HOUSE OF COMMONS

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

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Watch the meeting

Members present: Hilary Benn (Chair); Mr Peter Bone; Joanna Cherry; Sally-Ann Hart; Dr Rupa Huq; Stephen Kinnock; Nigel Mills; Mr Barry Sheerman; Jane Stevenson; Matt Vickers.

Questions 1144 - 1206

Witnesses

I: Professor Catherine Barnard, Professor of European Union and Labour Law, University of Cambridge; Raoul Ruparel, former Special Adviser to the Prime Minister on Europe, Deloitte UK; Sam Lowe, Senior Research Fellow, Centre for European Reform.

Examination of witnesses

Witnesses: Professor Catherine Barnard, Raoul Ruparel and Sam Lowe.

Q1144 **Chair:** Good morning and welcome to this meeting of the Committee on the Future Relationship with the European Union. Happy new year. On behalf of the Committee, I extend a very warm welcome to our three witnesses this morning, who I am now going to ask to introduce themselves for the record.

Professor Barnard: Hello, my name is Catherine Barnard. I am professor of EU law and employment law at the University of Cambridge and senior fellow in the UK in a Changing Europe programme.

Sam Lowe: Hello, my name is Sam Lowe. I am a senior research fellow at the Centre for European Reform.

Raoul Ruparel: I am Raoul Ruparel, formerly special adviser to the Prime Minister on Europe under Theresa May, and formerly special adviser to the Secretary of State for Exiting the EU under David Davis.

Q1145 **Chair:** Thank you very much indeed. We are very grateful to you for giving up your time this morning to enlighten us on this very substantial agreement. Can I begin with, I hope, a relatively simply question, which perhaps I will direct to you, Catherine, to do with the UK's participation in the Horizon programme? Is it the case that that comes with ECJ oversight of any issues that may arise? I just wanted to clarify that.

Professor Barnard: That is correct. It must be said, on the ECJ oversight, that I do not think there has been any case law at all on this sort of matter, but there is at least that possibility. It is the one area where the ECJ still retains some sort of effect on this agreement. Otherwise, what is really striking about this agreement is the lengths to which it goes to distance itself from anything to do with EU law. Indeed, there are repeated statements that this is an agreement of international law; it is an agreement of WTO; there is no direct effect; case law of the domestic courts on either side, including the ECJ, is not binding on the other party. The whole agreement is really focused on saying, "This is not EU law".

Q1146 **Chair:** But there is this one area in which the CJEU, to give it its proper title, could have some say.

Professor Barnard: Yes.

Q1147 **Chair:** That is correct. Therefore, if the Government said, "We have seen off the CJEU in every respect", this is one respect in which they have not. I suppose my next question is this. Take another example, EASA, the European Union Aviation Safety Agency, where the Government decided some time ago we would not participate, the grounds being potential CJEU jurisdiction. I think I am right in saying that there are very rarely CJEU cases involving EASA. If the Government have accepted it for

Horizon, looking to the future, might that mean it would be possible for us to join those agencies? Let us take EASA, for instance. If the UK were to say, at some point in the future, "On reflection, we think it would be quite handy if we were part of EASA", what are the prospects that the EU would say, "Okay"?

Professor Barnard: It is possible, not least because this agreement, the way I read it, is drafted as a starting point, not an end point. One very striking feature of the agreement is that it envisages that there will be further bilateral agreements. Indeed, the possibility of future bilateral agreements is repeatedly referred to. Going back to some basics on the structure of the agreement, you might recall from our earlier evidence session that the UK wanted to have separate agreements and separate dispute resolution and governance mechanisms.

The EU never wanted that, because that rather looked like the Swiss model, and the EU has always thought the Swiss model, with 120-odd bilateral agreements, was unwieldy. They have been negotiating with Switzerland to have some sort of overarching framework, which is what they insisted upon for the purposes of this agreement. Crucially, it would cover any future bilateral agreements, so any future bilateral agreements, on whatever matter it might be, will be sucked under this overarching framework.

Q1148 **Chair:** Indeed, so it is a foundation on which to build. The drafting of it makes that clear.

Professor Barnard: Exactly right, yes.

Q1149 **Chair:** I want to turn secondly to the areas in which we presume the UK asked for things and did not get them. I would like to bring in Sam and Raoul here. For example, can I start with mutual recognition, for clarification? For those professions whose qualifications are currently recognised, what is their status as of today? Has that recognition gone?

Sam Lowe: So the question is specifically about mutual recognition of professional qualifications, because there is also the discussion to be had about mutual recognition of conformity assessments.

Chair: I will come to that.

Sam Lowe: There is no more automatic recognition for UK professions across the EU. The UK did not achieve what it wanted from the negotiations. Its opening position was that the EU would continue to allow for automatic recognition, more or less upon request from a UK person, in various member states. The UK accepted from the beginning that we would lose temporary recognition of qualifications for the purpose of fly-in, fly-out trade, so it was not asking for the exact status quo, but it did not get that.

What instead has been agreed is a framework to allow for continued discussion on this subject, so it could be improved upon over time, but as

of day one there is no overarching EU framework for the recognition of qualifications. However, it is quite explicit that it accepts that the UK can pursue other routes in allowing for recognition of these qualifications. This could be member state to member state, or even body to body, so a relevant qualification body in the UK could discuss with, say, a qualification body in Germany, and on that basis recognise each other's qualifications. That can and will happen, I presume, but, no, the UK did not achieve its starting objective.

Q1150 **Chair:** For those individuals whose qualifications had previously been recognised, who were going and doing various things in other EU countries, what does that mean for their ability to do that today? Has that been withdrawn?

Sam Lowe: They will now need to have those qualifications recognised by specific member states. I should say that, just because they get their qualification recognised in, say, Austria, it does not mean that qualification is also going to be recognised in France. There is the issue whereby they would have to go member state by member state, if they are seeking to have their qualification recognised across the EU. Some people have been doing this. There has been lots of talk about lawyers trying to get recognised in Ireland and the like.

Raoul Ruparel: On that point, the withdrawal agreement remains in effect, so there are protections for people who have their qualifications recognised already and are using those qualifications. Those are protected under the withdrawal agreement, so it is not as if they fall away entirely. If you are currently using your qualification that is already recognised in the EU or by a member state, that is protected by the withdrawal agreement. It is actually just the new flow of people, more than the stock of people, that is affected by this.

Q1151 **Chair:** That is really helpful. Thank you. Can I ask about performers, artists and so on? It has been quite widely reported that they are not explicitly covered in the agreement. Is that the case and what does this mean for them?

Sam Lowe: The issue here is about what you are allowed to do as a short-term business visitor, so what can you do without a work visa? We know you are allowed to go for 90 days in every 180. If you are trying to take a step back and ask, "What am I allowed to do? What am I not allowed to do?", you are allowed to go for meetings; you are allowed to do some research, but for anything that involves you getting paid usually you would need a work visa.

The agreement itself then gives a specific list of activities that you are allowed to do as a short-term business visitor, and it excludes what you have just said: performers and live artists. They are not on the list. The overarching list also has its own caveats. Member states have lodged derogations. For example, whereas market research is allowed on an EU-wide basis, Austria requires that you have a work permit if you are

going to carry that out. It is still the case that, if you are going on a business trip on a short-term visa, you would want to check with the relevant member state whether the activity you are performing is permitted.

Yes, there is a notable exclusion, in that live performers are not on there. It now means that, if you are, say, a touring musician, you are likely going to need to get a work visa, unless the member state has some additional rules that are not in here and that are more permissive.

Q1152 **Chair:** For intracompany transfers, there are specific arrangements. Is that correct?

Sam Lowe: It is important to differentiate between short-term business visits and mode 4 services, which is what you are referring to here: the temporary movement of people to deliver services. That is broken down into three categories. You are either a contractual service supplier, an independent professional or an intracompany transferee. If you are an intracompany transferee, there are provisions in this agreement that allow you, for example, if you are a manager or specialist, to go for up to three years. If you are more junior, the amount of time is less.

Q1153 **Chair:** For example, a Rolls-Royce engineer is sent out somewhere to fix an engine on a plane.

Sam Lowe: That is different from an intracompany transferee. Say I worked for a big accountancy firm.

Chair: Yes, you can move to an office.

Sam Lowe: You can move to a different office. Movement for repairs is covered by the short-term business visitors list. It is provision H, after-sales or after-lease service: installers, repair and maintenance personnel and supervisors. You could be covered there, but there is the caveat that your qualification would still need to be recognised.

Q1154 **Chair:** That is very helpful. On conformity assessment, there is that issue; there are SPS checks. It is said that the arrangements for SPS checks are less beneficial than the arrangement the EU reached with New Zealand. Is that correct?

Sam Lowe: Yes. Again, SPS is a different category from conformity assessment. I would not put them in the same box.

Chair: I understand that.

Sam Lowe: In terms of sanitary and phytosanitary checks, the UK has not been granted any form of equivalence. Any products of animal origin entering the EU will be subject to the normal, standard EU third-country regime of identity checks and physical inspections. New Zealand has an equivalence arrangement, which means that, when it comes to the rate of physical inspections, you are largely looking at about 0%, unless there

is something obviously wrong. The UK will be assessed on a risk-weighted basis.

Despite there not being a specific agreement contained within the broader trade agreement to reduce the frequency of physical inspections, it is still possible that, on the ground, the people actually carrying out these checks are more permissive than were they to be carrying out checks on food from somewhere else, because they will take into account the UK's own sanitary and phytosanitary regime. In practice, you might get somewhere similar to Canada and New Zealand, but it is not locked into the agreement.

Q1155 **Chair:** Those answers have been really helpful. Raoul, focusing out from the specifics, the UK asked for a number of things in the negotiations that it did not get. What is your assessment of why the EU took the approach that it did? Was it protecting particular interests or was it saying, "Well, if we give you all of these, you have gained a lot of what you want, despite having left the European Union, the single market and the customs union. Therefore, we cannot make it too easy for you".

Raoul Ruparel: There are a number of reasons on both sides why we have ended up where we have. Both sides have prioritised more defensive interests than offensive interests. By that, I mean prioritising things like protecting the single market and protecting the integrity of the customs union on the EU side and, on the UK side, not having any regulatory alignment, avoiding the issue of EU law, as we have touched upon, and therefore avoiding the European Court of Justice. They have been focused on these defensive asks and limiting the obligations, rather than focusing on the market access asks and trying to get that to be as expansive as possible. That is the first reason.

Secondly, as you touched upon there, Chair, the EU was very concerned about giving the UK the benefits of the single market without membership or the obligations of the single market. Particularly in the areas of mutual recognition of conformity assessments, for example, this was rejected pretty much out of hand by the EU, very early in the negotiations, and was seen as not really being part of the discussions. The EU has done mutual recognition agreements with other non-EU countries, although they are very limited in scope and very specific in most cases.

It is not unprecedented, but the EU took the stance very early on that it did not want to get into that discussion with the UK. I think that was driven by the logic that this would be seen as keeping too many benefits. The same applies to mutual recognition of professional qualifications and the type of ask the UK made there. That was, for me, the overriding factor.

Then the red lines on both sides played a part. There are some areas where it may have been possible for the UK to get more access if it was willing to take more obligations, but the red lines of not having any

European Court of Justice jurisdiction, although we have touched on certain exceptions there, and not having regulatory alignment would have impacted that. You mentioned EASA being one example. My experience of the negotiations was that, when we look back at the previous approaches that were designed, such as the Chequers approach, part of the aim of that was to try to secure participation, if not membership, in these agencies such as EASA, the European Chemicals Agency and in particular the European Medicines Agency. That is why there was regulatory alignment set out in Chequers, but even that was not seen as being enough.

In some areas, yes, the UK could have done more to try to get market access, if it had taken more obligations, but even in some other areas it is not clear that just committing to those things would have been sufficient, because the EU has ruled certain things out as being part of the single market and not available to the UK.

Chair: That is extremely helpful. Thank you.

Q1156 **Mr Sheerman:** Can I take advantage of Raoul, because he is a very welcome new witness? The other two have become old friends, almost. Can I put Raoul on the spot a bit? I thought there were some very interesting speeches last week, one of them from the former Prime Minister, Theresa May, who made a very vigorous defence of the fact that the deal she had negotiated before was a better deal than the one achieved. What do you think of the comments of Theresa May on that? Was that a fair point to make?

Raoul Ruparel: When you judge whether this is a better deal, it depends on your aims and objectives. I do not think there is any objective metric to say which is better. If you look at the former Prime Minister's aims, she would have liked to see a closer relationship economically and on the security terms. She also would have probably liked to see a different arrangement for Northern Ireland. Therefore, on those metrics, the deal she negotiated would be seen to be better.

The current Government have different priorities. As we have discussed, their priorities were no regulatory alignment, no role for the ECJ and ending free movement of people, with an independent trade policy being paramount as well. If those are your priorities and aims, this agreement ticks those boxes slightly better than the previous agreement would have. I cannot say whether one is better than the other. It is for people to judge, based on what their aims are.

Q1157 **Mr Sheerman:** That was very useful. Thank you, Raoul. Can I turn to the other two witnesses, who have become almost old friends to us, as I said? The dust is beginning to settle already on this document. Catherine, what is your overall view of winners and losers here? We used to play the game of the percentage likelihood of getting a deal or not, and we all found that quite amusing. Most people were reasonably accurate, as we went through, that we would get a deal. We played the percentage game,

but what level of satisfaction do the two sides get out of this deal?

Professor Barnard: Building on what Raoul has just said, it depends on your starting point. If your starting point is comparing to no deal, this deal is a much better thing. If your starting point is comparing to what we had until 31 December, this deal falls very far short. If you focus on what each side's interests were, it is a pretty balanced deal. The text itself is fiendishly complicated, and it is a very difficult read, from something as basic as the numbering not always being consistent or continuous, to the vast number of cross-references and exceptions.

It has a slightly Alice in Wonderland quality about it, in that nothing appears quite as it first looks. You will see statements that the dispute resolution mechanism does not apply, but if you plough on you get to the end, and you discover that chunks of the dispute resolution mechanism are in fact incorporated by reference. You see that over the non-regression provisions. The deal itself is only about 400 pages, but then you have these extra 1,000 or so pages of annexes. As we know, the devil is always in the detail, and the detail is in the annexes.

What we have is a highly complex, highly technical document, delivered at the last minute. We know the political reasons for that, but it means that, for the businesses that are going to have to operationalise it, this is a real challenge. The urgency now is to give operational guidance to businesses, which have to try to get their heads round how to comply with this and operate legally.

Q1158 **Mr Sheerman:** I love the Alice in Wonderland allusion. There was a lot of discussion in the debate last week, from Michael Gove and others, that this was something to build on. There were several references that this was going to organically grow; it gives the opportunity to strengthen, modify and collaborate, in a real sense of building. I took that very seriously. What do you think of that?

Professor Barnard: I agree, absolutely. It is a foundation stone to which other things can be added and bolted on. It can be done through further agreements, which will then fall under the broader rubric, as I explained to the Chair. You also have a very powerful partnership council, which has quite considerable powers. It can amend the agreement, not just to deal with infelicities in the agreement, but to make quite significant changes. A really important issue going forward, for you as a Committee and for Parliament, is how to scrutinise not only how the deal is working, but how changes are being made to the deal and what is being done under the deal.

Q1159 **Mr Sheerman:** Sam, some years ago, right at the beginning of the European debate, after the referendum, Lord Peter Mandelson said to me, "Europe will, in the end, save us". Have we been saved by long-sighted leadership from Angela Merkel and from Ursula von der Leyen in the European Union? Is this a deal that has been very positive for us, because of the long-sightedness of those two major players?

Sam Lowe: I probably disagree with that slightly. With the exception of Northern Ireland, if you are talking about how the EU feels about the UK now, it does not really care that much how the UK feels about things. The UK is now a third country and the EU will act to defend its interests. It is not very nice negotiating with the EU from the outside, even if you are nearby. Just look at Switzerland; just look at Turkey's experience. It is going to be rough for the UK in terms of its relationship with the EU, although I agree with Catherine that it will evolve over time, as it should.

If we are looking at specifics on that question, the agreement leaves open the possibility of the UK plugging into the EU's emissions trading scheme. That is a decision that has been kicked into the future. We will have to decide whether the UK wants to do that in future. If you look at all the different councils on sanitary and phytosanitary issues, as we discussed earlier, that could evolve over time, as with mutual recognition of professional qualifications. A lot will depend on the future composition of the UK Government and what they want to achieve. Then the EU will put in place its conditions for that access. We will get into a negotiation again, and it could go well or it could be difficult, depending on how divergent the expectations are.

In terms of whether the agreement itself is successful, to go back to your opening question, we have known for a long time what the parameters of this agreement would be. The UK was seeking an agreement that would remove tariffs, but would do very little to remove non-tariff barriers to trade and to facilitate trade in services. If that is what you want to achieve, that is what this deal does. It does that and, as Raoul indicated, it then comes with some additional freedom for the UK to pursue a different agenda. If you are prioritising the economic status quo and economic integration with Europe, this deal is going to disappoint you.

Q1160 **Mr Sheerman:** Catherine, is there anything in the agreement that we may have missed out on? I have always believed that it takes a long time to really find out, even with a Budget. This is a far more complex document than a Budget. As the dust settles, are there particular aspects, in the common discourse we have had since the publication of the agreement, that we have missed out on? Are there things lurking there that we are going to have to go back and look at?

Professor Barnard: I think this deal is actually very unstable. I say that because there are so many ways that this trade agreement can be brought to an end by either party. There are fairly extreme ways, where, for example, essential elements of the deal are not complied with in respect of human rights, climate change, weapons of mass destruction. Less dramatically, we can terminate the agreement on one year's notice, something that Brexiters are very keen on because they do not want to be tied in. Equally, the deal is also subject to review in five years and there will be a vote in Northern Ireland in four years.

One of the problems is that this constant potential contestation of the deal creates quite a lot of difficulties for business. If you are a car

manufacturer and you are thinking of investing in new plant, a serious, serious investment worth millions or perhaps billions of pounds, you do not know whether tariffs are going to be imposed, either because the deal is brought to an end or because there is cross-retaliation. For example, if the Government decided, in their political interest, that they wanted to take advantage of regulatory de-alignment and do their own thing, it might precipitate cross-retaliation. This is the much more fundamental concern about this deal than anything else.

Q1161 **Mr Sheerman:** Can I have an answer from Raoul on the political side of all this?

Raoul Ruparel: It is a very complex deal. I do not know whether I would use the word "unstable", although I take Catherine's point. The issue is that there are just lots of parts of it where we do not know exactly what they mean, and we will not know until it has been tested. There is a grey area, and we may come on to this later in the questioning, on parts of the level playing field and how that will work in terms of non-regression; the bar to that and how that is going to be defined; the rebalancing and when that might be used.

These sorts of things are up in the air, because we will not know until they are tested, when either side raises an issue. In that sense, the agreement and our understanding of it will evolve. When that happens, there will be a political stocktake: "Does it mean what we thought it meant, and what does that mean for how the UK or the EU approaches the agreement in the future?"

Q1162 **Mr Bone:** I was interested in Barry's question about leadership and saving Europe. It is quite clear to the vast majority of people in this country that it is the Prime Minister who has led and saved Europe from having tariffs imposed on its goods. Catherine mentioned the partnership council, which is an area we were not going to cover in detail, but it is quite interesting. I think you said that the treaty could be changed by the partnership council. I thought the partnership council was there to deal with technical issues. Have I got that wrong?

Professor Barnard: I do not know if you have a copy of the text in front of you, but it is page 11 of the version I have. The partnership council has a range of powers, including to adopt decisions, which are legally binding, but also to adopt, by decision, amendments to this agreement or to any supplementary agreement in the cases provided for in this agreement, in much the same way as the joint committee can do so under the withdrawal agreement. Then there is another clause about more generally, for four years, being able to correct errors, because obviously this agreement was negotiated at speed. Yes, the partnership council has considerable powers.

Q1163 **Mr Bone:** Who will make that partnership council up?

Professor Barnard: We know that it will be comprised of a senior Minister from the UK and someone from the Commission, and

presumably, based on the model of the joint committee under the withdrawal agreement, it will be Michael Gove and perhaps the Vice-President of the Commission. There is a requirement in the annexe about notification by each side of who is turning up at meetings. There will clearly be a body of folk, but we do not know who they are.

This may be an issue for you, as parliamentarians, to try to scrutinise a bit more what the partnership council will be doing, given the powers of the partnership council. At the moment, it is only slated to meet, at a minimum, once a year. In reality, it is probably going to meet more often. The joint committee has certainly met more often.

Remember: under the partnership council there is a whole raft of committees and working groups, some more powerful than others. They can all report to the partnership council. Some can act instead of the partnership council, in that the partnership council decides to delegate the powers. Here, again, there is a whole swathe of new governance, to use the jargon, which you as parliamentarians might want to look at how you are going to scrutinise.

Q1164 **Mr Bone:** Raoul, I want to ask some questions about the dispute resolution. First, could you tell me what areas you think it covers?

Raoul Ruparel: It covers the bulk of the trade agreement. As Catherine mentioned, it is not necessarily easy to identify that in clear-cut terms. There are parts that are excluded, but where the dispute resolution then comes back in. The vast majority of the FTA is covered by the dispute resolution. It is one of those things where it is particular to the issue and there are certain areas where it is carved out, but equally where things get brought back in.

Q1165 **Mr Bone:** Delving a bit into the mechanism, the Prime Minister has likened it to what you would get in other free trade agreements. Would this be an example? Say the European Union decided to dump steel into the UK, maybe not even covering its marginal costs. You would expect a sovereign nation to be able to retaliate. In that case, do we have to wait to go to an arbitration panel or can we just put tariffs on straightaway?

Raoul Ruparel: From my understanding of that case, which you would probably classify as unfair state aid distorting trade between the two parties, the UK in that example would be able to take remedial measures, such as imposing tariffs, after giving a certain notice period under the agreement, within 30 or 45 days, I think. There is a short notice period that you have to give that you will take these actions.

Essentially, the UK in that scenario could act unilaterally to take those remedial measures and those tariffs, but that would be subject to review and arbitration if the EU felt those remedial measures were unfair. Then the arbitration would take a view on those remedial measures, importantly on the measures themselves, not on the initial subsidy or the initial state aid issue. That is my understanding.

Sam Lowe: Could I add to that, just to say why it is so complicated? I am going through it in my head, and there are maybe four different approaches to dispute that you could pursue, in the example you have given. You could still go via the WTO route and just pursue an antidumping case. That has not been excluded. If it was a fundamental breach of the EU's commitments and how it formulated its approach to subsidies, you could go via the normal settlement process of the agreement. If it is more specific, you could go via the remedial measures approaches in subsidies. As Raoul just articulated, you have notice periods, but you can unilaterally put in place protection.

If you decided it was a fundamental rebalancing issue, you could take the rebalancing approach. Again, you can put in place unilateral tariffs and suspend bits of the agreement, but the time periods are all slightly different. I am saying that to highlight just how confusing this agreement is, because there is no clear answer to your question.

Q1166 **Mr Bone:** Sam, can I try another question along that route? A lot of people have put this case: the UK diverges on its regulations, which it can do under the agreement, but the EU takes umbrage and thinks that is an unfair advantage. What mechanism does the EU have at that stage? Does it have to go to arbitration first, a binding arbitration, and get a decision that will be accepted on both sides, or can it take action before that?

Sam Lowe: It would be great to bring in Catherine here in terms of the specifics.

Professor Barnard: First, this treaty is riddled with provisions on disputes. They vary quite a lot. It feels as though the two sides were like mating porcupines, so you do it at arm's length, very carefully, and there is a lot of suspicion about what the other might be up to. That is why the dispute resolution mechanism is extremely complicated, because there are so many of them, as Sam has just said.

If you are talking specifically about the rebalancing mechanism in response to significant changes in the field of state aid, environment or employment law, which have material impacts on trade or investment, there is a very short time period. The complaining side has 19 days after notifying the other party to impose sanctions. Then it has 49 days if the other party refers the matter to the tribunal. This is really quick, in international trade terms, so the retaliation can be pretty painful, pretty quickly.

Q1167 **Mr Bone:** On that point, I thought it had to go to an arbitration panel, and then that panel would decide on the merits and come up with a decision. I guess arbitration tends to mean it might not necessarily be what the complainant wants or what the defendant wants. It will be somewhere in between. Would that not normally take an awful lot of time? I am an accountant and you are a lawyer, and we have different timescales. For a lawyer, it takes 49 days to open a letter, doesn't it?

Professor Barnard: You might be doing a disservice to my profession, but I would say that, more generally in the dispute resolution mechanism, there are very strict timescales laid down. Just in the general dispute resolution mechanism, it is true: if an arbitration panel is set up, the final ruling has to be given between 130 and 160 days after the date of the establishment of the panel. As you know, in legal terms, that is pretty speedy. There are provisions for extending all of that, but the fact is that there are very tight timescales laid down.

Q1168 **Mr Bone:** I personally do not think that this problem is likely to come up, but it is worth exploring. All the time, within the European Union, there were trade disputes and the Court of Justice was taking forever to decide on one thing or the other. There was a whole list at any one time, I believe. Could we get into that sort of thing with these resolution mechanisms, or do you really think people are going to stick to that time limit?

Professor Barnard: One of the reasons why the Court of Justice is relatively slow, although it has got faster, is the sheer problem of translation of all the documents. That translation problem is significantly reduced in the context of this agreement, because there are various provisions that a lot of the disputes should be conducted in English. You are not going to be burdened by the extraordinary challenge of translating lots of the texts into up to 23 languages, which is one of the reasons why the ECJ is much slower. Of course, in the British courts, we stick to timescales.

Mr Bone: That has never been my experience of the British courts, but there we are.

Raoul Ruparel: Bringing it back to scope, because it does matter here, in your question you mentioned regulations generally. It is not the case that any regulatory change would trigger or come into play here. As Catherine touched upon, it is issues specifically around state aid, subsidies and the other level playing field issues, namely environmental law and social employment law. It is not the case that every regulatory change or every area would come under this. It is in those specific areas.

In that sense, the scope is narrower, which means that the number of issues that may come up here is lower. If you look at how labour law evolves over time, this happens over a very long period and regulations are made over a long period. As for the prospect of divergence opening up there, and that triggering the rebalancing or questions, in my view it is something that would happen over a longer period. Therefore, your comparison to the number of issues that come up day to day in the EU is a slightly different thing, in terms of the scope.

Sam Lowe: Can I narrow the scope even further?

Chair: Very quickly, yes, because we need to move on.

Sam Lowe: It is issues that specifically impact on trade and investment as well. My view is that the EU has already provided a list of these, because it did so in its initial proposal under the Theresa May agreement, and in its proposal at the beginning of these negotiations. It is specific labour and environment issues that are market-relevant. It is not all environment and labour issues.

To give an example, I do not think the birds and habitats directive is market-relevant. It is not included in the EEA, so if the UK wanted to change that it would annoy lots of environmentalists, but it could potentially do it without there being a problem. If you decided to scrap the industrial emissions directive, that might lead to some issues and rebalancing measures. It is narrower than people perceive.

Q1169 **Nigel Mills:** Continuing on the same theme, really, of the level playing field provisions, we thought we were getting non-regression clauses in these areas. What we actually got was a qualified non-regression clause, so we can regress as long as it does not have an impact on trade. Can you talk us through what that means? Is that quite a narrow scope, then, because in theory it is quite hard to link any change to a regulation all the way through to having an impact on trade pricing or quantity? In theory, it could be quite broad. You could say, "Well, that is bound to cut your costs a bit, so it helps your price". Is that a material qualification on the non-regression clause, or is it not something we should get too excited about?

Professor Barnard: In fact, we focus on social rights. There are three elements that you need to take into account. First, there is the non-regression clause that you are referring to. That has quite a low threshold. It is non-regression rules on existing employment law that weakens or reduces in a manner affecting trade. There is no threshold of materiality, as far as non-regression is concerned.

Secondly, there are issues about labour standards in this section on other instruments for trade. There, there are different rules on dispute settlement and a lighter-touch approach. Thirdly, there is the rebalancing, which deals with future developments in labour law. There, the test is different. There is a test of materiality, where there is a material impact on trade or investment. You might ask, "Does it make a difference whether you have that criterion of 'material'? How much influence does that have?"

Let us think about some concrete examples; it might bring it to life a bit. Let us take the working time regulations. There are areas of the Court of Justice case law that employers do not like, in particular that you cannot have what is called rolled-up holiday pay. Employers are also not keen on the fact that, if someone has had a year's sick leave, they have to pay four weeks' paid annual leave. Let us imagine the UK decides to reverse those decisions or at least say that we are going to legislate to change. Can you argue that that will have an effect on trade and investment? It is hard to argue that a single change on, for example, rolled-up holiday pay

is going to have an effect on trade and investment. If you are thinking of investing billions, the rules on rolled-up holiday pay will not make or break your decision.

What happens, on the other hand, if there is a cumulative change? It seems to me that we are less likely to repeal the whole working time regulations, but we might salami-slice them away. Could it then be argued that the reduction of protection of working time does affect trade or investment? What happens if we remove not just aspects of the working time regulations we do not like, but aspects of the agency workers regulations that we do not like either? Is that cumulatively enough to trigger the non-regression provision, which does not have that materiality threshold?

Going forward, which is where the rebalancing kicks in, when might the rebalancing mechanism apply to future developments in labour law? The question is what happens if the EU, as it might do, starts legislating a bit more enthusiastically in the field of labour law, because it has this European pillar on social rights and it is going to use it; it has shown signs of using it. The most interesting provision coming out under that is on minimum wage. It is not actually setting a minimum wage, but requiring states to think about minimum wages.

Will that suggest that there is a disequilibrium, because the EU has this and the UK does not? On the other hand, we would say, "Look, we already have minimum wage legislation, which is regularly reviewed over time". It is not clear to me quite how these provisions will be triggered, if you think about concrete examples, because, as I have said, in respect of the non-regression, it is quite hard to argue that some smaller changes, significant for employees, will in and of themselves be enough to trigger the threshold of affecting trade or investment, even without the criterion of materiality.

Nigel Mills: Does anybody else have any comments on that?

Raoul Ruparel: Catherine made the point well that, ultimately, as I touched on earlier, this is one of the areas of the agreement where we will not know until things are tested. We are going to have to see, as and when it happens. What comes out of those tests will be important. My concern in this area is that, given the complexity and the political nature of some of these areas, and the ability in certain cases to take quick remedial action, there is always the risk of a tit-for-tat scenario emerging. We have to be wary of that and keep an eye out for it in the future, but it is very hard to pin down exactly how this is going to work in practice at this stage.

Sam Lowe: It also requires you to take a political judgment as to the trajectory of both the EU and the UK, when it comes to this type of provision. If I am thinking about the environment and climate, the UK trajectory is to tighten the rules, to introduce new protections and obligations on companies, in order to hit the net zero target of 2050. It is

quite difficult for me to see that being a big issue between the UK and the EU in future. Perhaps the UK will think the EU is not going quickly enough in certain respects, and trigger it there.

Secondly, on both sides, the UK and the EU, there will be a wariness about being the first to trigger unilateral rebalancing measures. That first step is the hardest. Once it has been triggered, you could see it cascading, with lots of different disputes arising and coming into play. My hope is that this is a bit like the argument people make in favour of nuclear weapons, in that you have this tool so that you never have to use it, but that may be me being slightly too optimistic.

Q1170 **Nigel Mills:** I suppose this is what I am trying to get my head around. We spent what seemed like months and months arguing about level playing field provisions, and then we have got things that are so hard to interpret that they may never really be used. They are there as a big stick in the background, as you say, as a deterrent, but they are not going to be a big constraint on day-to-day decision-making for either side. You can do little bits without a problem; if you go too far, you might trigger a whole load of trouble for yourself, but we would not expect this to be happening a lot. I guess the aim for both sides would be not to use these.

Sam Lowe: From the EU's perspective, it was only ever worried about divergence in the context that it gave UK companies selling into the EU a perceived competitive advantage over its own. It is not that worried about what the UK does otherwise or from an ideological perspective. It is very much hard-headed economics.

Q1171 **Nigel Mills:** I am tempted to ask Raoul a final question, following up on Mr Sheerman's questions. I do not remember Theresa May negotiating a future partnership. Have I missed that? I thought she did not quite get past the withdrawal agreement, so it is quite hard to work out what she might have done and whether it would be better than what the present Prime Minister has done. Is that a fair recollection?

Raoul Ruparel: That is fair, but the way I interpreted Mr Sheerman's question was relating to the trade provisions that were part of the withdrawal agreement that Theresa May negotiated. The whole point was that it included a permanent trading arrangement, which is why it was voted down, because it would have kept the UK in a permanent trading relationship. If it was not permanent, it may well have got through, as we all saw from the votes and discussions in the House back then.

Q1172 **Nigel Mills:** It is also fair to say, is it not, that what the EU agreed to in a political declaration was not necessarily what it tried to negotiate once we got on to those future negotiations? We saw that its negotiating mandate was not the same as in the political declaration that the present Prime Minister signed a few months before the start of negotiations. It is quite hard to judge not only what she might have sought but what the EU might have been prepared to do in line with that previous declaration. It

does not seem to be a very useful exercise to work out whether those customs arrangements could ever have been produced.

Raoul Ruparel: There were provisions in the withdrawal agreement and the Northern Ireland protocol where you can make a comparison between the level of market access achieved in there in a customs union and the level of level playing field requirements that were put there. You can make a direct comparison between that and what is in the current agreement. They are obviously slightly different things, as you say.

Your point about the political declaration is correct. It is a political document; it is not binding. No one knows how that might have evolved in either case, and, as we have seen, both sides signed the same political declaration but had very different interpretations of it. It was inherently what I would call a fudgy document, in the sense that there was a lot of scope in there to interpret it how you wanted. There were bits that the UK placed more emphasis on and bits that the EU placed more emphasis on, and that would have been the case in any negotiation, no matter who was leading it. It is hard to second-guess how that would have gone.

Q1173 **Sally-Ann Hart:** Good morning to our panel. I have a couple of questions, one of which is on level playing field provision, so I am going to follow on from Nigel there. Just listening to the conversation, are the level playing field provisions stronger than those found in the agreements between the EU and Canada and Japan, for example? If so, will this in itself give rise to issues going forward?

Professor Barnard: They are stronger just because you have the rebalancing measures that you do not have in the Canada agreement. In fact, the dispute resolution mechanism under the non-regression clause in the level playing field is stronger than in the Canada agreement. It is based on Canada, because it is about panels of experts, and there is a line that says that the panel of experts' report does not need to be followed. All of that looks pretty weak in terms of enforcement of the non-regression provisions.

This goes back to what I said before about the Alice in Wonderland nature of this document. Although it looks rather weak and panels of experts are nice but not particularly strong, it says in article 9.3 that it is possible to trigger the temporary measures provisions in the dispute settlement part of the treaty, which is about cross-retaliation, so it is stronger than it first looks.

Sam Lowe: I do not think it is comparable to Canada. I agree with Catherine that it is built using the same sort of framework, but in terms of outcomes we are talking about a very different beast. In the EU-Canada agreement or the EU-Japan agreement, when it comes to parties breaching their obligations under the labour and environment commitments, there is no sanction. Ultimately, a panel of experts will create a report and everyone will have to discuss it and try to work it out,

but there is no consequence to breaching your obligations. There are consequences here. You can have aspects of the agreement suspended.

There are lots of different routes towards this, and Catherine's point is very well made that, on the environment commitments, it looks like there is no sanction, and then all of a sudden it pops up out of nowhere and you are into a completely different discussion. You also have the rebalancing approach. It is very different. There is actual consequence to divergence and breaching obligation in areas where, in EU-Canada or EU-Japan, that is just not the case.

Q1174 **Sally-Ann Hart:** That consequence can be on both the EU and the UK. It is not solely on the UK; it is mutual. Raoul, did you want to add anything to that?

Raoul Ruparel: Not only is the enforcement stronger, as Sam and Catherine have said, but the bar is higher than in those other agreements. You are starting with non-regression from current levels, whereas in other agreements they tend to refer to international standards, which are much more flexible and much less prescriptive. We have both a higher bar as a starting point and then stronger enforcement with that.

Q1175 **Sally-Ann Hart:** In the areas covered by the level playing field provisions, where do you believe the UK and the EU are likely to do things differently and significantly diverge going forward, before the first review of the agreement? I do not know when the first review of the agreement is; is it a year's time? When is it?

Sam Lowe: It depends which review you are talking about. There are quite a few. There is a review of the whole agreement after five years, but after four years there can also be a rebalancing review, which is to assess whether the balance of access and obligations remains consistent with what the parties originally understood. That can lead to large-scale suspension of aspects of the agreement. That is one of the more worrying ones, whereas, with the broad review after five years, it is not quite clear what the consequences of that are.

Q1176 **Sally-Ann Hart:** It will be interesting to know where the possible things done differently would be. I know we have touched on environmental aspects, so it looks like we will all go together on those. Does anyone have a view on where we might differ?

Sam Lowe: You could ask the Government, maybe. To put it crudely, it is a political question. What are the Government's objectives? What areas have they identified as an opportunity for themselves in diverging from EU approaches, and what do they feel the consequences of that divergence will be? Will it have a material impact on trade and investment? Those have been questions that I have found it very difficult to get answers on.

Professor Barnard: I would say two things. First, labour law is obviously in the line of sight of the Government, working time in particular but agency work also. I do not sense an appetite for mass deregulation of labour standards, not least because both Theresa May and then Boris Johnson have said in terms that they do not expect that.

The other area is state aid, or subsidies, as the UK Government call it and as it appears in this text. What is quite striking here is the similarity, in fact, between the state aid regime that is currently applied by the EU and what appears in the text. There is a role for setting up an independent body in the UK to look at some of these attempts at granting aid. Indeed, it is one of the things that the Government must get on with as soon as possible. It goes back to the earlier point we made about what needs to be done straightaway; this is really important.

The structure of approach is very, very similar to what is under EU state aid rules. Now, of course, UK state aid or subsidies do not need to be notified to the Commission, but they will in fact be notified to this British independent body. In fact, the flexibility to use subsidies in an aggressive way is considerably reduced because of the provisions on subsidies in the level playing field provisions.

Q1177 **Sally-Ann Hart:** Raoul, do you have anything to add?

Raoul Ruparel: No, not hugely. Both Catherine and Sam have identified the areas. As I touched on earlier, labour and social employment law seems to be the biggest and most likely area for this to become an issue, but it is something that evolves over time. The big regulations we talk about in this area, such as working time, are things that have come 10 or more years ago. The case law has been evolving over time, so it will take time to emerge. I do not see a big bang where suddenly we change a whole bunch of things, that triggers a rebalancing and then there is an issue quickly. As Catherine touched on, it will be salami-slicing that happens over time, and then at some point there will be a tipping point and then it will be triggered, but the bar to that is quite high because it will be a big deal.

Q1178 **Sally-Ann Hart:** I just want to move over to the accord on fisheries now. I might just go to you first, Raoul, about the agreement. Does the fisheries accord put constraints on the UK's freedom of action as an independent coastal state?

Raoul Ruparel: To an extent, it does. It maintains, initially, EU quota shares in UK waters. It then moves to annual negotiations, which provides for greater flexibility and options to change this, but obviously, if there are changes from that initial quota share, there will be potential for retaliation from the EU side to the economic and societal impact. Again, this is one of those areas, as with many of them we have come across, where we do not know exactly what that means right now. We probably will not know until it is tested and economic and societal impact is defined. The UK cannot just reduce the EU's quota share from where it is

agreed without there being consequences. If that is what you classify as a fettering, there is to an extent, yes.

Q1179 **Sally-Ann Hart:** Just looking at the breaching, in five and a half years' time, when the transition period ends, what happens if either side breaches or terminates the fisheries provisions of the agreement, and what remedies are available to the other party under the agreement and in international law?

Raoul Ruparel: I will not go into the international law side of it because I am not an expert in that. In terms of the agreement, if that agreement is terminated after the five-and-a-half-year transition—essentially, if it were to reduce one side's quota share in the other's waters to nothing and reduce access—as I said, there is the ability for either side to respond based on the economic and societal impact and loss felt. That is a limit. It is not, as the EU wanted earlier on in the negotiation, to essentially reopen the entire FTA, but it maintains that link between the trade agreement and the fisheries agreement. There is the ability to have that response.

There are also other links. People have talked about the link between energy and fishing, and how there is a review point for the energy agreement around the same time as the end of the fishing transition. That should not be overdone, but it is something that the EU has been pushing out and has focused on, in the sense that it believes that it has offered the UK a particularly good agreement on energy. We can discuss whether that is the case, but I am talking about the EU's perception of this. It believes it is positive and delivers economic value for the UK, and it is concerned that that would be entirely stable and fishing would be unstable. That coincidence of review is not purely coincidence; it is by design, because the EU has seen a link between the two.

These are cross-cutting, and in the end, when we step back from this, the link between fishing and trade is not as significant as the EU wanted initially but it is there. That was always going to be a prerequisite for the EU, given its guidelines and mandate in these negotiations.

Q1180 **Sally-Ann Hart:** Just for clarity, terminating the fisheries section would not automatically terminate the trade, aviation and road transport sections, would it?

Raoul Ruparel: No. My understanding is that it gives the option to do that. If they wanted to, they could, but it is not automatic.

Q1181 **Dr Huq:** I just wanted to return to some of those grey areas or gaping holes that the Chair started off with at the beginning—the things that were maybe requested and then not granted. I am guessing Erasmus was one of those, because that is not in the agreement at all. This has been spun as a Christmas Eve miracle, and ever since the Home Secretary has been quoted as saying that we will be safer now than before. I just wondered what the three of you thought of that claim, seeing as the loss

of direct access to these databases means things certainly will be slower, and we are not in the European arrest warrant. I hope it is not one of those things that there is no objective truth to. I just wondered what the three of you thought: will we be safer? Will things be slower?

Professor Barnard: I am afraid I disagree with the Home Secretary saying that we will be safer now than we were before. The UK was highly instrumental in setting up all these mechanisms when we were still a member of the EU. The fact is that a number of them have been turned off or we have been refused access to them, in particular the SIS II database. We use that about 600 million times a year, so it is something really quite serious.

That said, I was pleasantly surprised about how much had been agreed, in this agreement, on law enforcement issues and criminal co-operation, although notably not civil co-operation, which is a major loss for the commercial courts in this country. In respect of criminal matters, yes, we have lost access to some of the databases, but we have something not too dissimilar. It will be slower and more clunky, and it will require quite a lot of work from the relevant specialised committee to try to get this to work harmoniously, but the fact is that it is far better than a no-deal Brexit, in which we would have had access to none of this stuff.

As you say, we no longer have access to the European arrest warrant, but you find in the European surrender agreement something that is not that far short of the European arrest warrant. Yes, there are some more caveats and it may be that states take advantage of the possibility that they can refuse to extradite their own nationals, but what the European arrest warrant is more often used for is to get British people back to the UK from, for example, Spain, rather than trying to get Latvians back into the UK. The fact that the European surrender agreement is there is a positive step.

Raoul Ruparel: I am not qualified to judge how safe the UK is; it is not for me to make that judgment. I agree with Catherine's analysis. I had low expectations in this area, given where the negotiations had been going and the difficulty caused by the red lines of both sides on this issue. As soon as you have the constraints of no regulatory alignment and no European Court of Justice, the security agreement and the level of ambition inherent in that drop significantly. I always was of the view that this would be quite a difficult negotiation but, as Catherine has touched on, there are positives there. Particularly the replacement for the European arrest warrant and how close it gets to the current system is a positive.

It is a step down, in terms of access and data-sharing, from where we are now but, in the scheme of the negotiations and where things had been heading, it seems to have come out slightly better than I had expected.

Q1182 **Dr Huq:** Sam, is it a downgrade?

Sam Lowe: I am going to speak specifically about safety and security in the trade space. I have heard an argument made by people in Government that the reintroduction of safety and security declarations, which are part of the new bureaucracy that people exporting or importing goods in and out of the UK have to deal with, provides greater information to the UK agencies about what is coming into and leaving the UK. In that sense, this extra bureaucracy, although a big cost for business, provides Border Force with more information from which to assess the risk levels of trucks entering and leaving the UK. From that perspective, you could argue that there is more information available in a certain instance that can allow us to protect our borders or make decisions in the security space.

It also speaks to your broader question of absences from the agreement, because it is possible that we would have negotiated a waiver on the safety and security declaration, similar to what the Swiss and the Norwegians have with the EU, and removed this bit of bureaucracy for businesses. We chose not to. I then have the question of why we did not try to negotiate it. You could make the argument that it is because the UK wanted to have more information about who is entering and leaving the UK for security purposes. I am not sure I necessarily agree with all this and I am not sure I am qualified to have an opinion on it, but it is an interesting avenue to explore.

Q1183 **Dr Huq:** It is going to be coming up again in more detail in later questions. We have an 80% services economy. A lot of these things, such as financial services, are TBC things that need the blanks filling in. There is a further memorandum of understanding to come on financial services. There are probably more people in the borough of Ealing employed in that than fisherpeople in the whole country. The Chair talked about mutual recognition of qualifications. How useful are the provisions in the agreement for that as is? Who is going to decide? Is it professional bodies within each member state on a bilateral basis?

Sam Lowe: Starting in general with the services point, it is important to remember that, although a large proportion of the economy is services-orientated, our trade is more evenly split between goods and services. If you take the data at face value, we trade more in goods than we do in services. We should not necessarily take the services data at face value because I think it misses a lot, but it is important to remember that.

In terms of the provisions within the agreement, from the moment the UK chose to extricate itself from the EU's regulatory infrastructure and to reject freedom of movement, the options when it came to services in the context of an agreement were always going to be limited. Free trade agreements do not do much to facilitate trade in services. They lock in existing levels of access, which is useful from an investment perspective, but beyond that they are not the place you go to liberalise trade in services. To liberalise trade in services, you largely need regulatory harmonisation in order to get regulators on board and to trust each other.

Otherwise, you are left with equivalence-type discussions, which is where we are, where unilateral decisions are taken by countries to allow certain things to happen or not, but they do not bind themselves to those decisions.

In terms of mutual recognition of professional qualifications, it is very similar to EU-Canada. To be honest, EU-Canada provisions on mutual recognition of professional qualifications do not work. They are not very useful. They have not led to any actual recognition of qualifications. There is always a rumour that the architects are going to get recognised at some point, but it has not happened. On the basis of this agreement—it is good that the agreement did not shut down this avenue—we are left with attempts by the UK Government, or respective qualification bodies in the UK, to operate bilaterally with their counterparts on the continent to ensure recognition of qualifications that way. It does not look like it is going to happen on an EU-wide basis anytime soon, although the possibility is there because it can be built upon over time.

Q1184 **Dr Huq:** Do the other two have anything to add? Raoul, you were in that negotiating space for quite a long time.

Raoul Ruparel: I agree with Sam. The best thing I can say about mutual recognition of professional qualifications here is that it is not actively unhelpful, which it would have been if it did not include this ability for the bilateral agreements to be struck. That was a big ask of the professional business services industry: "Look, if you cannot get what you are asking for on mutual recognition of professional qualifications, at least do not shut off the bilateral routes", because that can quite quickly create a useful patchwork of agreements. If everything had to go through the EU level, it would have been slow, onerous and quite political. The best we can say, as I said, is that it is not actively unhelpful, and hopefully these bilateral routes can quickly establish some agreements.

Q1185 **Dr Huq:** Is there space for this being one of these TBC things further down the line?

Professor Barnard: Could I just answer your broader question about what is missing? The most obvious, very large area that is not touched upon at all in the agreement is foreign policy, which was already identified as an area in the political declaration or agreement. Clearly, there has been a policy decision taken that this should not be done via the EU but on a more bilateral basis with certain European partners. It is clearly quite important for the UK to work out what it wants to do in this area, specifically over the fact that we have COP 26 taking place in Glasgow at the end of the year, and how we are going to work with our European partners to try to deliver some of these very ambitious objectives.

It is not just climate change; it is how to deal with Iran and the other pressing international problems. There is no framework at all for that in this treaty. It is not the end of the world, because even under the CFSP it

was more of a framework; it did not actually deliver some of the big changes, which were still done on a largely bilateral basis. Nevertheless, there is nothing here, so, to answer your question, that is an obvious gap.

Q1186 **Dr Huq:** That includes international aid, defence—the whole lot.

Professor Barnard: Yes.

Q1187 **Stephen Kinnock:** I would like to start by apologising for being late; I had another call from 9 am to 10 am. I have tried to catch up with as much as I can of the discussion. I wanted to focus my questions on financial services. Sam, I know you have done a lot of work on the services side of the EU-UK relationship. There has been a lot of talk of regulatory equivalence. There is the March deadline. I know it is a bit unfair to ask you to do crystal ball gazing, but it would be great if you could give us a sense of what you think the chances are of getting an equivalence decision, and then perhaps expand a bit on other possible scenarios and what they might mean for the UK financial services sector.

Sam Lowe: The agreement itself does not have any linking over to the equivalence decision at all. Surprisingly, the agreement does not even include provisions on regulatory dialogue, which is included in EU-Canada or EU-Japan, for example. Instead, we believe that discussion is being kicked to a memorandum of understanding that will appear soon, which has a slightly weaker legal basis. I find it slightly baffling as to why that was not in the trade agreement, but I am sure there is a good reason for it.

In terms of equivalence and crystal ball gazing, my view earlier in the year was that, if there was a trade agreement between the UK and the EU, it would increase the likelihood of financial services equivalence being granted, and also data adequacy. That does not seem to have been the case. The mood seems to have changed slightly, and now I am much more concerned about equivalence. The EU will continue to grant equivalence in areas where it believes it to be in its interests to do so, particularly where there is a potential systemic risk, but otherwise it is not really in the mood for granting the UK any access above and beyond what it normally allows third countries. Part of the reason for that is that it is quite keen to pull over some of that business.

Q1188 **Stephen Kinnock:** Major UK-based banks have already moved more than £1 trillion of assets and thousands of jobs to the EU. If we do not get the equivalence deal, we have to assume that process will continue and we will continue to see the transferring of assets and jobs. What is a reasonable worst-case scenario in terms of a longer-term impact on our financial services sector if we do not get an equivalence deal?

Sam Lowe: We have to add another element into the equivalence discussion, which is the actions of member-state regulators. To begin with, they have said to these companies setting up subsidiaries, say, in Frankfurt, "We want you to bring over some of your salespeople. For the

next few years you can still conduct certain operations in London, but over time we want to see a plan for how you are going to repatriate your trading function into Frankfurt as well". It is going to be gradual. My view is that, in the long run, the EU's aim—it will probably succeed, to a degree—is to have all consumer-facing financial services operations targeted towards EU consumers to be based in the EU, for the most part. That is what it is aiming to achieve.

In terms of the impact on the UK as a whole, we have to understand that Europe-focused financial services trade is only a small proportion of what the UK does. It is international and focuses on lots of other areas, but of course this is going to be a slow leakage of economic activity that would have otherwise taken place in the UK.

Q1189 **Stephen Kinnock:** Just to pin you down a little on the likelihood of an equivalence deal now, as you say, the position seems to be hardening. Would you put our chances of getting that equivalence deal significantly below 50%?

Sam Lowe: It is very unlikely—way below 50%—that equivalence will be granted across all product lines, so in all areas where the EU could grant equivalence. It just seems that is not going to happen now. It is possible and probable that, in certain specific areas, the EU will continue to grant equivalence or might grant additional access because it sees it as being in its interest to do so. In terms of wholescale, across-the-board equivalence, that is now very unlikely.

Q1190 **Stephen Kinnock:** It is possible for something like EU derivative markets but not for some of the more lucrative markets.

Sam Lowe: Yes. It seems that decision has been made. I am sure Raoul will have opinions on this as well.

Raoul Ruparel: There are something like 39 potential equivalence decisions to be taken. The EU has taken two of them so far, in terms of granting equivalence. Those were two that it saw as particularly important from the EU perspective, particularly around clearing houses and liquidity. That gives you a sense of which areas it sees as an absolute priority. The other ones it sees as optional. They may happen in the future, but the fact that it has not taken those decisions is an indicator that it is going to see how things evolve.

As Sam said, this is less about the equivalence decisions themselves and more about the regulatory grip on how banks or other financial firms can operate in the EU. Banks and most financial firms have taken the steps necessary to operate on day one and even through the first year or two in the EU. If things stayed like that, it would not matter so much if there were no further equivalence decisions; they would have taken the steps necessary to function. As Sam said, though, the regulators have given permission to certain forms of establishment in terms of the number of people required, the levels of assets required and the risk and oversight

structures inside the member states. They have taken, in their view, quite a permissive view as to the day one approach. It will then be tightened over time, and that is what will cause a further drip from London into the EU, rather than the equivalence decisions or not, I expect.

As Sam touched upon, this is a long-term strategic play by the EU. It is not a one-off; it is a wholesale view of how to bring certain financial services back into the EU. It ties into its vision on capital markets union and other things like that going forward. It wants to create an internal eurozone capital market that can rival London. I am sceptical about whether that is really possible but it is something the EU is thinking about, and this feeds into that.

Finally, in terms of the dialogue, the memorandum of understanding and the fact it has been separated out, in a pure negotiating sense the UK would have had more leverage when this was kept as part of the whole FTA. If you are holding out on this issue, you can hold out on other things the EU wants. When you separate it out in isolation, obviously it becomes a different discussion, and I am not sure necessarily to the UK's advantage, so I am also pretty sceptical of the idea that this separate discussion will lead to the type of enhanced equivalence that the UK was seeking. It will lead to some kind of regulatory dialogue because, as Sam said, that is a no-brainer for the two sides.

Q1191 **Stephen Kinnock:** It is clear that there is a consensus here that a comprehensive equivalence deal is not going to happen. What might the alternative look like? Would it be some sort of information-sharing with a transparency mechanism? How would that be governed? We do not have any real sense because, as Raoul has correctly pointed out, none of this has been covered in the TCA.

Professor Barnard: I would just like to make two points. First, while data adequacy provisions have been extended for four to six months, clearly in anticipation that there will be a data adequacy decision, there is no equivalent on financial services, which potentially reinforces the point that there is a hardening of position in respect to financial services.

Secondly, I would like to address the rather commonly expressed view that there is nothing on financial services in the TCA. That is not correct. There are provisions on financial services in there. They include references to market access and market improvement, but there is a very important prudential carve-out, so it is much easier for the EU to use that to argue that UK firms should not be able to have access. There are provisions in there; it is not an absolute desert.

Q1192 **Stephen Kinnock:** What might the alternative to equivalence look like? Will there be some kind of structured information-sharing agreement at least, or are we just looking at a completely ad hoc situation?

Sam Lowe: My hope would be that there will be a regulatory dialogue instigated. My view on lots of these regulatory dialogues is that they can achieve quite a lot so long as the politicians forget about them, to put it a bit crudely. When issues become depoliticised, it is left to the regulators and the civil servants to work it out between themselves, and they will probably achieve quite significant things.

I hope that there is a regulatory dialogue on financial services because it is important. We are a very large financial centre. The eurozone is collectively systemically important. For there to be no structured dialogue between regulators with the ambition of ensuring future barriers and issues do not emerge would be quite unfortunate. I hope that, at the very least, we can get that. Over time, if we are taking a very long time horizon, you could see it evolving in different ways and potentially opening up new market access opportunities in future, but I do not see that happening while Brexit and the EU-UK issue remain highly politicised.

Raoul Ruparel: An element will also be the continuation of swap lines between the ECB and the Bank of England, which will be important particularly while the majority of euro clearing remains in London. That will be an important point to continue, and I think there will be, again, regulatory dialogue and discussion built around that.

Q1193 **Joanna Cherry:** I want to go back to ask more questions about security, law enforcement and judicial co-operation. Therefore, my questions will primarily be directed at Professor Barnard. Looking at the surrender agreement that has been negotiated as a replacement for the European arrest warrant, I think I am right in saying that there are three main differences between the surrender agreement and the arrest warrant. In relation to the surrender agreement, states can refuse to execute a warrant for political offences; they can refuse to surrender their own nationals, or only do so in certain conditions; and, thirdly, there is a requirement of dual criminality, meaning an offence has to exist in both jurisdictions, except in very defined circumstances. These are significant differences, are they not?

Professor Barnard: They are. As you know, there has already been discussion about some of those things in respect of the European arrest warrant. In respect of the dual criminality provision, it is similar to something in the Norway-Iceland arrangement, so we are building on something rather similar to that. Absolutely, it is not the European arrest warrant, but we could never have access to that so long as we were not going to sign up to the charter and the European Court of Justice. All I am saying is that it is better than not having anything at all.

Q1194 **Joanna Cherry:** Yes, indeed. It is better than not having anything at all, but our extradition rights will no longer be as wide ranging, swift or efficient as they were under the European arrest warrant. That is right, is it not?

Professor Barnard: Yes, I agree.

Q1195 **Joanna Cherry:** There was a very interesting discussion on the "Today" programme a couple of mornings ago. Lord Ian Blair, the former Met commissioner, and Lord Peter Ricketts, the former national security adviser, were discussing these matters. Lord Blair reminded us all of how quickly one of the suspects in the 21 July 2005 terrorist outrage was extradited from Rome. He reminded us that the man was arrested in Rome and it took only 56 days to bring him back to the United Kingdom. Lord Blair said that it could take years to bring someone like that back now. Was he right?

Professor Barnard: I do not have enough knowledge to be able to comment on it being years, but it is certainly not as good as the European arrest warrant. Given the much more positive approach adopted under the law enforcement provisions than we had expected, I would be surprised if it was years, but nevertheless it is clearly inferior, yes.

Q1196 **Joanna Cherry:** Moving on to the right to access European-wide databases that has been negotiated, again listening to Lord Blair and Lord Ricketts, they both agreed that we have lost full access to European-wide, real-time, interrogatable databases on criminal records, DNA, fingerprints and intelligence. They went on to give some examples, which I am going to take you through, of the significance of losing full access to these databases. They are right that we have lost the full access that we had before, are they not?

Professor Barnard: Yes, absolutely, especially to SIS II and ECRIS.

Q1197 **Joanna Cherry:** Lord Blair said that you can access some of these databases—obviously not SIS II—but you cannot interrogate them. He gave the example of the passenger name records. He said that our access now will only be to passenger names, not to their criminal records or any intelligence on them. That is quite a major problem, is it not?

Professor Barnard: Yes, I agree.

Q1198 **Joanna Cherry:** Lord Blair went on to say that the Home Secretary has prioritised wanting to ban foreign criminals who have spent more than a year in jail, but that, in order to prevent people from coming into the United Kingdom who have spent more than a year in jail, you need to have access to their criminal record. Previously we could, but now we can no longer access such criminal records directly. If you look at the small print of this agreement we have entered into, it says that member states will reply to our requests as soon as possible and, in any event, within 20 days. Lord Blair explained that, if it is going to take 20 days to check whether someone has a criminal record, that is not much use to a Border Force official who has someone standing in front of them, is it?

Professor Barnard: No. I agree with all of this.

Q1199 **Joanna Cherry:** It is quite inferior to what we had before.

Professor Barnard: Yes, absolutely, but it is better than nothing at all, which would have been the case with no deal.

Q1200 **Joanna Cherry:** I could not agree more that it is better than nothing at all, but we need to compare it with what we had previously.

Can I just come on to the Lugano convention? You mentioned earlier that this deal that has been negotiated does not address matters of civil judicial co-operation. As of 1 January, the United Kingdom is no longer part of the Lugano convention, because we came out of that when we left the single market and customs union. That governs jurisdiction and the recognition and enforcement of judgments between not just the EU countries but also Norway, Iceland and Switzerland. Can you explain for us the significance of the United Kingdom not being in the Lugano convention as of 1 January?

Professor Barnard: As you know, I am sure, far better than I, Lugano would have been some sort of replacement for Brussels I, and Brussels I is about determining jurisdiction but also about enforcing foreign judgments. Of course, that is really important for the UK. We are a big commercial centre. Our courts are respected and judgments of our courts need to be enforced not just in the UK but in other states. We have lost that possibility under Brussels I.

We applied to join Lugano. We wanted to, and indeed Norway, Iceland and Switzerland were keen for us to do so, but the EU said that we cannot because we are not close enough to the single market. Because it is an area of exclusive competence for the EU, the fact the EU has said no means that we cannot join Lugano.

We have joined the Hague convention on choice of court agreements. That at least gives us some cover. I think that has already come into force.

Q1201 **Joanna Cherry:** What are the implications for business in the United Kingdom, and for our legal system, particularly in London and to a lesser extent Edinburgh, which may be places people choose to come to litigate at present? How is that going to be impacted going forward if we are not part of the Lugano convention?

Professor Barnard: The Hague convention helps quite a lot, but you are absolutely right. It has the effect of somewhat eroding the attractiveness of London as a place to litigate, because of the issues about getting your judgments enforced. We understand why the EU is doing it. It says that we are not close enough to the single market. I find that argument somewhat perplexing, because it is not really a level playing field issue. As you know, it is about procedure and whether you are able to enforce a judgment, not any substantive terms. The fact is that the EU is minded, in fact, that the Netherlands wants to build up its commercial court

jurisdiction. This is a bit like when we were discussing financial services; it is a way of the EU grabbing some of that business from the UK.

Q1202 **Joanna Cherry:** Can I finally ask you about the dispute resolution provision in the law enforcement section of the agreement? Could you also mention what provisions have been inserted in relation to the United Kingdom's duties in respect of human rights?

Professor Barnard: In respect of the law enforcement provisions in the dispute settlement section of the law enforcement part of the treaty, it is a much more political nature of law enforcement. It is consultations, including in the framework of the specialised committee on law enforcement. One of the questions that might be underpinning your question is about how important that committee is, to which the answer is that it is seriously important. It has a role not just in dispute settlement but also, if you cannot reach a mutually agreed solution and that leads to a suspension of titles within the part on law enforcement, in managing the arrangements for turning off the application of some specific titles within the part on law enforcement. That committee has a particularly important role, and it is really important that some scrutiny is given to what that committee is doing.

In respect of your question on human rights, yes, there is quite a lot on human rights in the treaty, more perhaps than you would have expected. You have the general human rights provisions on if there is a breach of what are called the essential elements of the treaty, and that includes democracy, rule of law and human rights, with an implicit inclusion of the European convention. That can lead to a fast-track suspension or termination of the agreement as a whole. You then have the human rights conditionality in the criminal law part of the agreement itself. There is the possibility of a termination clause. If you want the actual reference, it is LAW.OTHER.136. It is subject to a threshold, but either party can terminate this part of the agreement with nine months' notice if there is a denunciation of the European convention on human rights.

Q1203 **Joanna Cherry:** It also covers certain protocols or articles of the ECHR, so you do not have to denounce the whole thing. There are certain articles and protocols that could be denounced.

Professor Barnard: What is interesting is what happens and how it might play out if we repeal the Human Rights Act but do not formally withdraw from the convention.

Q1204 **Joanna Cherry:** What is understood legally by the term "denounce"?

Professor Barnard: Presumably it would be where we say that we are terminating our membership of the European convention.

Q1205 **Joanna Cherry:** What about denunciation of just a particular article or protocol? Is that also covered?

Professor Barnard: Yes.

Q1206 **Chair:** Can I just ask one final question? We have discussed during the course of the evidence session today that the UK had certain objectives on the one hand—completing exit from the European Union, not having anything to do with the European Court of Justice and so on. On the other hand, the EU wanted to preserve the integrity of the single market and the customs union, and for it not be seen that a member state leaving could keep a lot of the advantages.

Thinking ahead five or 10 years, given what you have said to us about the assumption in the agreement that there will be further negotiations, and having identified a number of issues where, particularly from the UK's point of view, we might want to seek further agreement to remedy some of the things that have not been achieved, do you think we are likely to be able to look back and say, "Here are a series of agreements that have been reached that have built on the relationship"? This is a difficult question but it is the big political one now that we have left: is it your expectation that both sides will eventually realise that a closer and stronger relationship, while respecting the respective positions, is in the mutual interest of both the United Kingdom and the EU?

Raoul Ruparel: The agreement will be built on over time, although there will not be much appetite in the immediate future for either side to negotiate. There will be limits to how far this can go because of the enduring red lines of both sides. Particularly on the UK side, as we have touched on, if you are not considering free movement of people, regulatory alignment, European Court of Justice jurisdiction, and those are all ruled out, as well as membership of the single market and the custom union, yes, there are bits you can build on, but there are very significant limits to how much further the agreement can go. I could see there being some mutual recognition agreements on conformity assessments in certain areas, or even quite broadly across goods, over time. I do not see it going as far as the UK gaining participation or membership of the EU's agencies, in terms of those that regulate the single market in goods in particular. I just do not see how that will be possible without ongoing regulatory alignment.

There can and will be tweaks, and things will be built on over time in this agreement, but I am not sure it will lead to a significantly deeper, significantly different type of relationship than what we have now, unless either side radically shifts its red lines.

Chair: That is very helpful.

Sam Lowe: I would build on that by reiterating what Raoul said about the hard red lines. If we want a significantly deeper economic relationship with the EU, we have to change our approach to freedom of movement. I am personally very in favour of free movement; I understand that that view is not shared by much of the country. That would need to shift significantly. If it were to shift, in my mind, that is the key that unlocks deeper integration on services and goods, but it would need to be accompanied by deep regulatory integration.

In terms of where we could get in the meantime, it is important to stress that the agreement could go two ways. It could be built upon. We could, for example, have deeper alignment on sanitary and phytosanitary issues. One of the reasons we might want to do that is that all we have been discussing today relates to Great Britain, not to the entirety of the UK. In terms of Northern Ireland and dealing with the internal border the process of the last few years has created, if we could become reintegrated on sanitary and phytosanitary issues, removing the need for inspections, as the Swiss have done, that would greatly help with the internal border of the UK, between Great Britain and Northern Ireland, and reduce or remove the need for checks there.

There are opportunities there, but the agreement could be chipped away at as well. There are all these provisions that can point towards termination or the reimposition of barriers to trade, so a lot rides on the nature of the Government in the UK and the EU during this period, and what direction of travel they would like to go in. In terms of economic gravity, it remains in the UK's interests, from an economic perspective, to remain quite integrated with the EU, particularly in goods, but, as I have learned over the last few years, economic arguments do not always win.

Professor Barnard: I had always thought one of the arguments in favour of having a deal was that it would make relationships more cordial between the EU and the UK. I always thought that no deal would be really very bad, not just economically but politically, for the hostility that would be expressed on both sides. The optimist in me says that this is a foundation for something that is potentially more harmonious. However, the nagging voice in the back of my head is saying that the EU has got very much what it wanted out of this deal. Concessions will have to be made by the UK if the UK wants more, and it is not clear where there is space for the UK to make those concessions, certainly with the present Administration. If the politics of complaining about the EU and saying the EU is not a good thing means that we end up having a shadow Brexit debate up until five years' time, when the agreement is reviewed, we may well find ourselves back, looking at a no-deal scenario.

Chair: On behalf of the Committee, can I thank you, Catherine, Sam and Raoul, for an excellent evidence session today? This agreement is going to require a great deal of further understanding, which will be partly informed as it plays out and we see how the two sides interpret the provisions, but you have been of great assistance to us today. Thank you very much for coming.