sort of Monday morning quarterbacking.

Q1099 **Nigel Mills:** We will look forward to seeing you next time to ask you about it. Finally, if I asked you for a percentage chance of a deal by Sunday night, which appears to be the European Parliament's deadline, are you going to give me a high percentage? Is it more or lower than your usual 66%?

Michael Gove: Well, my new resolution, adopted from a few weeks ago, is to avoid giving percentages, but I think, at the moment, actually, as I said to Peter, regrettably the chances are more likely that we will not secure an agreement—so, at the moment, less than 50%.

Chair: Thank you very much indeed. Antony Higginbotham.

Q1100 **Antony Higginbotham:** Thank you, Chair. Thank you very much, Secretary of State, for coming before us. In March you told us that we were going to put in place a robust state aid subsidy system. Could you just give us an update on where we are with that?

Michael Gove: Yes. The Secretary of State for Business, Energy and Industrial Strategy has been working on an approach which makes sure that it respects free market principles but also allows us to intervene in an appropriate way. One of the issues, though, in the negotiations, which I think is relevant—and it adds to the point that Nigel made—is that one of the things the EU has been arguing is that transnational, supranational, state aid should be exempt. So the EU's position is this: the UK is a nation; it must have a form of reporting and monitoring state aid which replicates that which member states have within the EU, but the EU itself, when it comes to providing funding at an EU level, should be totally exempt from those rules. So you would have a situation where, for the sake of argument, the EU at the level of the 27 could provide support, let's say, for the production of electric vehicles, but if the UK said, "We, too, want to use Government money to pump-prime that new technology," the terms to which the EU want us to agree would mean we would be prevented from doing so.

We think that that is a fundamental problem and that the Union of the United Kingdom, like the Union of the European Union, should be, of course, in a position where it respects clear rules about how state aid is provided. But at the moment, or certainly during the course of these negotiations, the EU has sought for itself freedom from restraints that it would not grant us.

Q1101 Antony Higginbotham: Sounds very much like there is a game of double standards being played there. You will know that in the election last year, a key pillar for us was being able to intervene in key markets. That is the way we will secure a competitive advantage in the future. Unlike the EU, I do not think a competitive advantage is something to be shying away from; it is exactly what we ought to be doing. Could you reassure us that we are going to keep the flexibility that means that, as we look at different industries in the future—I know we are looking at hydrogen, space and electric vehicles—we will retain that sovereign ability to find the markets where we as the UK will have a competitive advantage and to intervene to make sure that we can boost them?

Michael Gove: Absolutely. One of the purposes of reclaiming independence and being sovereign is the capacity to be able to do different things in different ways. We will not be diverging purely for the sake of it, but you are absolutely right that there are a number of areas where the UK does have an advantage, because of the skill of our people or because of the enterprise shown by innovators. Your own constituents in Burnley are very much at the forefront of our minds when we are thinking about how we can make sure that there are high-quality jobs in the sunrise industries of the future.

Q1102 Antony Higginbotham: That will be pleasing news to them. On the plans of the Secretary of State for Business, can you give us a rough time limit for when we might expect to see the legislative proposals for what the regime might look like?

Michael Gove: I cannot pre-empt what the Leader of the House might say about the next legislative Session, but there will be substantive BEIS legislation that will give effect to our position on state aid and on other ways of supporting business.

Q1103 Antony Higginbotham: And that will not hold up the negotiations. We can proceed with the negotiations and try to get an agreement, although I totally accept that it might not be in our interests. The EU is not holding that up and saying, "You must lay the proposals before we are willing to discuss."

Michael Gove: They want to understand the approach that we are taking broadly, and we want to understand their approach, but it is the case that measures will be brought forward by the Secretary of State for BEIS on subsidy control in the next parliamentary Session.

Antony Higginbotham: Thank you very much. Keep fighting the good fight.

Q1104 Sally-Ann Hart: Good afternoon, Mr Gove, and to your colleagues. I am going to ask about fisheries—that is probably not a surprise. I think it is clear that the British fishing fleets need to rebuild in order to fish all our waters that have now reverted back to the UK and to our fishermen from 31 December 2020. Thinking of that, on what basis is the Government offering the EU access for EU fishing vessels and crews to UK waters from 1 January?



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Michael Gove: Thank you, Sally-Ann. The first and most important thing to stress is that, in international law, the UK will be an independent coastal state. It is very important that that is recognised by the EU. But as you quite rightly point out, it is also the case that it will take a little bit of time for the UK fishing fleet to expand in the way that we want it to, to take advantage of the additional capacity that will be available to catch.

It is also the case that we will want to invest in ports and harbours across the UK in order to make sure that we have the processing ability as well. What we hope to do is to reach an approach with the EU whereby they understand that, while of course the principle of annual negotiations is at the heart of the way that we will do things, they can have confidence about a staged approach, whereby they will have a degree of confidence and certainty over the decreasing level of availability of stocks to them and the increasing level of availability of stocks to UK fishermen.

Q1105 **Sally-Ann Hart:** When you are thinking about a staged approach, do you have a year basis, whether it is three years or five years?

Michael Gove: The EU have talked about a 10-year approach, and the particular 10-year approach that they have outlined has some other aspects as well, which would be very, very, very difficult. We are negotiating hard in order to impress upon the EU the point that we just want to be an independent coastal state like others, that they negotiate on an annual basis with Norway, with Iceland and with the Faroes and that we must be able to find a way which means that the UK's control over its fishing waters and the rights of its coastal communities are properly respected, without an overlong timetable or undue restraint on our freedom of manoeuvre.

Q1106 **Sally-Ann Hart:** So, if we reach no deal this year and from 1 January are without a deal, essentially the EU has no access to our waters. Is that right?

Michael Gove: They have no rights of access; you are absolutely right. We would want to reach a pragmatic arrangement with the EU even in those circumstances, but if there is no deal on 31 December, then on 1 January it is the case that European ships would lose access to our waters.

Q1107 **Sally-Ann Hart:** So something is better than nothing.

Michael Gove: Yes.

Q1108 **Sally-Ann Hart:** Is the UK asking for all fish caught in the UK waters to be landed in the UK?

Michael Gove: No. At the moment, in the English channel, I think it is the case that, for some stocks there, only 7% of the stocks are allocated to UK fishermen and 83%, in the case of one stock, to French fishermen, so no. There are well-established principles which allow European boats to fish in our waters and, of course, to land the fish in their own harbours. But what we do want to see is just a simple and straightforward move to a more equitable share.



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Q1109 Sally-Ann Hart: Will the fisheries agreement you are seeking mean fundamental change on 1 January for those catching the fish in the UK waters and selling their fish to the EU market?

Michael Gove: I would hope that what we would see is a move and an adjustment that reflects the UK's position as an independent coastal state, gives our fishermen more access to our own fish, but also, at the same time, in an ideal world we would want to have tariff-free access for fish and shellfish products to the EU market. That is our aim—and indeed vice versa.

Q1110 Sally-Ann Hart: Yes, and obviously there is a hope that there will be a transition period to allow those concerned to adjust to the new trading arrangements.

Michael Gove: We certainly wanted to make sure that everyone can be comfortable with the new trading arrangements. I should say that for all fisheries exporters, irrespective of what happens on the free trade agreement, it will be the case that they will need export health certificates and catch certificates in order to sell their products in the EU market, but again, to be fair to the EU and in particular the French, they have ensured that there should be as smooth a level of access as possible by making it clear that there will be a dedicated border control post for fisheries products not at Calais but in Boulogne-sur-Mer, where the principal French fish market is. So, on a pragmatic, business-to-business level, arrangements have been made in order to ensure that trade can continue, but I know that fish processors have been contacted by DEFRA in order to make sure that they are aware of what the requirements will be.

Q1111 Sally-Ann Hart: Mr Gove, one last question on fisheries.

Chair: Very quickly.

Sally-Ann Hart: On the six to 12 nautical miles from the UK, can you confirm that British fishermen will have the sole rights to fish there as from 1 January?

Michael Gove: Yes, that is our intention.

Q1112 Nicola Richards: How do you think the UK Internal Market Bill has influenced the negotiations so far?

Michael Gove: Well, it is difficult to make a definitive judgment, but I do think, speaking personally, that the UK Internal Market Bill has done three good things. The first thing is that it has given businesses certainty within the UK that the non-discrimination on market access principles will be observed. The second thing is that it has demonstrated that as EU structural funding disappears, the UK will be able, through the broad shoulders of the Treasury, to support every part of the United Kingdom to grow. But in the third respect, I think it has also demonstrated that the UK Parliament will always assert its sovereign right to do what is right for the people of the United Kingdom. If we can reach agreement with our partners so that we no longer need to act in a particular way, so much the better, but I do believe, even though it caused something of a stramash at



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the time, that the UK Internal Market Bill certainly helped to concentrate minds when it came to making sure that the Northern Ireland protocol was concluded satisfactorily.

Q1113 Nicola Richards: Would you say then that the benefits outweighed any costs?

Michael Gove: Yes.

Q1114 Nicola Richards: Have both sides accepted the non-regression principles for social and environmental standards?

Michael Gove: Yes. That was never really an issue from the beginning. Again, we proudly have higher standards in the UK—certainly on the environment and climate change, and on a number of social and workplace rights—than are required through membership of the EU. The issue is not whether we will maintain high standards, it is whether the EU have the right to demand that we follow suit or face penalties if they change their rules.

Q1115 Nicola Richards: Would there be any implications of agreeing to all the non-regression principles in full?

Michael Gove: No. In principle, non-regression is right, and it is a feature of free trade agreements like the one that Canada has with the European Union, which we are seeking not to replicate entirely but which is broadly the approach that we think is right and, indeed, the approach that originally Michel Barnier suggested would be a good option for the UK.

Q1116 Nicola Richards: How similar will dispute resolution be when compared with the withdrawal agreement?

Michael Gove: Again, this is part of the heart of the issue. We want to make sure that we have a robust and fair dispute resolution mechanism, and that goes to the heart of some of the governance questions that have bedevilled the negotiators in the course of the past month.

Q1117 Jane Stevenson: Good afternoon to our witnesses. I would like to talk about how, if we get a deal, we will implement it by the end of the year. What legislation will be necessary to avoid a break at the end of the year, and when will the Government seek to introduce it?

Michael Gove: There will be a future relationship Bill, which will be introduced as soon as we possibly can after the conclusion of any agreement. The Chair of the Committee pointed out earlier that a great deal of the agreement, provided that the critical elements that I mentioned are resolved, has already been prepared, on the basis that nothing is agreed until everything is agreed—but we can do legal work on the text, so we should be able to move relatively quickly with legislation.

A lot depends on the willingness of the House of Commons and the House of Lords to expedite passage, but it should be the case that the principles behind the Bill will be relatively clear and straightforward. We will do our best to make sure that parliamentarians have ample opportunity to study the text of the agreement.



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Q1118 Jane Stevenson: It is now the 17th so, obviously, we are getting fairly close. The European Parliament has said that it may make plans to sit between Christmas and the new year. In order to allow proper parliamentary scrutiny of any arrangement, have you made provision to achieve that, or even, for the first time since 1656 to call Parliament in on Christmas Day?

Michael Gove: I think it is the case that the Leader of the House has said that Christmas Day will be sacrosanct, but it is entirely possible that we could be sitting on other days—I would not necessarily say every other day, but any other day right up until 31 December.

Q1119 Jane Stevenson: Thank you. If we do not manage to get a deal ratified by then, and if the EU Parliament does not manage to ratify, what will happen, and how do we mitigate those few days if there is a break?

Michael Gove: In the case of the European Parliament—again, I do not want to speak definitively for them—or of the European Union overall, they have a principle of provisional application, which means that they adopt the treaty and then Parliaments and others may take appropriate decisions afterwards to give effect to it. But what I hope that we will be able to do is to ensure that there is appropriate time to legislate. If there is not appropriate time to legislate—or, in fact, if we do not get a deal, and therefore there is not appropriate time to legislate—we will be leaving on Australian terms.

Q1120 Jane Stevenson: So we do not have that same provisional application system in the UK.

Michael Gove: We need to be able to legislate, and I think it is vitally important that Parliament does. The time for legislation may be constrained, but it is vital that Parliament has a say on the arrangements that we reach, if we are fortunate enough to be able to reach arrangements.

Q1121 Jane Stevenson: If the worst happens, and there is that gap, what reassurance can you offer for trade and security co-operation until we manage to get that legislation through? Is there no interim policy?

Michael Gove: Our approach is that we will need to know whether we have secured an agreement in time to allow Parliament to have its voice and its say, and to legislate. If we do not have time for that, the clock has run out. No agreement will have been reached, and we will be in a world where we will be trading on WTO terms.

Q1122 Jane Stevenson: Is there any possibility that there are areas where things that have been agreed provisionally would need to be approved by different Parliaments within the European Union? Can you see any issues with their ratification process as a general, full agreement, or would it be a mixed agreement?

Michael Gove: It is always possible that there can be potential issues, but I think it will be a full agreement that the European Council will agree.



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Obviously, all the member states will be represented in the Council. That is my hope.

Q1123 Seema Malhotra: Thank you, Mr Gove, and all who are giving evidence. I want to make one brief point. Mr Gove, you said that the majority of businesses would prefer an FTA. I will not ask you to comment on this, but I think you will know that is probably an understatement, in terms of what the mood is with business and the urgency for getting clarity about how we move forward. I want to ask a very specific question, which you may have covered slightly elsewhere. Is it possible that there would be a temporary situation between the end of transition and a deal either being approved or entering into force. If there is that gap, what do you plan to happen?

Michael Gove: We do not intend for there to be a gap.

Q1124 Seema Malhotra: You may not intend it, but if there is one, what would you plan to happen? How would you expect that gap to be bridged?

Michael Gove: We will make sure that we have an agreement and that Parliament can vote on it. If there is not time for that, we must accept that there will not be an agreement. As I have explained to this Committee before, we are prepared for those consequences. As I pointed out to Peter, we are also ready to take advantage of the opportunities that life at end of the transition period will provide.

Q1125 Seema Malhotra: I would like to ask for clarity. When you say Parliament will have its voice and its say, how long do you envisage Parliament will have its voice and its say for in this process?

Michael Gove: On a personal level, I would like the maximum amount of debate, but ultimately it will be for Parliament—through the usual channels, and through the Speaker and others—to decide for how long it sits once an agreement has been reached. In my view—I do not mean this frivolously—even though it is obviously inconvenient for Members of Parliament, I am sure that all of us, and certainly all the members of this Committee, would want to have as much time as possible, consistent with the rules of the House and respect for its staff, to look at the legislation and to review the deal that has been agreed.

Q1126 Seema Malhotra: I am grateful for that, because I think it is correct to say that Parliament will want as much time as possible. I want to come back to your comment that you give the chance of a deal at this point a less than 50% likelihood.

Michael Gove: Yes.

Q1127 Seema Malhotra: In the event of no deal, or a period without a deal in force, will the Government reciprocate the EU's proposed contingency measures on aviation, road transport and fisheries?

Michael Gove: We are looking very closely at those. We regard them as a step forward. I do not want to pre-empt decisions that might be made either by the Secretary of State for Transport or the Environment



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Secretary, but I think you can legitimately conclude from this Committee that we take a very positive view of reciprocating those positions. However, a final decision must rest with those other members of the Government.

Q1128 Seema Malhotra: So individual Departments may make individual decisions? That is interesting. What is your understanding of the EU's contingency measures? Are they able to be reciprocated individually, or would there be an expectation that they would be a package?

Michael Gove: It is important to say that when it comes to aviation and road transport in particular, we too take a more positive and benign view. On fisheries, the position as articulated by the EU is a cause of greater contention. However, we will approach these in a pragmatic way.

Q1129 Seema Malhotra: Just finally, Mr Gove, will the Government be offering any potential measures of their own, with a view to the EU reciprocating if such a situation arises?

Michael Gove: One thing that we have done is to say that we will stagger import controls and SPS checks for the first six months. The EU have not said that they will do that. We respect the fact that they are a sovereign equal and that that is their choice. It might be the case that, if we get to a situation where we are moving to WTO terms, there may be other announcements from the EU, but again, the EU has been clear that their approach on aviation, road haulage and fisheries is their unilateral position and that they are inviting us to reciprocate. I respect the fact that that is a sovereign decision for the EU, but of course in the event of our moving to WTO terms, if they make other sovereign decisions that help us and our businesses, we will be constructive and pragmatic in response.

Seema Malhotra: Thank you, Mr Gove. Thank you, Chair.

Chair: Thank you very much indeed, Seema. I now turn to Joanna Cherry.

Q1130 Joanna Cherry: Good afternoon, Mr Gove. I want to ask you about the absence of a data adequacy decision from the European Union. I think I am correct in saying that, as of 7 December, the United Kingdom has agreed to observe the existing regulations, including GDPR, but as yet the EU has not reciprocated with an adequacy agreement. Of course, the European Court of Justice previously voiced concerns about the UK's handling of personal data. There is considerable suspicion of our Regulation of Investigatory Powers Act 2000 on the continent, where some people see it as akin to the overreach of United States surveillance powers. So really, the position is that although the UK is already aligned with data protection law, there is no guarantee that the crucial data adequacy agreement will be granted.

Michael Gove: No, it is the EU's own decision. It is what is called an autonomous process, so technically, and properly, it should be seen as distinct from negotiations over the FTA. We have not received that adequacy assurance. I will say three things very quickly. First, as you quite rightly point out, we are fully compliant at the moment. It should be



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straightforward, but it has not proven to be so. Secondly, the Government take data protection very seriously. Finally, I do not want to—what is the word—jinx proceedings, but I am confident that there will be a way of ensuring that adequacy can be agreed.

Q1131 Joanna Cherry: But the absence of a data adequacy agreement would have pretty major implications for businesses in the UK and for law enforcement, wouldn't it?

Michael Gove: There are two important things to distinguish there, as you quite rightly do. When it comes to security, I am confident that we can have robust arrangements in place. When it comes to business, it is of course the case that business, through the use of standard contractual clauses, can provide itself with the legal assurances that it needs in order to be able to exchange data safely.

Q1132 Joanna Cherry: I just wonder about your confidence about robust security arrangements in the absence of a data adequacy agreement. This morning, the Home Affairs Committee heard evidence from expert witnesses from law enforcement that, in the absence of a data adequacy agreement, any contingencies they fall back on are likely to be slower and more bureaucratic. That would tend to suggest that they are not as robust as you seem to hope. Is that right?

Michael Gove: It is certainly the case that a number of people have scrutinised the range of security, law enforcement and justice tools that membership of the EU provides and raised a number of questions, but we are working through all of those questions in order to ensure that the UK is secure. Of course, there are other steps that the UK can take outside the European Union to improve the security at our borders as well.

Q1133 Joanna Cherry: Indeed, but I wonder if we can look at one particular example that the National Audit Office highlighted last week. It reported that the Home Office is planning to remove all SIS II data from the Warnings Index, Semaphore and border crossing systems on 31 December. This morning, at the Home Affairs Committee, the director general of operations at the National Crime Agency confirmed that that is the case. That means that we will be removing from our border systems the details of more than 40,000 criminals and suspects who are wanted aboard. That is a pretty serious state of affairs, isn't it?

Michael Gove: The Schengen Information System is the one system that, if we were to continue to have the same level of membership of it, would absolutely require CJEU jurisdiction. But there are alternative ways in which we can make sure that we maintain border security and, indeed, augment it.

Q1134 Joanna Cherry: But, you see, the alternative ways are not as good as Schengen II, are they? We heard this morning at the Home Affairs Committee that the UK has asked our EU counterparts to upload the names of 40,000 criminals and suspects who will be removed on 31 December to the Interpol database, but we do not yet know how many of those 40,000 have been uploaded. That is right, isn't it? So it is not



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accurate to say that fall-backs such as Interpol will replicate Schengen II. They are actually less robust, aren't they?

Michael Gove: I think good people can differ on that, but one of the things I would say is that when it comes to security co-operation—I say this in no boastful or jingoistic spirit—European nations gain just as much from the excellent work of our agencies and our law enforcement agencies as we gain from them. So broad co-operation—

Q1135 **Joanna Cherry:** That is a very interesting general statement, but I am more interested in specifics here. This morning, when this issue was being discussed at the Home Affairs Committee, evidence was heard from Deputy Assistant Commissioner Richard Martin, the lead for Brexit at the National Police Chiefs' Council, and he said that Interpol is not as satisfactory or as robust—to use your word—a system because with SIS II, if you come across a hit on the system, there is a legal mandate on the state to act on that hit, but with Interpol it is a voluntary requirement so the standard is lower. He is the expert, and he is right, isn't he?

Chair: A very brief answer, Mr Gove, if you don't mind.

Michael Gove: Yes and no.

Chair: You might like to clarify that by dropping a line to the Committee, actually. Thank you, Joanna.

Q1136 **Stephen Kinnock:** Thank you very much, Mr Gove, and thanks also to colleagues. The Government's own reasonable worst-case scenario published back in September said that 40% to 70% of trucks travelling to the EU would not be ready for new border controls and that, "This could lead to...queues of up to 7,000 port bound trucks in Kent and associated...delays of up to two days." Is that still the Government's reasonable worst-case scenario? Will we have 7,000 trucks laid up in Kent for delays of up to two days? Has anything changed since September to change that reasonable worst-case scenario?

Michael Gove: Things have changed since September to make us more confident that that will not be the case, but a reasonable worst-case scenario is always there to help with planning. The whole point about it is that it is certainly within the bounds of possibility. It is certainly, therefore, something that a prudent Government would take into account when planning. That is why we have acquired the infrastructure that we have, but without again wanting to jinx the future, we are a little bit more optimistic that we were two or three months ago about the likelihood of avoiding the reasonable worst-case scenario.

Q1137 **Stephen Kinnock:** Let's assume, then, 7,000 trucks in Kent and delays of up to two days. What sort of message do you think it sends to businesses in other countries that are potentially thinking of investing in the UK that our television screens are going to be filled with queues of trucks laid up in lorry parks for two days?

Michael Gove: It is the case that we have seen disruption to traffic in Kent before, sometimes as a result of industrial action and sometimes as a



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result of other events. I think that businesspeople will be well used to the idea that when you have a new state of affairs there are always a couple of days, or a couple of weeks, before we reach the new normal. I think that the fundamental decisions that people will make on investment in the UK will depend on the regulatory and taxation framework, investment in infrastructure and investment in skills. My judgment is that businesspeople, while of course conscious of news and political events, make their judgments on investments on the basis of sound long-term trends.

Q1138 Stephen Kinnock: Thanks very much. Just to clarify, you think that this issue with the 7,000 trucks and the one or two days will only last for a few days in January, or is it going to go well into 2021? Are we looking for this scenario to be alleviated by the summer? How long will this be going on for?

Michael Gove: Again, and it is an understandable take on things, it is not a prediction. We plan for the worst so that we can be ready to deal with it, but the projections and reasonable worst-case scenario are not the main case. They are not the base case that we expect to happen. Again, it is very difficult to make accurate predictions, as we know, when there are so many variables, but I think I have said in another forum that I would expect that we would find that, after an initial few days and weeks of potential—potential—disruption, things will resolve themselves into a new normal relatively early in the new year because, again, the risk of the disruption that you quite rightly draw attention to flows from businesses, traders and hauliers not having the necessary documentation, and we—and members of this Committee have played a part in this—have sought to make sure that traders are ready so that the risk of disruption is reduced.

Emma Churchill: With permission, may I also say that for those traders who are not ready on 1 January there will, of course, be much support from Government helplines and webinars? We will continue running those to make sure that those traders can get ready as quickly as possible, so that before they attempt to send goods across the channel they are ready. Because, of course, it is the level of trader-readiness that ultimately determines whether, and for how long, disruption might continue.

If I may say one other thing, I think that the Committee will know that we have introduced a web service called “Check an HGV is ready to cross the border”. This is mandatory for hauliers who are taking goods across the short straits to use. What they do is they use the service to certify that the correct documentation is in place, and that issues them with a Kent access permit. We had committed to sending that service live this Monday. We did that. It is operational, it is working, and indeed haulage firms are already using it to get their Kent access permits. What we hope that will do is make sure that a much higher percentage of trucks that arrive at the ports in Kent are ready and can make, therefore, a successful crossing, thereby avoiding that disruption.

Stephen Kinnock: Thanks very much. I would like to change by quite

some degree now to talk about Erasmus.

Chair: It will have to be the final question, Stephen.

Q1139 **Stephen Kinnock:** Thanks very much. I was quite surprised to hear you say, Mr Gove, at the start in response to the Chair that Erasmus is covered under these negotiations. You gave the clear impression that it is all sorted and therefore we would be able to continue to participate in a programme that I think most people feel adds a tremendous amount of value and benefit, both in terms of British students going out and learning new skills and languages, and EU students coming here and getting a great impression of our university system and of our society. It really enhances our soft power. I think most people would feel that it is a good thing. Yet Michel Barnier made it absolutely clear to MEPs on Monday that the United Kingdom will be ejected from the Erasmus programme. Can you just confirm that that is the case—that we will not be participating in Erasmus?

Michael Gove: Nothing is agreed until everything is agreed. We are considering which EU programmes we should be part of in the future. When we are looking at both Erasmus and Horizon, there are different judgments about their value to the UK, but we are looking at those in the round as part of the discussions.

Stephen Kinnock: Why then—

Q1140 **Chair:** I do apologise, Stephen, but we have almost run out of time.

I have a couple of final points, Mr Gove. The Government talk often of, in the event of no deal, the UK leaving the transitional period on Australian terms. Can you just confirm that Australia does not have a trade agreement with the European Union?

Michael Gove: It trades under WTO rules.

Q1141 **Chair:** It trades under WTO rules. It does have, however, a mutual recognition on conformity assessments, certification and markings with the EU. If we are leaving on Australian terms, are you saying that you think the EU would give us the same mutual recognition on those issues as it gives Australia?

Michael Gove: As I mentioned earlier, the EU has already made some unilateral decisions in anticipation of our leaving on Australian terms. I can't accurately predict which other consideration it would give, but the point about an Australian-style exit is that it is not symmetrical with the relationship that Australia enjoys—it is very, very similar. When we talk about a Canada-style deal, it is not exactly the same as CETA—it is very, very similar. One of the things I would say is that, for example, the provisions that the Commission talked about on aviation and on road haulage are provisions that, for understandable reasons, do not extend to Australia. So they are not entirely coterminous, but they are very similar. They are twins, but not identical twins.

Q1142 **Chair:** Finally, you have made it very clear why the EU's original proposals



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in relation to the level playing field were not acceptable: because the EU side could decide that the level playing field had become unlevel, so to speak, and therefore could impose tariffs or countervailing measures. Can you just clarify, since the key issue is who decides whether unfair competition has resulted from any divergence—that is the question—would the Government be prepared to accept an independent arbitration mechanism, determining whether, in fact, the level playing field had been tilted one way or the other?

Michael Gove: That is potentially possible, but a huge amount depends on what the arbitration panel is being asked to decide. By their very nature, judges look very closely at the terms on which a question is put to them. That is why, if there were to be the resolution of this issue through arbitration or dispute resolution panels, then we would need to be certain that the basis on which they operated and the judgments that they were going to make were appropriately fair and serious.

Q1143 **Chair:** Now, “appropriately fair”, in theory, suggests that you want to know what the outcome is going to be before you agree to an arbitration mechanism.

Michael Gove: No, not quite. In essence, if an arbitral panel is being asked to judge whether there is, for the sake of argument, a potential or possible impact, that is very different from an arbitration panel being asked to decide if there is a real, material and significant impact.

Chair: Right—the difference between potential and actual.

That concludes the session. I think we have kept with the hour that you set. I hope that the compensatory mechanism will be your willingness once again to appear before us once we know what is in any deal, if one is concluded.

Could you pass on from the Committee our best wishes to David Frost and his negotiating team? They have been working extremely hard. Speaking for myself, I hope very much that they are successful. That concludes the session.