



European Scrutiny Committee

Oral evidence: [UK Government's renegotiation of EU membership: parliamentary sovereignty and scrutiny inquiry](#),
HC 458

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Members present: Sir William Cash (Chair); Geraint Davies; Peter Grant; Damian Green; Kate Hoey; Kelvin Hopkins; Calum Kerr; Craig Mackinlay; Mr Jacob Rees-Mogg; Kelly Tolhurst; Mr Andrew Turner; Heather Wheeler.

Questions [1-45]

Witnesses: **Rt Hon. Mr David Lidington MP**, Minister for Europe, Foreign and Commonwealth Office, and **Vijay Rangarajan**, Europe Director, Foreign and Commonwealth Office, gave evidence.

Q1 Chair: Welcome, Minister, yet again. The first question that I have for you is as follows. What are the key areas of renegotiation for the UK Government? What is in, what is out and what are your red lines?

Mr Lidington: It is always good to be back in front of the Committee, Sir William. I am supported today by Vijay Rangarajan, whom you know well, the Director of Europe at the Foreign and Commonwealth Office.

The areas covered by the renegotiation are the ones the Prime Minister has set out. First, there are a set of issues concerned with the need for greater competitiveness, economic dynamism, job creation and wealth creation in the EU. That area covers the deepening of the single market, which is a good single market so far as trade in goods is concerned, but a woefully underdeveloped single market when it comes to trade in services, which is where most of the new jobs are going to come from in every member state's economy.

The area also covers trade, where the EU has recently concluded a welcome free trade agreement with Vietnam, but where the great prize ahead of us is the potential for a transatlantic EU-United States free trade agreement, covering both trade and investment matters, which we believe would generate significant new employment and opportunities for growth, and in effect set global regulatory standards on a transatlantic basis.

The third element of this policy area is about the need for smarter, more effective and less burdensome regulation. Frankly, this is something where member state Governments as well as EU institutions should be, and I believe are, beginning to get the message, but we need to have a system of regulation that does not get in the way of small business in particular being able to grow and to create new jobs.

The second area covered by the renegotiation concerns fairness between those who are in the eurozone and those who are outside the eurozone, because, as far ahead as I can see, there are going to be a significant number of EU member states that have full membership but are not going to participate in the single currency. Some will regard themselves as pre-ins; others, like the United Kingdom, are unlikely ever to join the single currency.

That raises a whole set of questions, which we may wish to explore in more detail later, about how, given what I believe will be the need for the members of the currency union to integrate their economic policy-making more closely, we enable that to be done—for that currency to be stable—while at the same time ensuring that the integrity of a single market at the level of 28 countries is protected; that the duty of EU institutions to have regard to the interests of all members, not to a subset of members, is upheld; and that the integrity of decision-making across the whole of EU policy not covered by those things that derive especially from a single currency is also properly safeguarded.

Out of that question about the relationship between Europe at 19 and Europe at 28 comes this question of ever-closer union. What we are seeking is a way in which to make it clear, beyond any doubt, that all in the EU accept that the United Kingdom in particular, and perhaps some other countries, is not going to participate in much closer political integration. Others may choose to do that, and that should be a matter for them, if that is their choice, but it should be done without prejudice to those who wish to say, “We are not going to go down that route, unless you are accepting a model of differentiated integration at a European level.”

Thirdly, that leads me to what the Prime Minister defines as sovereignty, which moves from the ever-closer union issue to strengthening powers for national Parliaments by building on the system of reasoned opinions and yellow and orange cards that was put in place under the Lisbon Treaty. We have discussed some of these ideas in this Committee and its predecessor Committee. Both the Dutch and the Danish Parliaments in particular have come up with some very creative proposals in this regard. I would also add that I see, as part of strengthening the voice of member states and providing sufficient checks and balances amongst the institutions, the need for the Council, as a European institution, to be more assertive about its own role and its own powers under the treaties.

The final element is free movement and welfare access, which the Prime Minister spoke about in his speech in November last year. He said then that he was not challenging the basic principle that workers should be free to move and to take jobs, but that there should be limits. He set out some ideas in that speech on how

people could get access to benefits, including tax credits, when they move from one country into another. It was the subject of a significant judgment in the European Court yesterday, the Alimanovic case.

Those are the overall areas. It is a perfectly reasonable question, as always, from you, Chairman, about what is in, what is out and what our red lines are. I do not think you will be surprised if I somewhat disappoint you and say I cannot give a running commentary on the detail of negotiation. The people who would be most delighted if I were to spell out all the detail of negotiation would be the other countries and the European institutions with whom we are negotiating. I am happy to be as helpful as I can, but spelling out red lines is not part of that.

Q2 Chair: First, there is not much point going around all the capitals of Europe and not telling them what we want and what our terms of renegotiation are. If, in fact, you cannot tell us, I would be very surprised if they do not know, and there is nothing in the public domain to suggest that anybody has any knowledge of what our renegotiation position is, other than what you have already described. What I would really like to ask you is this. Some of the matters you referred to are going to require treaty change. I would like you to enlarge on what you regard as falling into that category. Of course, that will affect the extent to which other member states will be prepared to agree, because that has to be unanimous.

You mentioned the question of ever-closer union. As you may remember, and one of the things you have not mentioned, is that the Prime Minister was unequivocal in stating that he wanted a fundamental change in the relationship between the United Kingdom and the European Union. He was quite clear about that in the statement he made just before the general election. I would like to know the position on that very, very important issue. Are we going for a fundamental change in our relationship between the UK and the EU?

Connected with that, I would also like to know the extent of enforceability, which is fundamental to the outcome of these negotiations; otherwise you are an emperor, as it were, without any clothes. How are you going to go about achieving this so-called post-dated settlement that has been described? I would also like to know whether you might go down the route of a declaration. A declaration is pretty worthless in European law, as we all know, so that would not be very good, although the Chancellor appears to have referred to it recently. As regards a post-dated settlement, that simply would not be enforceable. It is not binding and it would not give the kind of effect that treaty change would in relation to the European Communities Act 1972.

Could you just give us a little more realism in all this? At the moment, there are a lot of generalisations. How are you going to go about achieving real change and what are you going to do if you do not get it?

Mr Lidington: You have made a number of points, Chairman. On the language the Prime Minister used about a fundamental change, yes, that is something he stands by. He believes that the programme he set out in his Bloomberg speech and his November speech of last year will, if we succeed in those negotiations, amount to that fundamental change. I have to say, if the content of the conversations we have been having so far with other member state Governments and with the institutions have not

got into the public domain, I am absolutely delighted about it. It shows that the confidentiality of those negotiations is being maintained by all who are participating in them.

Q3 Chair: Do you not think Parliament ought to know?

Mr Lidington: In fairness, Chairman, if the Government of the United Kingdom is going to have negotiations at international level, whether that is with the E3+3 on Iran or whether it is an EU renegotiation, it is not unreasonable for the elected Government to have space to go away, have those negotiations in private and then come back and say to Parliament, “This is what we have achieved or not achieved”, so there is full opportunity for Parliament to hold Ministers to account for what they have done on behalf of the country. I do not think that is an unreasonable position for successive Governments to take.

In terms of the important issues that you raised about the means by which we would secure and in which we would seek to embody the changes that we are after, there are a number of ways in which this could be done. Certainly, the way I envisage this is that the eventual package, if we are successful, would include various instruments and processes. To take the obvious example, much of what I talked about in terms of economic growth and competitiveness are measures that are already the subject of secondary legislation at EU level, through directive or through regulation.

In the case of free trade agreements, there is an established way of negotiating those. They have to be approved by member states in Council, approved or disapproved by the European Parliament and then subjected, as a free trade agreement, to the various national ratification processes as well. To take an obvious example, you would not need a treaty change in order to have a free trade agreement with the United States of America. There would be some elements of the package that I think you could achieve without having to touch on treaty changes, protocols, declarations or whatever. There are the legislative means available.

The instruments available for other elements of that vary. I have just mentioned some: treaty changes, protocols, declarations at European Council or other level, legislation at EU level, possibly involving some legislation at national level as well. These sorts of things are amongst those that are being scoped out by the technical talks that are underway. The June European Council, the Committee will recall, gave the go ahead for the renegotiation to take place. It empowered the President of the European Council to take the lead in that work on behalf of the EU as a whole, with the issue to be referred back to Ministers, to Prime Ministers, to Presidents at the December European Council this year.

In the meantime, we have embarked on a process of technical discussions mostly at official level, and to a limited extent at ministerial level. They have started to try to work out the extent to which we have a common analysis, so we can say to the European institutions, “This is the issue as we see it. This is where we see the problem and this is the outcome that we are seeking. Now, are you saying, oh

Commission, oh Council Secretariat or Legal Service, that this would require treaty change, or is this something that you could do by secondary legislation? What are the means?" Before we get into Heads of Government or even Foreign Ministers being involved, we will therefore have some greater clarity and greater mutual understanding about the technical side, as well as the policy and strategic element of this.

Q4 Chair: What you are really telling us is that you have not got any very specific red lines at all, as far as renegotiation is concerned. You are not prepared to tell us what they are. We do not really know whether they would require treaty change, and, if there was no treaty change, you would not be able to get your renegotiation through. If you use a post-dated settlement or declaration, it would not be binding.

Mr Lidington: I disagree with you, Chairman, if you say that we have no red lines. I agree with you if you say I am not prepared to tell you what they are. I am not going to give a blow-by-blow account in public of an ongoing negotiation. At the end of the day, the test of all this is not actually what the Prime Minister thinks, what I think or even what Members of the Committee think; it is what the British people think in the referendum.

The Prime Minister has made it clear that his objective, set out at Bloomberg, is to negotiate for a changed settlement which enables him to campaign for a vote to stay in the European Union. He has also said, "If I am not successful, I rule nothing out." Either way, the decision goes to the British people. We have taken the Bill authorising that referendum by the end of 2017 through the House of Commons. It starts in the House of Lords when we come back after conference recess. I am hoping it will become law around the end of the year or early new year. That is the guarantee: it is the British people who take the decision, not me.

Chair: Not too convincing to some.

Q5 Peter Grant: I know that Geraint was very keen to get in on one of those answers. There are more questions now than I had to begin with. Good afternoon, Minister. Can I move things on, because I know we are rather limited for time? What responses have you had to date from other EU member states to the list of demands, requests and requirements that you have put to them?

Mr Lidington: It has been, I would say, pretty positive. People have had various questions. We have seen the public statements from different European Governments and the institutions. I thought, for example, it was significant and welcome that the President of the Commission, Mr Juncker, said in his State of the Union speech that he regarded getting a fair deal for the United Kingdom as one of the key priorities of the next year. That is something that First Vice-President Timmermans has echoed, both in his public statements and in private conversations.

The various Heads of Government have, I think, all made it clear that they want us to stay and they want to find a satisfactory outcome. Different Governments will

have different views about their particular priorities and concerns within the area for negotiation that I have set out. I am not betraying any secret to say that Governments in Central Europe, for example, will want to have a detailed conversation with us about the November speech, and about movement and access to welfare. The Danes and the Dutch, as I have already mentioned, are very keen to see more done in terms of extra powers for national Parliaments. There are other countries where that is a less salient issue.

Q6 Peter Grant: I am sure we are all reassured that everybody wants a satisfactory outcome, because I could not imagine any Head of Government looking for an unsatisfactory outcome. You have given indications—specific examples, Minister—where a particular Government is agreeing to something that we are asking for, and this Government is agreeing to something else that they are asking for. Various European Governments are reluctant to accept the key issues that you presented earlier as being not quite requirements but very strong desires of the UK Government.

Mr Lidington: There are two parts to that question. The first thing I would say, Mr Grant, is that, as I said a moment ago, we are in intrastate technical talks at the moment, to scope out the area for subsequent political discussion. The EU is a constant process of renegotiation. No, I cannot rule out that another Government would come forward and say, “Look, in return for our agreement to what you want, we would like you to help us on this or that issue.” All I can say is that nobody has sought to hold a gun to our head so far. On the contrary, the message I have been getting from my ministerial counterparts is: “We want to work with you to try to find a satisfactory outcome to this.”

Q7 Peter Grant: Are you aware yet of any indication that other member states will look for their own changes to treaty in order to work to their advantage, in ways that potentially are to the UK’s disadvantage? It seems surprising if everybody else is willing to give serious consideration to changes the UK is asking for, and nobody is coming back with their own changes that they would like to see us accept.

Mr Lidington: The straight answer to Mr Grant is, no, that is not what has come up yet. I cannot sit here and rule out the possibility of that coming up in future, but there is no sign of that at the moment. There are, in various parts of the European Union, Governments, institutions, who aspire to particular treaty changes in the future. The German Finance Minister has more than once said that the eurozone will need a change to the European Union treaties at some stage in the next few years in order to regulate the affairs of the eurozone more exactly. The previous European Parliament, before the EP election last year, made it clear—this is something we actually support—that they would like the treaties changed to provide for a single seat for the European Parliament, instead of its having to migrate between Brussels and Strasbourg. That would require treaty change because, at the moment, the treaties say that they have to be in both places. These are not things that, at the moment, are part of the conversations we are having.

Q8 Damian Green: You mentioned the State of the Union address by President Juncker last week, which struck me as, in the way of these things, an unusually realistic analysis of where the EU is. What is the Government's attitude to both his analysis and his proposals in the context of our renegotiations? Do you welcome the general proposals?

Mr Lidington: I welcome the speech, with a few caveats. I do not think the Committee will be terribly surprised about that. I expect every Government has had some caveats about it. I thought what was particularly welcome about it were the words about the importance of seeking a fair outcome for the UK, the emphasis upon trade and upon job creation, growth and competitiveness, and the limited number of priorities that were set out. I think, from memory, it was something like 10. In last year's work programme, the first year of the Juncker Commission, again, there were a relatively small number of declared priorities. The previous Commission had something like 80 priorities set out at the beginning of the year, so they have tried to slim things down, in line with what both President Juncker and Vice-President Timmermans have said they wanted to do.

The areas where I and the British Government have some concerns are, for example, the passages on economic and monetary union that then start to go into issues of social policy and the suggestion that there should be a social pillar. Leaving aside whether new social policy measures are desirable or not, is this something that derives from a single currency, or is this something for Europe at 28? That ambiguity reinforced my view that a key part of this negotiation is to secure much greater clarity about how an integrating eurozone group of countries fits within a broader union of member states, which includes some who are not going to take part in that currency.

Q9 Damian Green: You mentioned very briefly the Alimanovic case, which we got the result of yesterday. On the surface, it looks quite helpful for our negotiations on the benefits and free movement basket that you referred to. Is that what you think as well?

Mr Lidington: What I should say very quickly is that it is an extremely long and technical judgment. The Government lawyers are still crawling over the small print, so I cannot give a comprehensive response to it. Our initial response would be that we welcome the fact that the judgment reasserted that the treaties give national Governments, not the EU legislator, competence over national welfare systems. I thought it was, overall, a step forward, but we are examining the detailed implications of all the small print. I am sure DWP Ministers in particular will want to say something more about it in future.

Q10 Kate Hoey: Minister, can you tell us if there are any circumstances whatsoever, as a result of these negotiations, in which you would recommend to the Prime Minister or the Prime Minister would recommend to the country, that people should vote to leave the EU?

Mr Lidington: It will be a judgment first for the Prime Minister, in particular. He has said that, if he does not get the changes he wants, he rules nothing out, and we are not speculating beyond that, because the Government's clear objective is to get success in the negotiations. You cannot go into any negotiation on any other basis. We are very determined and working very hard to deliver a successful outcome,

but he rules nothing out if that proves to be unsuccessful. At the end of the day, whatever the Prime Minister recommends, aye or no, it is down to the British people at the vote.

Q11 Kate Hoey: Can I be clear that your position, or the Prime Minister's position, is not that there are no circumstances that would rule out a move to leave, or are you saying that you would stay in, no matter what happens?

Mr Lidington: The Government's objective, as the Chancellor said in terms at a recent appearance in front of the House of Lords European Union Committee's sub-committee on Treasury matters, is to stay in the European Union on the basis of successful reforms. The Prime Minister has also said that, if we failed to get the reforms, he rules nothing out. Our clear objective, set out at the Bloomberg speech, is to secure those reforms we think will enable people in Britain to feel more comfortable about their place in the European Union, and which also would be good for Europe as a whole. Everything we are saying about trade, markets and regulation will help prosperity and job creation in every one of the other 27 countries as well. Frankly, I think a stronger voice for national Governments and national Parliaments would go some way, at least, to redress the sense of disaffection that we see about European level decision-making in many, many different countries, not just our own.

Q12 Kate Hoey: So the British people will judge the fundamental change.

Mr Lidington: It will be the British people. It is the British people, at the end of the day, who will judge whether the Government's recommendation is right or not.

Q13 Kate Hoey: I have one very final point. Are you really saying that we could be going for a referendum with a promise of treaty changes in the future, and the British people would be expected to trust the European Union and the Commission that these treaty changes would happen in the future?

Mr Lidington: The Prime Minister has said that his objective is to secure changes that are legally binding and irreversible. As I said a few moments ago, we are in some quite detailed technical discussion about various options that might be available to ensure that. The PM will want to take to the country a package about which he feels confident, on which he feels it is right to campaign. At the end of the day, it is for the people to judge whether they are satisfied with that or not.

Q14 Kelvin Hopkins: Just following Kate Hoey's points, because we do not know what you are negotiating on—it is all rather mysterious at the moment—it is conceivable, is it not, that you might be negotiating on 10 objectives, but you are only going to be successful on three? We will not know, when the time comes, that you have actually lost on seven and won on three, because you will just be saying, "We have won on three."

Mr Lidington: I am happy to send Mr Hopkins another copy of the Prime Minister's collected speeches on these subjects. The Bloomberg speech set out pretty clearly his objectives, and he has followed that up with a number of newspaper op-eds that have presented those ideas in a pithier form, then a fairly comprehensive, carefully argued speech on movement and welfare in November 2014. I really do think that there is material there that would give Mr Hopkins the information that he is after.

Q15 Kelvin Hopkins: The Home Secretary, a few days ago, said that she thought that free movement should only be acceptable when people are coming for jobs they already have, rather than coming to look for work in Britain. I just wonder if that is one of your negotiation strategies behind the scenes, which we do not know about.

Mr Lidington: The PM set out the Government's position on that in November. That remains the authoritative statement.

Kelvin Hopkins: The Home Secretary's suggestion was not—

Mr Lidington: The Home Secretary agrees with the Prime Minister's position.

Q16 Chair: Just to follow Kate Hoey's point about this question of there not being a treaty change, but a promise for a later time, this is not going to be binding. A declaration in itself could not achieve it. It might be achievable in international law, but it would not lead to an amendment of the 1972 Act and, therefore, many people would argue that it is really a promise without any substance.

Mr Lidington: People will have to make their minds up when they see the content and the form of the package the Government finally presents. At this stage of the negotiations, I cannot speculate about exactly what legal form the final outcome will take.

Q17 Mr Jacob Rees-Mogg: Thank you, Minister; it is always a pleasure listening to your defence. It is absolutely essential that there is proper, copper-bottomed legal certainty at the end of this process, because the European Union has form in overriding the agreements that it has given when they are not legally binding. You will recall that, when Margaret Thatcher invoked the Luxembourg Compromise in the early 1980s, the Luxembourg Compromise was deemed to be irrelevant and she was voted down. You will recall more recently, in spite of a Council decision saying that the European financial stability mechanism could no longer be used for Greece, it was then used for Greece. There is no basis for trusting anything short of treaty change.

Mr Lidington: I can understand why treaty change is rightly regarded as the most secure change. I could perhaps write to the Committee about the history of the Luxembourg Compromise, if people would find that helpful. It was de Gaulle, rather than Margaret Thatcher, who first used it.

Mr Jacob Rees-Mogg: He first used it, but she was the one for whom it was overruled and they decided that it no longer applied on some matter to do with agricultural subsidies, I seem to remember.

Mr Lidington: There has been the development of a doctrine about the interpretation of the Luxembourg Compromise. It has actually been used on other occasions, in more recent years. It is fair to say that its use has been less frequent and its status, I think, has been seen as less significant, as the years have gone past.

On the EFSM, what I thought was striking was that the member states of the eurozone readily accepted that they had all agreed in December 2010 that the UK should not be liable to any bailout of Greece or another eurozone country. When, in the particular circumstances of the Greek crisis this summer, they felt they needed bridging finance and the EFSM was the only thing available, they very

rapidly said, “We have to do this in a way that means the UK and other non-eurozone countries are protected against liability.” That of course was the objective of the 2010 deal.

Where I go along with Mr Rees-Mogg is that I would say that the outcome is fine. The outcome was absolutely in line with what was agreed in December 2010. That episode did reinforce, in the minds of British Ministers, the need for much greater clarity and a stronger legal basis for ensuring fairness to eurozone and non-eurozone members alike. The Chancellor, when he has talked in a bit more detail about this, has said that what we need to see established and agreed by everybody at EU level is a set of overriding principles. We have done a fair amount already on this in the detailed negotiations about banking union.

If one goes back to the directives governing the Single Supervisory Mechanism and the single resolution mechanism, there was a lot of complex negotiation by Treasury Ministers and officials, which led to a compromise that we felt did protect the position of ourselves and of countries like Sweden, Denmark and Poland, but the impact of the Greek crisis has meant that we feel even more strongly that the economic logic of the eurozone is going to be towards greater integration over the years to come. That means that now, rather than at the time of some future crisis, we need to sort out what these overarching principles should be: no discrimination on grounds of currency; no harm done to non-eurozone member states by the actions that the eurozone members choose to take in order to protect the interests of the currency union.

Chair: Heather Wheeler has a specific question on that very issue.

Q18 Heather Wheeler: Absolutely. You read my mind; that is excellent, Minister. How is the renegotiation process taking account of the position of eurozone ins and eurozone outs, and the changes of the QMV voting system, given the Chancellor’s comments in 2011 that “the remorseless logic” of monetary union was greater fiscal union?

Mr Lidington: This is one of the cardinal elements of the changes that we are seeking. It is something that the Prime Minister, the Chancellor, the Foreign Secretary and I raise in all conversations with counterparts about the reform and renegotiation agenda. It is a subject I was raising in various conversations in Brussels earlier this week, and it is not just the UK that recognises that this matter has to be sorted out.

I find in other non-eurozone countries, including those that are committed by treaty at some stage to sign up to the euro, that we need to have such an arrangement. Denmark, like us, has a treaty-based opt-out from the euro. Sweden is supposed to join the euro one day, but Swedish public opinion seems to be very firmly set against the prospect. Hungary has now embodied the national currency, the forint, in its constitution, so would need a constitutional change to join the euro. Poland needs a special parliamentary majority or perhaps a referendum to join the euro. While this is a matter for Polish politicians to determine, my reading of Polish public opinion polls is that, at the moment, Polish public opinion is pretty hostile.

Even countries that are destined by treaty to join the euro, whose leaders perhaps want them to join the euro one day, know that there are going to be some very important years when they are not in the euro, but where existing euro members will be taking decisions about their further integration. They want to ensure that is done in a way that protects their interest. I do find a greater understanding amongst eurozone countries too about the importance of fairness to those of us who are outside, as they grapple with how on earth they make these arrangements. It is perhaps a subject for another day, but there is quite a big gap still between different visions of eurozone integration. You talk to leaders in Paris and hear one thing; you talk to leaders in Berlin or Frankfurt and have a different model put to you. There is a recognition that we need, as European partners, to sort this out.

There are things like the location policy issue. The European Central Bank decreed that an institution that carried out clearances in euros had to be physically located in the eurozone. That we saw as not just a threat to our interests in the City of London, but it was a fundamental breach of single market principles. How can you have a single market in financial services and yet introduce this restrictive practice? Now, the court has struck down that Central Bank location policy, but it is important for our financial services business, for London, for Leeds and for Edinburgh, that we have clarity about this, so that the UK financial services industry can continue to do business on a large scale, right around Europe.

Q19 Craig Mackinlay: I am just trying to really get to the nitty-gritty of how, constitutionally, this would all hold water. You mentioned earlier that there could be protocols; there could be agreements; there could be a post-agreement treaty that is promised. When we look back at some of these agreements that we have been subject to in the past, one that is quite relevant at the moment is the Dublin Convention. The first one was back in 1997. Then it was amended in 2003 at Dublin II, and we are now on Dublin III in 2013. At a whim, within a week, we have Germany pretty much putting that aside. This is a worry when you get promises and agreements that are not bound in treaty. The legally binding bit I think is important.

If we put our minds forward a couple of years, you have put that there will be a binding treaty change that has been agreed by all; if that is put to the British people and they are happy with it, then the process of treaty change takes place. What sort of state will we be in, depending on the different EU 28 and whether they have to go through a parliamentary approval or referendum, if one of those fails and that treaty change is not approved? Where does that leave us? That is the problem for the future. I would have thought, with the utterances of the five Presidents about the requirement in the future for almost a eurozone Government, with rather more strength and power, and the change of locations of the European Parliament, that this would perhaps be a time for all this to be bound together. It worries me. What happens if it fails in Sweden or fails in Poland? Where does that leave us?

Mr Lidington: It is exactly that sort of, in one sense, technical, but actually very politically important, element of the debate that we are focusing on in these technical discussions that are going on. It might be that there is more than one model that we need to explore with partners. What are the means by which we can

secure the Prime Minister's objective of making this legally binding and irreversible?

I would just add that I slightly push back on Mr Mackinlay's interpretation of Dublin. Vijay will interrupt me if I get this wrong, but my understanding is that Dublin does not oblige Germany to send back people who are Syrian and perhaps ought, under the 1951 Convention, to have registered and claimed asylum in another European country. They can choose to take them in and go beyond Dublin. Of course, what they have done is invoke the emergency clause in the Schengen Agreement to reintroduce what the German Government says are temporary border checks, along the frontier with Austria. That again is in line with what Schengen provides.

Craig Mackinlay: I am sure you have chapter and verse on whether Dublin applies. It is just that, in some circumstances, Europe, whether it is allowing Greece into the eurozone, seems to put aside what seem to be reasonable principles for its own advantage, whenever it pleases. Is this legally binding? How are you going to secure that? Frankly, I would not want to be in your chair.

Q20 Geraint Davies: Coming back to the issue of free trade agreements and sovereignty, you mentioned that free trade agreements would not be treaties, but we know of course that treaties can in fact be changed. CETA, the Canada-European Union free trade agreement that is really complete, has a 20-year stabilisation clause in it, which would mean that future Parliaments are bound to it for 20 years. What is more, the regime it has inside it, the ISDS, investor-state dispute settlement, would allow corporations to sue Governments through arbitration panels, in private, for millions or indeed billions of pounds. By way of example, if we did some fracking, when we pulled back from that because of climate change or health considerations, we could be sued in the future.

If we agree CETA, the Canadian one, it will of course bind us in terms of what happens in the Transatlantic Trade and Investment Partnership agreement. Everyone is talking about how ISDS could be wrong in TTIP, but it is already coming through the back door. I was wondering how you squared your comments about sovereignty with the idea of us signing up to this 20-year agreement.

Finally, there are issues, as you know, other than health, nationalisation and so on, about British products like Cornish pasties, Cumberland sausages and this sort of stuff being produced in Canada, because we have not protected them in these agreements, in terms of their intellectual property. In contrast, the French have protected Champagne, brie, etc. In other words, would you agree that, unless we have some dramatic change to CETA on ISDS and other changes, and by implication to the TTIP negotiations, we could end up being sued? We could end up binding future Parliaments. We could end up undermining future products in Britain.

Finally, I laid down a Private Members' Bill today, called the International Trade Agreements (Scrutiny) Bill, which simply requires scrutiny in European and national

Parliaments, and amendments in European Parliaments, to allow people to buy into this process.

Mr Lidington: There are a number of issues there. I start by saying, Chairman, that I offer to write to you for circulation to the Committee with more detail about CETA. If I can try to respond to the points that Mr Davies has made, I think it is inherent in treaties and free trade agreements that Governments agree to put limits on their future actions or to act in particular ways, because they judge that the content of that treaty or a trade agreement overall is in their national interest. There is nothing to stop a sovereign Government deciding to denounce and withdraw from an international treaty or a free trade agreement, but that clearly has consequences, both political and economic, which that Government has to judge at the time.

Geraint Davies: In the case of Sri Lanka, when their Supreme Court tried to withdraw from an agreement against Deutsche Bank, they were fined. The arbitration was international. It is all very well saying we can withdraw, but we cannot.

Mr Lidington: There are consequences to actions. If you take action that causes direct harm to another party, then there can be at international level, just as at national level, arrangements for compensation. Governments have in the past decided, for reasons of public policy, either to compulsorily purchase private property or to legislate to forbid certain types of economic activity. Governments have usually had to provide some kind of compensation scheme in those circumstances. They could take the action, but the individual or business had to be appropriately compensated.

The purpose of ISDS is that you try to have something equivalent on an international level. We are already party to a very large number of ISDS clauses, as part of other trade agreements, which successive British Governments have entered into. I think I am correct in saying that, hitherto, no British Government has ever lost a claim brought against us under ISDS. Having said that, there have been intense international discussions about ISDS in response to the disquiet in a number of countries. The UN has held hearings about this, as Mr Davies knows. My understanding is that the UN is due to publish some ideas about reform of ISDS, either today or very shortly. Obviously, we will take a view on those when we see them.

Chair: I think we have probably dealt with that enough.

Mr Lidington: *I will write further about this.*

Q21 Peter Grant: Some of us have constituents for whom the idea of voting in a referendum based on a cast-iron guarantee that everything will be sorted out afterwards might just need a pinch or two of salt, but we will come to that in due course, no doubt. I want to go back to legally binding and irreversible, because my understanding is that it is a principle that applies to this Parliament, for example. This Parliament cannot irreversibly bind its successor Parliaments. An organisation cannot irreversibly bind itself, because the organisation can change its own rules. You said in an answer to an earlier question, Minister,

that the European Union—in fact, you may even have said the treaty—is a constant process of change and of renegotiation. If it is in a constant process of renegotiation, how can anything be genuinely irreversible, as opposed to irreversible for the press statement or for public consumption?

Mr Lidington: Everything that is legally binding has a capacity for amendment. The bar for securing those amendments can be set high or low. That is a matter for national constitution, law or international agreement, but I do not think there is a contradiction between saying that something should be legally binding and saying that it is not incapable of amendment but is irreversible in the sense that it is not something that could be subverted against our agreement.

Q22 Peter Grant: Can I press that point, please, Chair?

Chair: Very briefly, please. I would like to move on.

Q23 Peter Grant: Can it be made utterly irreversible or can it not? I do not think anything that we would put into a treaty change can be irreversible. It might be difficult to reverse. The Prime Minister has said “irreversible”. Can it actually, legally, constitutionally, be genuinely irreversible in the way that the population will take it to mean, even if it is not what it means?

Mr Lidington: That is what we have said we are seeking to secure. We are exploring the various options for that at the moment.

Q24 Geraint Davies: The Prime Minister has taken personal responsibility for renegotiation. Do you not feel that, given the complexity of renegotiation and the other things on the Prime Minister’s mind, that it might be a good idea at this point to have a Cabinet member solely responsible for doing the renegotiation, on behalf of the country and the Prime Minister, rather than him doing it as a part-time job, given the strategic importance of this negotiation for the future of Britain in Europe?

Mr Lidington: The way in which I see the EU operating these days, particularly on the big policy questions, is increasingly a place where those decisions have, in the end, to be thrashed out at leader level. I found that particularly striking at the time of the negotiations on the multiannual financial framework, a couple of years ago. Yes, a huge amount of groundwork was done by officials, other Ministers, Foreign Office Ministers and Treasury Ministers in the months leading up to that, but to get the MFF agreed required, at the end of the day, 28 Presidents and Prime Ministers to thrash out between themselves not just the overarching principles, but the details of the sub-clauses of what was a very, very complicated agreement. I can promise the Committee, having watched the Prime Minister in action on this, he was absolutely, completely on top of the brief and with a pretty good idea of the briefs of other leaders as well.

Our renegotiation can only be settled at Head-of-Government level, at the end of the day, but he is working intimately with the Chancellor, the Foreign Secretary and me. The renegotiation is being overseen by a small Cabinet committee that is dedicated to that role and it is drawing upon officials at No. 10, the Foreign Office, the Cabinet Office, the Treasury and other Departments, as appropriate. It does involve networking. All of us who are involved have to make sure we know what

each other is doing, but I actually think that there is not a big flaw in the way that this is working. Ultimately, it has to be settled at Heads level.

Q25 Kate Hoey: The European Commission has a task force called the Brexit task force, under someone called Jonathan Faull. Would you like to tell us what you think its role is? How well do you know Jonathan Faull?

Mr Lidington: Its role is, on behalf of the European Commission and President Juncker personally, to think about the British question of how to deliver the fair deal for the UK, which President Juncker talked about in his State of the Union speech the other day. With a view to that, as a small team reporting to the Commission President, it has power to roam around the Commission and draw on all resources of the Commission. I saw Jonathan Faull on Tuesday morning. We had a conversation.

Q26 Kate Hoey: Sorry, could you remind the Committee who Jonathan Faull was or is?

Mr Lidington: Jonathan Faull is a senior Commission official. He is a British national who has previously worked, for example, as Director-General for financial services there. He is one of the most senior-ranking UK officials in the Commission.

Q27 Kate Hoey: Why is it called the Brexit task force?

Mr Lidington: It is not a name that I have given it. I think probably a bit of unofficial nicknaming has been going on there. If I can assure Ms Hoey, there really is no sort of conspiracy here.

Kate Hoey: There is no European Commission money already being spent on working out a plan to counter any opposition to the United Kingdom staying in the EU?

Mr Lidington: The consistent message that I have had from everybody in the European Commission is that they want Britain to stay in the EU. They regard the referendum as a matter for the British electorate and the British electorate only. The last thing they intend to do is get involved in the campaign. They are also savvy enough to know that their involvement in the campaign would be an absolute gift for the no side.

Q28 Kate Hoey: Just while we are on task forces, is there any truth in the rumour that there is a little group within Downing Street or maybe the Treasury already working on ways of trying to get the referendum next year, as soon as possible? Is there a working group in Downing Street working on that?

Mr Lidington: No, there is no group working on the date of the referendum. The people I have just talked about are thinking about options for dates, as well as about content, but the date depends on the progress of negotiations. It depends on two things. It depends on the timeframe for getting the Bill into law, which, as I have said, I think will be sometime around the end of 2015 or beginning of 2016; then it depends on the outcome of the EU negotiations.

When those negotiations are concluded, assuming the Bill is law by then, there has to be time allowed for statutory instruments to set the date and to give effect to the various technical rules concerning the referendum and its conduct. At minimum, there would be a further 10 weeks for the regulated campaign period, which is prescribed by PPERA. You would be looking at a number of months between the conclusion of negotiations and any referendum date. We have ruled out certain dates already. There are other times of the year which, by convention, are regarded by all involved in politics as not being good times to have elections or referendums.

Q29 Peter Grant: Minister, you said earlier that it would be the Prime Minister's judgment as to what was in the final package that was on offer, on which people could make up their minds to stay or to go. Have you considered the fact that there may be some elements of the package that the Prime Minister and the Government think would make it a better deal, but that others think would make it a much worse deal? TTIP and CETA, for example, would drive a number of my constituents to vote out, when they would otherwise have voted in. Are you really saying that that would be entirely the Prime Minister's call? Is there any proposal to let Parliament have a say, as to what should be in the final offer?

Mr Lidington: *The recommendation from the Government is what, to a large extent, the campaign and the vote will be about.* At the end of the day, it is the people who make their decision. I am sure that Parliament will have an opportunity to debate this. I suspect that we may well have more than one debate on this subject, given the various means that are available, both via Government time and through other mechanisms. We have not really thought in detail about exactly how that is done. I am sure there will be an opportunity for parliamentary views to be expressed.

I understand that Mr Grant may disagree with my position on TTIP and CETA, but the present Government has made no secret ever of its support for those measures. We believe that they offer huge opportunities for businesses, job creation and economic growth in all parts of the United Kingdom. If I look, for example, at how the free trade deal with Korea has already led to increased export opportunities for Scotch whisky, I would point to that as something Mr Grant might want to take back to his constituents, to try to persuade them.

Chair: Bearing in mind that there is going to be a vote in half an hour, I would just like to make that point, if I may. Calum Kerr, would you like to pick up on that?

Q30 Calum Kerr: Minister, the APPG on whisky meeting was last night. I am afraid you missed that. I would like to ask you how you are consulting the devolved Administrations, both on the areas of renegotiation and then as the process progresses?

Mr Lidington: The first thing I will say is, of course, the UK's membership of the European Union is a reserved matter and, therefore, it is right that it should be for this Committee, the Foreign and Commonwealth Affairs Committee and so on, of the UK Parliament, to question Ministers about this. We recognise that the devolved Administrations have a clear interest here and that some EU activity,

some EU legislative competence, touch on policy areas that are also devolved competences.

The Foreign Secretary has invited the three Heads of the devolved Administrations to have bilateral meetings with him, where this can be discussed. I have put the issue of the UK renegotiation on the agenda for all future meetings of the Joint Ministerial Committee on Europe, which brings together devolved and UK Ministers, roughly once a quarter. That will give us the opportunity to make sure that we understand fully the concerns of the devolved Administrations and we can take account of their views. That is in addition to, not a substitute for, the duty that already exists for every Government Department, when it frames its approach to a particular dossier of ongoing EU business, to consult the three devolved Administrations where devolved competences are involved.

Q31 Calum Kerr: Thank you. I must say I enjoyed your introduction and your answer to the first question. Your “competitiveness, fairness and sovereignty” reminded me of the yes campaign we ran a year ago, which was “prosperity, fairness and equality”. I wish you significantly more success than we had a year ago on this matter. I think you will know the SNP’s stance on the EU.

I would like to ask you to indulge me, though, in terms of some of the areas for negotiation. I ask, specifically, whether, within that, you are looking at areas like CAP and CFP, which are areas that have a defined cadence for review, but where we feel our interests are particularly ill served and we would welcome renegotiation.

Mr Lidington: Those are not areas that featured in the Bloomberg speech, though there are certainly elements of CAP that one could say affect the competitiveness agenda. I know that there are particular Scottish concerns, and indeed Welsh and Northern Irish concerns, and not necessarily ones that coincide, about both those areas of policy.

We felt that the CFP reforms that were achieved during Commissioner Damanaki’s time did take us some good steps forward, although they were not as ambitious as we would have wished in terms of the extent of devolution to local and regional fisheries management. We thought that they were still some good steps forward. For example, I know that amongst fishing communities the ban on discards was not universally welcomed, but I just think that discards had become completely impossible to defend.

On CAP, there are differences between the Scottish Government and the UK Government in our views about reform there. Our view in the UK Government remains that we should be looking to shift agriculture away from the idea of automatic single farm payments. Yes, agriculture is going to continue to need some sort of taxpayer support, but that is better provided through general support for the rural economy and for environmental stewardship that farmers carry out. I accept that, for upland farmers in all parts of the United Kingdom, there are particular challenges. That is why, under successive British Governments and EU CAP regimes, there has always been a special place for upland farmers and special arrangements for them.

Chair: Could we now perhaps move to Wales and ask a question?

Q32 Geraint Davies: I have a similar question really. You mentioned to the Chair earlier on that clearly the Prime Minister is keeping his cards close to his chest, from the point of view of negotiation. The philosophical, financial and policy position of Wales, as with Scotland, vis-à-vis England, is different. We have billions of pounds of convergence funding, as you know. In the past sometimes, Conservative Governments in particular have not applied for money that is available for match funding and the Welsh Government is happy to match fund that and obviously double the bang for its buck.

Secondly, on things like CAP, we have a particular interest in small farmers. I just wonder whether it would not be better to have a dialogue, albeit perhaps behind closed doors, with both the Welsh Government and the Scottish Government, about what the collective view is, because my guess is the collective view is not the view that is currently being expressed in the negotiations, which would be put to the British public. The Scots, quite naturally, will say, “If we are not going to vote for it, why can we not have a veto, particularly if we are not part of that negotiation?” The Welsh would have a slightly different, but similar, position.

Mr Lidington: I have to say, Mr Davies, that actually the Welsh Finance Minister is very assiduous about reminding me of Welsh interests, as indeed are Scottish Ministers and Northern Ireland Ministers too. I thought that was a perfectly reasonable point Mr Davies made, and I have given an undertaking that I will, Government Whips’ office permitting, make a visit to each of the three devolved Administrations, before the end of the year if I possibly can. That might be the opportunity for those kinds of conversations to take place.

Q33 Chair: We are getting an indication that there might be a vote quite soon, so I would like to ask one question now on this issue that we have just been discussing. Basically, we would like a paper by 5 October setting out what information the Government intend to provide to Parliament about the negotiations, what format it will take, when it will be provided, whether the UK Government intend to establish special relations for scrutiny during the renegotiation, and the scope of the negotiations and type of reform the UK is seeking to achieve, so as to be able to hold the Government to account. I am not going to go into all that now, but I just wanted to give you notice that we are going to and I assume that you will be glad to reply.

Mr Lidington: *Of course.*

Q34 Kate Hoey: Just very quickly, what was the rationale behind making the cut-off point the end of 2017? Is there a danger to negotiations because of that?

Mr Lidington: We felt that roughly two years to two and a half years, halfway through the 2015-20 parliament, was about the right length of time. There is of course the risk that Ms Hoey described but, equally, if you do not have a deadline, there is the risk that things just drift on. I think it would have also sapped public confidence in the referendum had people felt that this was an ever-movable feast.

Q35 Kate Hoey: The UK is going to hold the Presidency at the end of 2017. As any of us who have been involved in the past in Presidencies know, that is a huge amount of work. Have we got a plan B so that, if the referendum needed to be at that time, we have someone else who might step in and take over the Presidency, or are you committed to having the Presidency whatever happens?

Mr Lidington: We have given some thought to that and we are already starting to work to prepare for our Presidency, because of course the preparation for those six months involves working with the member states that have the Presidency before and after you. We have looked at this carefully. While clearly a referendum in that second half of 2017 would not exactly be ideal from the point of view of the smooth running of the UK Presidency, it would not be unprecedented. The Danes, in 1993, I think it was, had a very important referendum on their place in the EU while they held the Presidency. Whilst it is a slightly different analogy, the Belgians have held a reasonably successful Presidency while they had a caretaker Government, after they were unable to form a permanent Government subsequent to a general election.

Kate Hoey: Perhaps that tells us more about what the European Presidency is and the whole shenanigans around it. Perhaps it could be cut back radically.

Mr Lidington: Value for money is very much on my agenda for that.

Chair: In view of the time, I want Kelly to ask her question now.

Q36 Kelly Tolhurst: Thank you, Chairman. Minister, jumping ahead to when we have had the referendum. In the event of a no vote, what would happen next? What steps would the Government be taking?

Mr Lidington: The Government is negotiating with an aim to be successful, in the terms the Prime Minister set out in the Bloomberg speech. I am not going to speculate beyond that, but we will treat the referendum result as binding and there is, of course, a process laid out in treaties for a country to leave and to settle the terms of the subsequent relationship.

Q37 Kelly Tolhurst: Could we expect, at the time of the referendum, to have those details laid out in regards to what the British public could expect the timeframe to be, if there was a no vote, and what the terms would potentially look like?

Mr Lidington: One thing is what the British Government do, but also there would be the terms of a subsequent relationship. What the treaty says, in Article 50, is that, in the event of a member state leaving, there is a process of up to two years when the remaining member states decide what those terms should be. Those are things that are laid down. My assumption would be, in this hypothetical situation, that they would act on the basis of that procedure.

Q38 Kelvin Hopkins: As you know, Minister, we have 23 outstanding references for debate. Before the election, the Government were promising to address this, but still nothing has happened. Government scrutiny guidance talks about endeavours being made to schedule debates “as promptly as possible after the debate recommendation has been reconfirmed by

the new Committee”. We have been in existence for at least another three months, so what is actually going on about these matters?

Chair: Could we have a brief answer?

Mr Lidington: One of the Treasury debates took place on Monday this week. I do take this seriously. I have been having various conversations with Government business managers about this, including this morning. I can say, having talked to the Government Whips about this, that we are seeking to clear that backlog as rapidly as possible. I am also going to take up bilaterally, with the relevant Ministers in the other Departments responsible for some of these dossiers, what their plans are to try to bring those debates forward.

Q39 Chair: Very briefly, some of them are on the Floor of the House, which is going to require a lot of time. It is also important, because some of them are seriously outstanding. I would like to ask another question, however, relating to the Electoral Commission. They have recommended that the legislative framework for a referendum should be in place and cleared within six months before the date of the poll. Do you intend to abide by the Electoral Commission’s recommendation, yes or no?

Mr Lidington: We are doing our utmost. We published the draft conduct rules in July, and the Electoral Commission and anybody else who wishes to comment have been consulted about that. The Commission has come up with a number of useful possible tweaks to those conduct rules. Given we have ruled out May next year, it is likely that any referendum date will be many months after those conduct rules were first published in draft. Counting officers and returning officers will have seen from those conduct rules the way in which the referendum would be organised and administered, so I think that there will be the clarity that the Electoral Commission wants.

Q40 Chair: Will Cabinet Ministers be allowed to vote? Obviously they can vote whichever way they want, but could they also campaign for or against?

Mr Lidington: The whole Government was elected on the basis of the pledge to renegotiate and then hold a referendum. It is quite right for the Prime Minister to say that he expects all members of the Government to support that renegotiation programme. When it comes to the eventual outcome, it is obviously for the Prime Minister to decide what he wants to do. It has to be for the Prime Minister to decide what to do in those circumstances, but that is not the position we are in today. It is an ongoing negotiation.

Q41 Kate Hoey: I just wondered, given that the position of Her Majesty’s Opposition is likely to be, under our new leader, that Shadow Cabinet members will be able to be much more like the last referendum, whether that might mean that the Prime Minister might change his view on the Cabinet having free votes as well.

Mr Lidington: This will be a matter for the Prime Minister. He is certain that his objective is to secure a deal that every member of the Government feels he is able enthusiastically to endorse.

Q42 Chair: Just before we finish, because there is going to be a vote quite soon I am told, to come back to the beginning of our session on things like ever-closer union, you know, I know and we know that ever-closer union is an expression. In fact, what really matters is what is contained in the treaties. If the Prime Minister's word is to be taken at face value that he wants a fundamental change in the relationship between the United Kingdom and the EU, does this not necessarily mean that the whole question of the treaties themselves is part of that and the whole question of the status of the United Kingdom Parliament, in deciding for itself on behalf of the voters in general elections the kind of laws they want? Now, what is your position as a Government on that?

Mr Lidington: We have said many times that we believe that some elements of what we are seeking are going to need treaty change. That has not altered, but we are discussing with partners around Europe the various legal options. I go back to the basic point that our membership of the European Union derives from the fact that an Act of Parliament has authorised our membership of the European Union.

Chair: Voluntarily, unlike the other member states.

Mr Lidington: Yes, voluntarily. When we debated the European Union Act 2011, this was one central element in those debates. The then Government, the coalition, was very clear that our membership was dependent upon the continued agreement of Parliament. It was open to a future Parliament to withdraw Britain from the European Union. That would have significant political consequences. It might well not be in the United Kingdom's interest, but Parliament ultimately was sovereign and had that right.

Q43 Geraint Davies: In the event that Britain did withdraw from the EU, would there be a prospect of us having to switch taxpaying Polish people for retired British people in Spain, coming over drawing the health service from here? How would you envisage the economic impact, which seems a massive downside to me, in those terms?

Mr Lidington: These are sometimes questions. I have done public meetings in other European countries. "What about all your expatriates who are working or have retired here? They benefit from freedom of movement." That is one of the issues that people will no doubt want to weigh up in their minds when the referendum comes.

Q44 Kelvin Hopkins: Is the reality not that hundreds of thousands of British people live abroad, but are paid from England, in terms of pensions and so on? There is actually a net outflow of British finance to sustain British people abroad, whereas the overwhelming majority of people who come in from the European Union come here to work and are paid again by Britain. There are net outflows, especially to the Eastern European states, where they make enormous remissions to families and so on. The actual net loss, in financial terms, is very big indeed, is it not?

Mr Lidington: In fairness, Mr Hopkins, people from wherever they come, who are here legally and working legally, are paying taxes and so they are contributing as well. I think it is probably dangerous to start trying to tot up too carefully. People may be retired but they use medical services, to which they are entitled, in other European countries. These are things that individual British citizens will have to

weigh up in their own minds, when they come to frame an overall judgment, when the referendum arrives.

Q45 Kate Hoey: Minister, do you lie in bed at night worrying about whether the United Kingdom might vote to leave the EU?

Geraint Davies: I had a very similar question.

Mr Lidington: I was given a very good tip by my former boss Douglas Hurd, many years ago. He said, “Always try, last thing at night, to read something that is nothing to do with work or listen to some music, so you get a decent night’s sleep”, and I stick to that.

Chair: On that note, Minister, thank you very much indeed. I have no doubt we shall be having some further discussions with you.