



European Scrutiny Committee

Oral evidence: Scrutiny of EU Business, HC 507

Wednesday 16 July 2014

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Members present: Sir William Cash (Chair); Michael Connarty; Geraint Davies; Kelvin Hopkins; Chris Kelly; Henry Smith

Questions [1-32]

Witnesses: **Rt Hon David Lidington MP**, Minister for Europe, **George Hodgson**, Head of the EU Parliamentary and Communications Department, and **Owen Jenkins**, Head of the Western Balkans and Enlargement Department, Foreign and Commonwealth Office, gave evidence.

Q1 Sir William Cash (Chair): Welcome, Minister. Two weeks ago, you wrote to me about a proposal for increasing democratic legitimacy in the EU. In there, you said, with respect to discussions you had been having with counterparts throughout the European Union, “Our discussions have shown that the democratic deficit is a genuine concern across member states and within EU institutions”. You also said that the lesson you drew from the conversations, amongst other things, was on giving national Parliaments a greater and more effective role in the EU’s functioning. You agreed with this Committee on the crucial role that Parliament, and Parliaments in other states, have to play in this process.

However, for well over a year now you, the former Foreign Secretary and the Prime Minister have been speaking across the EU about the role of national Parliaments. In our view, this is at the very least deeply ironic, given that at the same time we have seen inordinate long delays in scheduling debates on documents, and in some cases recommendations for debates on the floor of the House being overruled by the Government. We are going to ask you questions about these issues later in the evidence session. First of all, despite many letters between us, the response to our scrutiny report in November—which was a radical report with some extremely important matters raised, and which was also accompanied by very, very interesting evidence from many distinguished people—is now a shocking 169 days late. You may smile, but actually I am certain you realise that for a Select Committee report to be left on the shelf, as it were, for 169 days is intolerable. Why have the Government been unable to agree a response? When is it going to come out? Would you not have a better case in extolling the role of national Parliaments, as you set out in your letter of 1 July, if you got your own house in order first of all?

Mr Lidington: Thank you, Chairman. It is always good to be back. I am accompanied by two officials, George Hodgson from the EU department and Owen Jenkins, who is head of the Western Balkans department, since the Committee indicated that some of the

questions may relate to that part of Europe. I acknowledge the fact that it has taken a long time to provide a Government response. As you said, Chairman, the report is stimulating and contains a number of recommendations that would have a far-reaching impact in terms of the relationship between Government and Parliament, and in terms of the relationship of this country to the European Union. The issues touched upon in that report were not the property of the Foreign and Commonwealth Office only; they touched upon the responsibilities of every member of the Cabinet. Every Government Department has had to be involved in co-ordinating a Government line to respond adequately to the measures set out in the report. I am able to say that the Government's response to the report will issue imminently.

Q2 Chair: Do you mean before the House rises?

Mr Lidington: Yes, that is certainly my plan and my intention. Obviously the Committee will have to decide how it may wish to respond to that Government response. However, it did take a long time—longer than I would have wished. It took a long time, given the complexity and significance of the issues raised, to hammer out an agreement within the Government, involving all Departments, about the appropriate collective response.

Q3 Chair: There is also the inquiry we took on the Charter of Fundamental Rights—that is also gravely overdue. That is another matter that causes us grave concern. It actually comes up in relation to the emergency Bill on the retention of data, on which I had to put down some amendments, having taken very careful legal advice on my own initiative, because there is a severe danger, as expressed by a number of leading academic and other lawyers, that this Bill could be challenged by the European Court with very serious consequences, for reasons that were set out in the debate, which I do not need to go into in detail. Again, through a new clause, I put it to the House that we would need a formula of the kind of “notwithstanding sections 2 and 3 of the European Communities Act” to guarantee that this Bill was not upset by a further European Court decision.

I will not go into that now, but I give you that as an illustration of our concern that we have not yet had a response to the simple question that, in a nutshell, I put to the Prime Minister in the Liaison Committee, which is that you have a choice: either you accept that the charter applies or, alternatively—as expressed in our previous report in November, to which, as I say, we have not had a reply—you make clear that the charter does not apply with primary legislation and a “notwithstanding” provision. So, you might like to just respond to that point because it is right at the heart of all the questions we raised in November. It is right at the heart of the whole question of our relationship to the European Union, as you have just admitted, and we are still waiting for a response.

Mr Lidington: As I think the Committee knows, that is an issue where my colleague, the Justice Secretary, is leading the work on co-ordinating the Government response. I think the best answer I can offer to the Committee is to report the Committee's concerns to the Justice Secretary, and suggest that he may wish—if he is not able to publish the Government's response soon—to write to you, Chairman, to set out the Government's immediate response to the concerns you have just expressed.

Q4 Chair: I have one last point. The other point I would like to raise is in relation to the Prime Minister's own statements, for example in the Bloomberg speech, about national parliaments being the root of our democracy. This came up again with respect to the

question of the Spitzenkandidaten process and the whole issue of the assertions of the European Parliament in relation to the role of national Parliaments. Yesterday the European Parliament approved Mr Juncker's appointment as President of the European Commission.

Commenting after that vote, the President of the European Parliament, Martin Schulz, said: "This is an historic day in the continuing process of developing a true European democracy. Today we have witnessed the conclusion and acceptance of a process that, despite the scepticism it received initially, gave European citizens a direct say in the nomination of the top executive post in the European Union." He went on to say that, "This process irreversibly strengthens parliamentarism in Europe and it will change the EU by establishing a direct link between the outcome of the European elections and the choice of the President of the European Commission." This, of course, is directly contrary to the view taken by the Prime Minister, who said that this was a bad day for Europe and so on.

However, we also note the wording of the commitment set out and accepted by this Government in the conclusions of the European Council on 26 and 27 June: "Once the new European Commission is effectively in place, the European Council will consider the process for the appointment of the President of the European Commission for the future, while respecting the treaties." Do you think that this process, described rather curiously as the Spitzenkandidaten process, does respect the treaties? What is the treaty base? What consideration is the European Council now going to give to the process?

Mr Lidington: The situation here is that there is ambiguity in the language of article 17 of the treaty. This derives from Lisbon. The article provides that the European Council, having taken account of the outcome of the European parliamentary election, shall nominate a candidate for "election"—I think that is the word used—by the European Parliament. If the European Parliament rejects the nominee then the European Council has to meet again and put forward an alternative name. The interpretation that not only this Government but our predecessor during the debates on the Lisbon treaty in this place took was that this did not provide for the candidate nominated by the biggest group in the European Parliament automatically to become entitled to serve as Commission President. All that that article did was to require the European Council to take account of the outcome of the parliamentary election result.

I have said publically that that would certainly mean looking seriously and with respect at the claims of people who were nominated by European parliamentary groups, but that the European Council should not feel in any way obliged to confine its search to those people. The European Parliament's larger groups have consistently interpreted the article as requiring the European Council to go for the person who represented the largest group after a new European Parliament election. Now, this time round the Prime Minister took a very consistent and very principled stance in saying that the European Council should stand up for its own rights and powers under the treaty—conscious in doing so that the Heads of Government assembled in the European Council were democratic leaders accountable to their own Parliaments and their own electorates—and that the Council should not allow itself to be bounced by the leaders of the groups in the Parliament in this way.

The outcome of the European Council, as we all know, is that the Prime Ministers and Presidents of a majority of member states, for reasons that it is for them to explain, decided to either support or to acquiesce to Mr Juncker, the name put forward by the

European Parliament. That is the background and the explanation as to what has happened. I am in no doubt that Mr Schulz, whom I met yesterday in Strasbourg, and the leaders of the European People's Party too, have a very clear and transparent agenda, which is to try to enhance the powers of the European Parliament as an institution, using whatever leverage they can.

Q5 Chair: They are doing it without any legal base. Where is the treaty base for this?

Mr Lidington: It is difficult for me to present their argument. Their argument to me, and their argument to the Heads of Government, is that the only reasonable interpretation that could be placed on article 17 is that it requires the European Council to pick the person who commands the confidence of the majority in the European Parliament. Their argument to me and to the Committee would be that they are applying the same democratic principle at European level as we apply here, in saying that the Government and the Prime Minister are the people who can command a majority in the House of Commons. Now, we disagree as a Government with that interpretation of article 17. We think that that is a perversion of the meaning of article 17, but that is the point of view that those people at the European Parliament—and some Heads of Government in other member states—do express and support.

Chair: It is a power grab.

Q6 Michael Connarty: I will not ask you to respond to the comment I am going to make about the internal workings of the European Parliament, because I do not think you have that much access to the socialist and democratic group. You do not have much access at the moment to the European People's Party either, by choice of your Government. However, it seems to me that Schulz reflects the politics of Germany by doing a deal for a grand coalition with the EPP candidate for the Commission presidency, where he then gets the presidency of the Parliament. It is notable that the European parliamentary Labour party has not taken any vice-presidencies in this Parliament at all. That may in fact be reflecting the view that this stitch-up is something that is unpalatable in terms of our own political perspective from the UK. That is not necessarily how we do our politics; there should be a challenge and a vote, and then a proper decision, rather than an arrangement. However, that is the way that the EP works.

I wanted to return back to the original question. During the last Parliament, the present Government party opposed—as I did from the Chair of this Committee—proposals for diminishing the engagement of Members of Parliament in the European policy process, through getting rid of permanent memberships of the Standing Committees and proper delineations in terms of their responsibilities, through which a large group of knowledgeable Members of Parliament had gathered for the discussion of European matters. What they seem to have been replaced by in this Parliament is a number of debates on the Floor of the House where people stand up and spew out their prejudices for or against the European Union, showing no interest at all in the actual substance of each individual debate, which are the individual matters usually put before it.

A report was published on 28 November last year calling on the Government to respond—normally, by convention, within two months—to major proposals for a revival of European scrutiny in this House, where Members were actually engaged again in the process in a meaningful way. The Government—in fact, including the same main participants in

opposition to what was done to diminish scrutiny in the last Parliament—have refused to come forward with a response. It seems to me that the Government would appear to be willing to have these sterile debates on the Floor of the House that again and again circulate around and about people's prejudices for and against the EU as a construct, and as a European method of participating in joint action across Europe, and do not actually deal with the substance. The lack of knowledge about Europe, obvious to the public, is becoming one of the reasons why both this Government and the general process of EU scrutiny are regarded as being distanced from Europe. The Government are regarded as not wanting to have a Parliament that is knowledgeable and not wanting a parliamentary membership that is engaged, and as allowing the Government, as Executive, to make arrangements that suit them.

It does seem to me, Minister, that it is actually a stick that is beating your own back, because it seems that you are distancing yourself from many people in the country who see us having no knowledge, no interest, and no positive arguments for the European project that we are willing to put up in these debates on the Standing Committees and also on the Floor of the House. Why is this happening? Are the Government afraid of giving more power to Parliament to scrutinise it? I believe it would enhance participation and support for the European project? Why are the Government not willing to bring forward the response to that major report?

Mr Lidington: As I indicated in my answer to the Chairman, it has taken longer than I hoped it would do to secure cross-Government agreement. However, the Government's response to the report will issue imminently. I think it would be wrong of me to pre-empt here the Government's response to particular recommendations of the Scrutiny Committee report. However, if members of the Committee look back at the oral evidence I gave during the inquiry that led to that report, I commented on two aspects in particular of the case for improving the expert knowledge of EU matters within the House of Commons.

On the question of permanent membership of the Standing Committees, I recall working on one of the Standing Committees under that system in my first Parliament here. I said in my oral evidence that I was not opposed in principle to doing this, but that I had had strong representations from business managers to say that in practice it was proving extremely difficult to get people to agree to serve permanently, and that the reason the old system had been dropped under a previous Government was that it had proven nigh impossible to recruit people to maintain those as permanent Committees. In practice, the Committees ended up being staffed by conscripts or people who served for very short periods of time.

In my oral evidence, I also spoke quite warmly about the idea that departmental Select Committees should play a bigger role, both in looking strategically at matters like green papers, white papers, and Commission work programmes, to have a forward look at what might be coming forward from the EU, but also post facto to explore what the practical impact of European action and legislation had been on the British economy and other elements of our national life. I remain of the view that that would be a very welcome development in our Select Committee culture. I have spoken to the Liaison Committee and to a number of Select Committee chairs about this in the last couple of years, but at the end of the day this is a matter for those Committees. Clearly, the Government cannot

issue instruction to Select Committees of the House to act or set priorities in any particular way.

I have tried, through the good offices of the FCO, to encourage more Members of the House of Commons to visit the European institutions. We have established a practice under which Members of Parliament from all political parties are able to come to Brussels. If they do so, we have a Foreign Office-designed programme that introduces them to UKRep and to people working in the different European institutions. That is a small step; however, it is part, I agree, Mr Connarty, of what needs to be done in terms of mainstreaming knowledge of how the EU operates, as part of the way in which we do politics in this country.

Q7 Geraint Davies: I have got a quick couple of supplementaries on the answers you gave to the Chair. First, you said that you would be confident to have a holistic response to the Committee's report by the close of play of this parliamentary term. Yet a moment later you could not answer the question about whether the charter applied because you said you would leave that to the Justice Secretary. It just seems to me that if you do not know his view yet, or you have not got an established view, how are we to have any confidence that you can have a wider agreed view to the whole report?

Secondly, just to save time, on the other question that was asked about Article 17, it was suggested that there were different interpretations of that. Is there any prospect of resolving that? It seems to me as a non-lawyer that the expression of Article 17 that you dictated does not imply that one has to be mandated down this route, as the Prime Minister in fact said. Is there any way of unpicking that and what will happen in the future?

Mr Lidington: On the first point, we are dealing here with two separate reports from this Committee. The report on scrutiny came to the Foreign and Commonwealth Office for us to co-ordinate the Government response. The report on the Charter of Fundamental Rights went to the Justice Secretary for him to co-ordinate that. So, there are two separate tracks.

Q8 Geraint Davies: So the response to the report on the Charter of Fundamental Rights is not going to arrive—

Mr Lidington: I will take up with the Justice Secretary the points that have been raised here and the concerns that have been expressed by the Committee. What I was talking about in terms of the Government response coming out before the end of session was our response to this Committee report.

Q9 Geraint Davies: When will the charter one come out?

Mr Lidington: The charter was a central feature of the Committee's report on the Charter of Fundamental Rights—the Mostyn case and so on were, I know, part of the Committee's interest there. Those are matters the Justice Secretary is leading on in drawing together the Government response.

Q10 Chair: You are not going to produce this report that you are referring to on our November inquiry imminently?

Mr Lidington: The Government response to the scrutiny report is the one that I said—

Chair: You are not going to slip it out by a ministerial statement, are you?

Mr Lidington: We will let you and the Committee know of the details of when it will come. We are not going to hide it from—

Q11 Chair: I did not suggest you were going to hide it. What I was suggesting—and I was about to give you a warning on this—is that it would not be helpful just to put it out as a statement in a ministerial statement and then put it in the Vote Office, because this report is of sufficient importance for a lot of people to be wanting to ask oral questions on the Floor of the House.

Mr Lidington: I am sure that on whatever occasion, there will be opportunities to debate this and to have questions on it on the Floor of the House.

Q12 Chair: You are not answering the question. Is it going to be a Command Paper or a memorandum?

Mr Lidington: A Command Paper.

On Mr Davies' second point, I had not considered the question before presented in that way. Logically, the European Court of Justice is the arbiter of the meaning of any article of the treaties. However, I think that nobody on any side in this debate has yet contemplated litigation on this particular matter. One can immediately see the very significant political difficulties that could arise in those circumstances. As the Chairman pointed out, the European Council at the end of June included a sentence in its conclusions to say that it would return to this issue.

This question about how you interpret article 17 is not going to need to be addressed again now until the next Commission is selected in five years' time. The European Council has not yet decided upon any particular timetable or mode to address that question. However, actually getting that commitment into the Council's conclusions was helpful to us because it indicated that the European Council collectively did not accept that the interpretation presented by the European Parliament was binding.

Q13 Geraint Davies: Can I say, Chair, that this is a critical point? If it was somehow bottomed out by top lawyers in some sort of Europe-wide court that the interpretation of article 17 did not follow—and as a non-lawyer, it probably does not follow—it would have a critical impact on the subsequent appointment, would it not? It is not just about the future. We could say that that appointment, in some sense, was not legitimate.

Mr Lidington: The appointment of Mr Juncker is legitimate, in that he was nominated by the European Council and yesterday was confirmed in office by the European Parliament. So, the process set out in the treaty has been gone through. What was new this time was that, as the Chairman said, there has been a power grab; the leaders in the European Parliament in effect sought to limit the choice available to the European Commission to one individual.

Q14 Kelvin Hopkins: I had a question arising from a meeting I chaired this morning of the all-party group on social science and policy. We had a debate about the European Union and Britain's relationship with the EU following the European elections. All of the audience were entirely Euro-supportive, so I had an interesting experience in the chair. One thing that arose that we felt very strongly about was—and you mentioned transparency—that Mr Juncker was elected by the Parliament by secret ballot. Given that they are effectively delegates for the people they represent, there was a strong feeling that their ballot should be open, not secret. They are not individuals voting for their choice; they are representative of other people when they vote, and if we are serious about democracy and transparency in the European Union, it should have been an open vote and not a secret ballot. Does the Government have a view on this?

Mr Lidington: There is no collective Government view. It is a matter for the European Parliament to decide. My personal sympathies are with Mr Hopkins on this. However, one of the arguments in favour of the secret ballot was that it would enable MEPs to stand up to their group leaderships more easily than if they had to put their names to a particular Division. All of us in this place face those dilemmas the whole time. When I was in Strasbourg I watched some of the proceedings around the vote, and there were protests from a number of MEPs about the secrecy of the ballot, with MEPs saying that it ought to be held in public. My personal sympathy would be with that.

Q15 Kelvin Hopkins: Minister, we had a European Standing Committee meeting on Ukraine recently that I attended. We have read your letter of 27 June and listened to what you said in the Committee on Ukraine and restrictive measures. However, none of that changes the fundamentals. The overwhelming majority of the documents that the Committee considers should be debated are sent to the European Committee. It therefore follows that when we recommend a debate on the Floor of the House this is an exception, and we do so only after thorough consideration and for good reasons.

In this instance the Committee concluded as long ago as 26 March that it was by now clear that the EU sanctions in question were not only of great political interest in and of themselves—especially the difference in approach between the US and the EU—but also formed part of a wider, highly political discussion about the right reaction to Russian behaviour, and that given this wider context and the high degree of interest in the House, they should be debated on the Floor of the House as soon as possible. Why did the Government not respond for over three months, despite pressure and despite the Committee having on three subsequent occasions urged the Government to arrange this debate?

Mr Lidington: Yes, it was regrettable that the scheduling of the debate was delayed. What we had this time was a large number of recess periods, an early Prorogation that took away a number of parliamentary days on which we—and more importantly, the business managers—had been counting on for the planning of competing items of business, and my own diary commitments. There were some days that we looked at as possible dates for a Ukraine debate where I had unavoidable travel commitments to attend Council meetings or the like. So it was just not possible in the event to schedule the debate any earlier.

There is obviously a separate and important question about whether this debate, or others where the Committee has recommended Floor debate, should take place on the Floor or in Committee. I am of the view, partly for the reasons that Mr Connarty set out in his earlier question to me, that debates in Committees are often of greater value. Any Member of the

House can attend. They include a question time of up to an hour, as well as the opportunity for debate, and the Committee session can last for two and a half hours, whereas referred debates on the floor of the House are for 90 minutes only, a great proportion of which is taken up by the Minister and then by the Opposition spokesman making their cases. I have certainly attended debates on the Floor of the House referred from this Committee where only four or perhaps five Members, including the front benches, had been able to get in at all during the 90 minutes. So there is often greater opportunity to explore an issue in depth in the European Standing Committee.

There is the further—and, I am afraid, unavoidable—question that the Government have to consider about the allocation of parliamentary time on the Floor of the House generally. I know when I go to my colleagues in the Whips' Office and the Leader's Office and say that we have these bids in for European debates, they will say to me, "Well, fine, but we also have calls for parliamentary time for a large number of other matters as well, and we cannot make the same timeslot available twice." If one looks at this Government's overall record on Floor debates referred from this Committee, it is still running at roughly double the number that we had in the last Parliament. I think it is a reasonably good track record. I know the Committee would like to have more debates on the floor of the House, but there is an unavoidable issue of the Government having to make choices.

Q16 Kelvin Hopkins: At face value, Minister, what you say sounds very reasonable and very plausible. However, there is a strong feeling that the Foreign Office is reluctant to have these kinds of issues debated on the floor of the House, and that it is trying to get them into the less visible, more backroom atmosphere of a Standing Committee. I will leave it there.

Mr Lidington: I always rather enjoy it at the Dispatch Box. There is no reluctance on my part, but there are genuine pressures on parliamentary time.

Q17 Geraint Davies: In the question of whether or not Albania should be upgraded to candidate status at this juncture, major UK domestic interests are engaged—in this instance, concerns over immigration and criminality. The accession of Bulgaria and Romania has already shown the danger of allowing EU political considerations to over-ride the much trumpeted conditionality. Even in the case of Croatia, where new arrangements were put in place because of experience, the process has been found wanting. All these considerations underline the need for proper, prior parliamentary discussion. When the Committee reported the previous Commission report to the House on 29 January, it could not have made its position clearer. We said: "Looking ahead to later this year, when the Minister deposits the further Commission report for scrutiny, we shall expect him to provide an unqualified statement of the Government's position." Instead, all that you had to say in your 16 June explanatory memorandum was: "The Government has not taken a final view on whether to support the granting of candidate status." Why did you not warn the Committee that you would not be complying with its request?

Mr Lidington: What happened, as Mr Davies knows, is that the Commission's report was published on 4 June this year. I certainly hoped, and expected at that time, that we would be able to provide the Committee with an explanatory memorandum and a statement of the

Government's position within the time that would allow the Committee to consider those ahead of the General Affairs Council where this decision was due to be taken.

In the event, that did not prove possible. The Commission report came out late in the day. It then took longer than I had hoped to get cross-Government agreement. That is not to say that there were necessarily big arguments within the Government. Sometimes this is about trying to get a decision in front of senior Ministers in a number of different Departments when they are coping with competing priorities from the areas for which they had direct responsibility—perhaps with parliamentary commitments too, and so on. We actually established a definitive Government position the day before the General Affairs Council, so it was late in the day.

I took the decision that in the circumstances that faced me, it was better to let the Committee have the explanatory memorandum on the 16th to meet the convention of 10 days' notice, even without a Government statement, than to delay the explanatory memorandum until the Government's position had definitively been achieved. I regret very much that we were not able to do what we ought to have been able to do here, but it was a matter that the sequence of Government decision making this time on Albania did not meet the Committee's requirements in terms of procedure.

Q18 Michael Connarty: Minister, you say in your 27 June letter that the Commission's recommendation, and carrying out the FCO's own analysis of Albania's progress required, and I quote, "a considered and thorough judgment", and then you continue, "The full range of British interests needed to be factored in", and that consequently "the Government did not reach a formal view until very close to the GAC which did not leave time to update the Committee in advance". Knowing the process, and having watched the process over the last 15 years in the Committee, is the Committee seriously expected to believe that the Government had nothing that it could have said sooner, that you had no inkling of what the Commission was likely to say before 4 June, and that the Government had not been receiving assessments from Tirana and from Brussels on the Albanian situation and had not essentially formulated a position well before publication of the Commission report on 4 June? Given all of the evidence from sitting on this Committee and watching the European process of enlargement over 15 years, do you really believe Committee members will accept that no decision was formulated, rather than expressed, before 4 June?

Mr Lidington: The truth is, as I have just said in answer to Mr Davies, that the Government's agreed position was reached the day before the General Affairs Council took place. We only had final clarity about the Commission's language during the General Affairs Council proceedings themselves. The situation here was that we were faced with a very finely balanced decision. On the one hand, Albania is a European country that wants to join the EU, and therefore there is no reason why, in principle, it cannot be accepted—one day, provided all the criteria are met—as acceding to full EU membership.

However, the reality is that Albania today is a very long way from being in a situation where it is able to cope with the obligations of EU membership and meet all the conditions involved. In particular, Albania is plagued by corruption, is used by organised crime, and is a significant source of illegal migration into the European Union. One reason for us supporting the eventual membership of Albania is that the process of accession and complying with all those conditions over the years of negotiations that will be needed is

the best route, we judge, for seeing Albania entrench reforms, so that those problems of corruption, illegal migration, and organised crime are diminished and finally eliminated.

We have seen how in other parts of central and eastern Europe, that accession process has indeed entrenched democratic values, human rights, and judicial and democratic institutions in parts of Europe where those things were crushed for most of the 20th century. The judgment we had to make in June was this: on the one hand, Albania has made some pretty good progress in tackling the problems I have described. The question for us, though, was whether that was still sufficient, given that the remaining problems are still severe and endemic, to grant candidate status. In the end, we came to the view that to refuse candidate status would be likely to set back the course of reform.

We have ahead of us a long process. Albania is not going to be ready for European Union membership on any estimate until, at what is I suppose the most optimistic calculation, the late 2020s or perhaps the early 2030s. They have a lot of work to do, and that will need to be sustained over a number of Governments and Parliaments in Albania. However, they have made significant strides, particularly since the Rama Government came in, in terms of anti-corruption measures, action against organised crime, and on working particularly with the United Kingdom on reform of the judiciary, action against illegal migration, and the return of foreign national offenders to serve sentences in their home countries.

We wanted to have that recognised as an incentive for Albania to do more. I said in my minute statement and in open session at the GAC that there was a need for reform of transitional controls for migration for all future EU accessions. We also used this decision to give us leverage to insert some language into the conclusions of the GAC about the need for Albania to do more on illegal migration if it was to make further progress.

The other point I wanted to make here was that we talked at length to the Commission about this. The Commission has come to the view, particularly after looking at Croatian accession, that economic convergence is going to be one of the key means of trying to avoid large-scale migration of people when a new member state enters the European Union. Commissioner Füle, the Enlargement Commissioner, said in London in February this year that by driving economic convergence between aspiring and current member states, migratory pressures should reduce, thus helping new member states to keep their brightest and best while reassuring wider publics that enlargement can proceed without creating substantial migration. I think the Commission has recognised too that there is a challenge here that needs to be addressed in the way they handle the accession process in future.

So it was a balanced judgment, and we came to the view that the right thing to do was to give Albania a recognition that it had done a lot, and the incentive to do more. Candidate status does not set a date for the start of negotiations. It does not open one chapter of negotiations. It does not allow one additional Albanian the right to travel to the United Kingdom or anywhere else. It is a symbolic statement, but it was a symbol that was very important to the Government of Albania in being able to say to their people, “The pain that our economic and political reforms are requiring is worthwhile; we have started on the long road towards eventual membership.”

Q19 Geraint Davies: Can I ask a supplementary? If you are saying that economic convergence really is a prior condition before we run the risk of mass migration, are you

saying that there is a case for a different relationship where economic trading opportunities are provided to candidate countries before freedom of movement of people? Do you think that is a good idea?

Mr Lidington: What the Commission is saying is that economic convergence has to be a key element in the accession process, and that a consequence of economic convergence will be a decreased incentive for migration elsewhere.

Q20 Geraint Davies: I understand that. That is what you said before. I am saying that, following on from that, you could argue we should change the rules so that people are encouraged to have economic convergence first of all without migration by providing trading opportunities, as you would as a member state?

Mr Lidington: The Prime Minister has said publically that he wants the European Union to revisit this whole issue of transitional controls. At the moment, every other part of an accession negotiation rests upon qualitative criteria: upon on a series of benchmarks to show that particular reforms have been enacted and then bedded down, and a track record established. For freedom of movement only, the EU has worked on a somewhat arbitrary five or seven-year period of time after which the controls come off automatically. What the Prime Minister is saying is that we need to have more of a qualitative test—more of a benchmark-based system—for transitional controls on migration too. He has suggested that you could relate freedom of movement to the relationship of the GDP of the applicant country to EU average GDP, or perhaps that you could relate it to average wage levels. There are a number of different indicators that could be used. We have not come to a fixed view on recommending a particular option or basket of options, but we think that that would be a more sensible approach than the current one.

Q21 Michael Connarty: Can I move back to my question? I would love to have that debate at great length with yourself. I had a few skirmishes with Olli Rehn about his fiscal policies, which are destroying people. We went to Lithuania and were told that 600,000 people, mostly educated young people, had left Lithuania, and that 200,000 of them now lived in the UK. That is a very welcome addition to our talent pool, and a destructive one for theirs.

I think we do have to have something about the economic criteria before we agree that country should come in. The point we have is that what you outlined for us is clearly an indication that there was quite a lot of discussion going on within the UK delegation and with those people in Mr Jenkins' Enlargement Department. Therefore there was clearly much information that could have been brought to this Committee long before 4 June. This idea that the UK Government naively wandered into a meeting and was naively bounced into having to take a position does not do you any credit. Those who know you as an intelligent Minister know you do not go into meetings unprepared for the possible questions that might be asked.

It just might have been useful for you to bring these things to the Committee before 4 June, so that people felt that you were engaging with Parliament as well as engaging with your officials on that matter. I think that what you have said in the past contribution will be read as an indication that you have had quite a lot of discussion and thought, and that you knew this was coming down the track and was going to pop up at the General Affairs Council—if not at that meeting then at some other meeting very quickly. Why were the Government so

secretive about what they were doing? Why do they think that they just have to discuss with their officials? Do you not realise that it does undermine the public's confidence in the Government and in the EU process if you remain so secretive and do not discuss it in open forums with us?

Mr Lidington: We are very prepared to be held accountable for our decisions, and to discuss those decisions and the reasons for them publically. I also think that there has to be a space for Government—for different Government Departments and different Ministers—to discuss these matters in order to come to a collective Government decision. I think what Mr Connarty is asking me to do is to involve the Committee in an internal Government discussion, in a way that, in fairness, I do not think any previous Government have agreed should be the case. I can understand that there is an argument for changing the way that we do government in this country, but I actually think that the right relationship between Government and Parliament is for Government to take its policy decisions and to have these discussions internally, and then to come to Parliament, to say what we have done, to set out our reasons and to defend them.

Q22 Michael Connarty: I have to challenge that. On 4 June, when the Commission produced its report, the Enlargement Commissioner said, and I quote, that he believed “without any reservations, beyond any doubt,” that Albania should be granted candidate status. Is it the truth—it is certainly the perceived truth—that the matter was therefore never in doubt, and that the Government gave priority to the EU process, that you have fallen into the trap you should avoid, and that you seem to be giving priority to the EU process and not to the parliamentary process? Because clearly it is as if you have conceded and colluded in that decision by the Commission without reservation, and played the EU game, which is what is discrediting your Government. You are seen to play the EU game and not the parliamentary game.

Mr Lidington: No, this is not the case at all. The Commission had made the same recommendation for Albania to be given candidate status in December 2013. We were one of a number of member states that said at that point that it was premature to take that decision, that the Rama Government were very new in office, and that it was too early to be confident that they were serious about the programme of reform that they were taking forward.

I went to Albania earlier this year. I talked to Prime Minister Rama, to the Justice Minister, to the Interior Minister, and to a number of other members of the Albanian Government about what they were doing. I did come back quite impressed by the level of their commitment—for example, by the Interior Minister's clear personal commitment to take action against organised crime. The Commission report fleshed out the impression I gained on that visit with some hard evidence showing an increase in the number of prosecutions and convictions for certain key categories of offence.

There were good arguments behind the Commission's recommendation. Against that, though, there was the fact that although there had been a significant increase, in percentage terms, in these prosecutions and convictions, it was from a very low base. The overall numbers were still low. There was still evidence of endemic corruption in Albania. There are questions about the impartiality of the judiciary. I think the Albanians have only just begun to embark on the task of judicial reform. So, there was a lot of work to do. The judgment for us was whether we agree to candidate status, recognise their

achievement so far, and encourage them to do more, or do we say to them, “This really is not enough by any objective test, and you cannot be treated seriously as a candidate until you do quite a lot more”? Would saying that simply demoralise them and risk the country slipping backwards rather than maintaining a forward path to reform? Having discussed it internally, we came to the view that the first was the right judgment to make.

Q23 Michael Connarty: I have to press you on that. This Committee watched the Bulgaria and Romania recommendation we made being ignored, and Bulgaria and Romania coming in long before they should have, according to this Committee. Slipping backwards is exactly what they did. In fact, if you saw the programme just this week on television about the involvement of the Roma community in transporting large numbers of young women for prostitution, you will realise that there is a long way to go before it really does, even at this moment, reach the standards, or “conditionality” as we called it here, that they were supposed to reach before they got in.

Now we were told by the Croatians that their big worry was not that they had a mafia, but that there was a mafia from Albania that infected all of the Balkans, and that they were worried and trying to keep that out. Now we are talking about having that very same country admitted without reservation as a candidate country. This gives a signal to people, I think wrongly, that countries that get candidate status do not necessarily increase their efforts but feel that they have got their foot in the door and that the door will not be closed on them after that.

The point is that it would appear, Minister, that you have actually ignored the priority for the scrutiny process and have chosen the EU process. You said you were against the candidacy in 2013. As things progress, why was there not an attempt to inform this Committee of how they were progressing, and to talk to this Committee and to Parliament about how you saw things changing? Why did you only tell us after you had, in fact, agreed to the candidacy? What comfort can you give us that this will not continue to happen, and that you will not use what you call the Government process as an excuse for ignoring the Parliamentary process?

Mr Lidington: We wrote to the Committee with a very detailed explanatory memorandum after the publication of the Commission’s annual enlargement report last year, ahead of the General Affairs Council in December that considered those matters. We sent the explanatory memorandum that I described on to this Committee in June. The Committee cleared the annual enlargement report from scrutiny on 29 January this year. What the Committee then asked for was, as Mr Davies read out, an unqualified statement of the Government’s position on Albania accession candidate status before the event, so it can be scrutinised—a perfectly reasonable response. We, in good faith, thought we would be able to provide that. For the reasons I have described, that did not prove to be possible. I am always willing to respond to questions from parliamentary colleagues in this Committee or outside about our approach to particular countries.

I would just say to Mr Connarty that there is a profound difference here between the decision in June about Albania and the decisions on the accession of Romania and Bulgaria. The criticisms made about Romania and Bulgaria are that they were admitted to membership of the EU before they had undertaken and entrenched all the necessary reforms. That is why we still have the co-operation verification mechanism in force today. The decision here about Albania was not about accession; it was about a symbolic

designation of Albania as a candidate country. First of all, there have to be further individual decisions even to set a date for the opening of negotiations. There then have to be individual decisions—all subject to unanimity—about opening and closing individual chapters of those negotiations. As I have indicated already, I think nobody expects Albania to be ready for membership before the late 2020s at the earliest. That assumes steady progress and determination from now on in. It may well be the 2030s.

I will just say in conclusion, Chairman, that the lessons were learned from Romania and Bulgaria. Chapters 23 and 24 were invented as a response to the problems that arose from the Romanian and Bulgarian accession. Then the Croatian experience was used to require all future accessions, starting with Montenegro, to start with Chapters 23 and 24 being opened, precisely so that there was time not just for legislation to be brought in and for new appointments of judges and prosecutors to be made, but for a track record to be built up so that we and every other existing member state could see that these were reforms that were entrenched, were working, and were not just reforms that were there for show.

Q24 Geraint Davies: I have got a slightly related issue that I was going to raise. I was going to ask what preparation and evaluation you have made of the effect on migration of the UK's possible departure from Europe. People in the Polish community in Britain are now concerned that under a Conservative Government Britain would leave Europe and they would have to go back to Poland. British people in Spain think they might lose their social security and might have to come back here. There would be an enormous disruption. Has this been evaluated in terms of the economic impact, and how you would go about pushing people back to where they came and this sort of thing, which is presumably the motivating force?

Mr Lidington: Since the policy of the Government is that membership of the European Union is in the national interest, we have not carried out any such study. There will very soon be an interesting report in the balance of competence sequences on freedom of movement of persons, which will include evidence from a variety of individuals and organisations setting out many different views on this question.

Q25 Geraint Davies: It is not my view, obviously; that would be ludicrous. However, clearly from your point of view, there needs to be contingency planning. Are you saying there has been no planning for the possible eventuality that there will be a Conservative Government triggering a referendum that triggers exit from the EU, and for the impact on migration, with the obviously very negative impact on our economy of hard-working Poles being sent home?

Mr Lidington: The policy of the Government is that the United Kingdom should be within the European Union while seeking reforms of the European Union. That is the policy that we agreed that we will be following for the remainder of this Parliament.

Q26 Geraint Davies: People prepare for war without wanting it, and people should prepare for leaving Europe if they do not want it.

Mr Lidington: I have explained the policy of the Government. I do not think I can go much further than that.

Chair: We will move on to association agreements.

Q27 Henry Smith: Good afternoon, Minister. As you will know, this Committee is always very concerned about EU competence creep. With the association agreements recently signed with Ukraine, Georgia and Moldova, we have some worries that the EU's exclusive competence in international matters has been superseded. Can we have an assurance that in future, when the EU has exclusive competence to make international agreements, this country and other countries' competence in that area will not be ridden roughshod over?

Mr Lidington: This is a question on which we remain vigilant, because there is undoubtedly a Commission agenda to try to extend, for example, its rights of external representation in international organisations, asserting a particular interpretation of the Lisbon treaty. I do not think that we compromised on questions of mixed competence, let alone of member state competence, when it came to the association agreements with Ukraine, Moldova and Georgia. There is a long-standing difference of view between the Government and this Committee about the application of the justice and home affairs opt-out to international agreements in particular, but also to purely EU measures. What that boils down to is the Government saying that the existence of the opt-out is triggered by the content of the measure, whether it contains justice or home affairs content, whereas the Committee takes the view that it is triggered only when there is an explicit treaty base within title V of the treaties that is signified in the documents themselves. That difference of view remains.

Q28 Chair: There is one point that I would like to probe on the question of association agreements. As you know, I asked the Prime Minister and the former Foreign Secretary very explicitly on the Floor of the House why there was no attempt in the association agreement with respect to Ukraine to raise any of the questions regarding defence and security. There are major articles in there that are of grave concern to other member states, bringing in questions of convergence with European Union defence policy, questions touching upon NATO, the issues of Crimea, the Black Sea Fleet and the rest. Finally, there is an issue that I find quite bizarre: in the conclusions of the most recent summit on this issue, there is what would seem to me to be the astonishing statement—as a matter of law, at any rate—that the Crimea still belongs to Ukraine. Now, we have a Cyprus situation with Turkey, etc., and there are other similar examples. I just simply would like your comment on this. I do not want to hear all the arguments or theories about international law in this context, but what I do want to know is exactly where the Government stand as of now. Do they regard the Crimea as de facto being part of Ukraine or not?

Mr Lidington: On your first point, Chairman, it might be helpful if I wrote in more detail to you after this meeting about your points on the articles dealing with foreign, security, and defence policy. The basic principle here is that references to defence policy or security policy co-operation in the association agreements have to be read in the context of what the treaties say about the scope and limits of common security and defence policy at EU level. They do not and cannot go further than that. Now, to take the most topical example, Ukraine has already been involved in a number of EU peacekeeping missions around the world. Ukraine has had a ship deployed with Operation Atalanta combatting piracy off the coast of Somalia, and I think Ukraine has also had people serving in the western Balkans at some times. Owen, is that right? I have a memory of that.

Owen Jenkins: I think so, yes.

Mr Lidington: I think that is right. Ukrainians have certainly sent their people on EU as well as United Nations peacekeeping missions. Therefore, I really do not think that there is any cause for alarm about the inclusion of those elements in the association agreements.

On the specific question of the Black Sea Fleet, there is absolutely nothing in the association agreements that would prevent the Government of Ukraine from continuing with the arrangement, freely negotiated between Ukraine and Russia, about Black Sea naval bases.

As to your question, Chairman, about the Crimea, the Government of the United Kingdom do not recognise Russia's annexation of Crimea. We believe Russia has acted illegally. To answer your question, clearly Russia is in de facto control of Ukraine, having sent armed forces to seize that territory.

Chair: You mean Crimea.

Mr Lidington: I am sorry. I beg your pardon.

Chair: They have not taken Ukraine yet.

Mr Lidington: They have not taken Ukraine yet, although there is an interesting debate about the extent of Russian responsibility for some of the violent separatism that we have seen in eastern Ukraine. Russia has occupied Crimea by force. We support the measures that are being taken both internationally and within the European Union to penalise entities, companies, and individuals that are complicit in that work. For example, there is work going on at European level to make it as difficult as possible for Russian-controlled companies located in Crimea to sell their goods and services into European markets.

Q29 Chair: Finally, Minister, you said that the response to the November scrutiny report would come out imminently. I rather suspected you would be saying that, and that it would come out before the recess, but without giving us sufficient opportunity to be able to follow up on the response, because originally you said it was both unworkable and unrealistic. Of course, we completely disagree with that. A number of our questions on debates that we would like to develop are so interconnected with that response that I do not think we are going to get very far with them today. Can you therefore first of all give us the date on which the Government response, which you say will be in the form of a Command Paper, will be published?

Mr Lidington: As I said in the earlier part of our proceedings, Chairman, my plan is to have this out before Parliament goes into recess.

Q30 Chair: Monday?

Mr Lidington: I cannot honestly go further than that because it is always conceivable, knowing how parliamentary business sometimes changes at short notice, that I say something here that is then altered. I do not want the Committee to think I have spoken in bad faith.

Q31 Chair: If I can give you a hint, as Chairman of this Committee I have to go to Rome tomorrow for two days. I would be extremely interested to know whether it is going to be Monday or not.

Mr Lidington: I do not know when you are returning from Rome, Chairman.

Chair: I shall be back on Monday.

Mr Lidington: I think you are safe.

Q32 Chair: That is all I need to hear. Thank you very much. Secondly, will you undertake to return to give oral evidence to us in September—perhaps you could come with the new Foreign Secretary, as we would be very interested to have an opportunity to talk to him—so that we can question you fully on the content of the response? That is on the assumption, as you have indicated, that it will have been published by then.

Mr Lidington: I am happy to agree to return to the Committee at the earliest possible date. I do not want to give a firm undertaking about the first two weeks in September without seeing what other commitments there are, although of course the Committee can always sit during recess as well, so it may be that there is some more flexibility that both sides can offer here.

Chair: Thank you very much indeed, Minister. There are some important issues yet to be developed in the context not only of the questions we have asked, but particularly in response to our report. I remain concerned that it has taken you such a long time, but we are looking forward to the outcome as soon as possible. Thank you very much.