



European Scrutiny Committee

Oral Evidence: [UK Government's Renegotiation Of EU](#)

[Membership: Parliamentary Sovereignty And Scrutiny](#)

[Inquiry](#), HC 458

Tuesday 17 November 2015

Ordered by the House of Commons to be published on 17 November 2015

[Watch the meeting](#)

Members present: Sir William Cash (Chair), Geraint Davies, Damian Green, Kate Hoey, Kelvin Hopkins, Craig Mackinlay, Mr Jacob Rees-Mogg, Alec Shelbrooke, Graham Stringer

Questions [83-110]

Witnesses: *Rt Hon Mr Philip Hammond*, Secretary of State for Foreign and Commonwealth Affairs, and *Vijay Rangarajan*, Europe Director, Foreign and Commonwealth Office, gave evidence.

Q83 Chair: Foreign Secretary, thank you very much for coming. I know we have time constraints and also that the Prime Minister is making a statement. We are going to try to finish at 12.25 on the grounds that you and we would all want to take note of what the Prime Minister is going to say.

If I may start straight away, I am going to ask the questions and then there will be supplementaries from Members of the Committee. Could you please explain how, in each of the four baskets, as they are called, the Government's negotiating aims to take "the opportunity to reform the EU and fundamentally change Britain's relationship with it" as stated by the Prime Minister in the House of Commons in March 2015? Would you please note that this question relates to fundamental change in the relationship and not merely changes in the laws, even though these may be important in themselves? It is the relationship we are interested in.

Mr Hammond: I will try to be brief, because obviously we could spend a great deal of time answering that question. Running through the four baskets, competitiveness has always



been a key British demand. We joined the European Union because we believed that it could be a turbocharger on the British economy, and an accelerator of British economic capability. Much of the disappointment in the UK today is that the European Union has appeared, for many people, to be a brake on Britain's competitiveness, not an accelerator on Britain's competitiveness.

Taking the change of direction that we have clearly seen under the new Commission, the current Commission, there has been a bigger focus on competitiveness, on smarter regulation and an outward-looking Europe focused on completing trade agreements. That change has to be institutionalised to make clear that this is not just the whim of a single Commission; it is a change in direction for the European Union. To my mind, that is a crucially important issue for the UK, because it goes to a core UK objective and, from the point of view of most British people, addresses a key issue around our relationship with the EU.

On the second area in the relationship between the eurozone and the non-eurozone, we are looking for a structural framework within which the various relationships and dealings between the eurozone and the non-eurozone countries are managed in a way that protects the equities of the non-eurozone countries. We want structural protection for our vital interests, protection of the single market, and a guarantee that we will not be dragged into financing or otherwise supporting actions properly taken by the eurozone in support of the euro as a currency.

Moving on, on the sovereignty basket, clearly the statement that Britain is no longer bound by the principle of ever closer union, is no longer bound by the commitment to drive toward ever closer union, is in itself a very important statement. It will not only send a very crucial message but it will also inform the European Court of Justice, which has made reference to the commitment to ever closer union historically in its judgments. Specifically, however, we are looking for a greater role for national parliaments in overseeing the conduct of the European Union. As you will know, we have suggested an enhanced red-card procedure. We have also suggested that national parliaments, working collectively, could be involved in nominating areas of legislation for review where we believe powers should be repatriated from Brussels to member states, implementing the commitment made in 2001 at Laeken. Again, we see that as a crucial change in the way the European Union operates, creating a push from below to review and repatriate powers. Frankly, I regard that as a much more important development than simply presenting—I know some people were half-expecting this—a long list of specific demands for repatriation of powers. Let us develop a standing mechanism so that, on an ongoing basis, we can consider with others in the European Union the allocation of competencies between the European Union and the member states.

Finally, on migration, we are very much aware that one of the key asks for most people in this country is a reduction in the flow of intra-EU migration into the United Kingdom. We have accepted that freedom of movement is a core principle of the European Union and that we will not be able to negotiate change to the principle of freedom of movement. Instead, we have looked at the way in which labour is being attracted into the UK by the generosity and easy accessibility of our cash-benefits system and our public housing programme. We are addressing the draw factor on migration, particularly from eastern Europe, by proposing limits on access to those benefits and services for new migrants. Again, that marks a pretty important change in the way Britain's relationship with the rest of the European Union works.



Q84 Graham Stringer: Foreign Secretary, the Prime Minister is right in the first part of his letter, in actual fact. He is trying to stop the 19 oppressing the nine. He is trying to look after the interests of the City and other areas. How practically can you do that? You can stop them caucusing, but, in actual fact, if the 19, which will become larger as more countries join the euro, have a different policy objective than the minority of people who are not in the eurozone, how can our interests be protected in those circumstances?

Mr Hammond: The way in which we are approaching this is by looking at a framework of protected areas, as it were. These are things like the operation of the single market, where it will be agreed between the member states—that 28—as part of this package, that actions by the 19 in the eurozone should not have negative impact on the operation of the single market, as experienced by the United Kingdom.

I am not using this as precise legal language, but I think of this as a constitutional framework around what is done in building and integrating the eurozone. There are certain things that are not for the 19 to do, regardless of the impact on the other nine, where the interests of the other nine are specifically defined and specifically protected. In outline, that is what we have proposed. Of course, there is a great deal of detailed discussion needed around that. The Chancellor has been leading on this area and has had a lot of discussions with fellow Finance Ministers, and we have senior officials who are engaged with senior Finance Ministry officials from some of the larger EU partner countries and with Commission officials, looking at how this might work and what the mechanisms might be.

Q85 Graham Stringer: Do you think it will amount to a veto by the minority against the majority? That really is the only thing that would guarantee protection.

Mr Hammond: I do not agree with that. A veto implies an arbitrary ability to block. What we are looking to do is, in advance of an issue arising, to have defined what can properly be agreed by the 19 and what needs to be agreed between the 19 and the nine. I would not see that as a veto; I would see it as putting in place a continuing arrangement that recognises the special status of certain types of proposal, whereby they would have to be agreed between the 19 and the nine.

Q86 Damian Green: You started with competitiveness. It might be said that the current Commission appears refreshingly pro-competitiveness and is essentially on the side the British Government would want them to be on. What, therefore, are we negotiating for? You said you want to try to make this a permanent shift so that the Commission drives the whole of the European Union into being a turbocharger of British competitiveness; what changes would make that permanent?

Mr Hammond: I agree with you: the penny appears to have dropped. Across Europe, people are talking about driving growth, job creation and the need to engage in the global economy. We should, however, be sceptical. We have seen, in the past, the European Union often appears to be more interested in protecting the social model than in driving competitiveness. Much of Europe, of course, is still suffering the after-effects of a very severe financial and fiscal crisis. We cannot go the British people and say, “The competitiveness bit is fixed, because Mr Juncker and Mr Timmermans have a halfway reasonable agenda here.” Actually, we think their agenda points in the right direction, which is a good start. It does not go far enough; it is not proposing to go fast enough. However, it is at least pointing in the right direction.

I met with Frans Timmermans yesterday evening, actually, to talk about how we might try to institutionalise these changes. The Prime Minister has described it as baking a focus on



competitiveness into the DNA of the European Union—for example, by requiring targets to be set and requesting performance to be measured, ideally independently, against those targets and routinely publishing those. It might be by judging the Commission's annual work programme against the criterion of the extent to which it improves the competitiveness of European Union economies. There are a number of areas that I could suggest that would deliver on this requirement. We are pushing at a half-open door. There are many, many people in the Commission and across the member states who absolutely endorse this agenda, but we need to make sure we remain focused on competitiveness. Of course, there are also always bureaucratic instincts to resist any kind of prescription around the way the Commission and its programme operate.

Q87 Kate Hoey: I apologise, Foreign Secretary, for sounding like a stuck record, but, if the Prime Minister does not, could you refer to it as “the United Kingdom” rather than “Britain”? When I was a Government Minister and in Brussels, we always had “United Kingdom” in front of us. I am getting rather tired of Northern Ireland being completely excluded.

On sovereignty and this ever closer union idea, you are going to drop these words and that will be wonderful. Could you tell us whether you are intending that to be just for the United Kingdom or are you working with the other 27 countries for them to also drop that? If that is not the case, what would be the effects of us not having that and them having that?

Mr Hammond: We recognise that closer union is going to be appropriate for the member states of the eurozone in order to make the euro a successful currency. We believe and we have always believed, which is primarily why we have never been in favour of the euro for Britain, that a successful euro will require a much higher degree—

Kate Hoey: We question did not work very well, did it? You said “Britain” right away. It is just a habit. That is all.

Mr Hammond: I will do my best. It is a bit like “Daesh” and “ISIL”, is it not? I will do my best. I have lost my train of thought. Where were we?

Kate Hoey: You were trying to tell us about ever closer union.

Mr Hammond: In our view, it will be necessary for the eurozone to do further stages of integration at some point. There may be other countries outside the eurozone who wish to pursue closer integration. We do not want to stop them. We do not feel a need for the UK to try to halt that process. However, we do recognise that this is not the right path for Britain. We want an acknowledgement that it is not the right path for Britain and we are not in any way bound to or committed to go down that route.

It is not for us to mandate whether others should seek to excuse themselves from the commitment to ever closer union or whether it will be a British opt-out—or a United Kingdom opt-out. The important thing for us is that we have the United Kingdom opt-out.

Q88 Geraint Davies: On the issue of ever closer union, is the British view still that we are looking to disengage from this Charter of Fundamental Rights? In particular, with the long shadow of Paris now making people think we need greater unity of purpose behind the values of freedom and human rights for which we stand, is your position that we should disengage from Europe at this critical time on the Charter of Fundamental Rights?

Mr Hammond: The Charter of Fundamental Rights is enshrined in the European Union architecture. We have no proposals in the package we have put forward that would disengage from that.



Q89 Geraint Davies: What about ever closer union in terms of a unity of purpose behind our values?

Mr Hammond: With the greatest of respect to the European Union, the values we share across Europe are values we share for reasons of history and culture. They are not values we share because of the European Union. I share most of my values with Norway and Switzerland. They are not members of the European Union. The values agenda is not specifically European Union business. It is cultural, historic business.

Q90 Kate Hoey: Again, on the question of subsidiarity, which the Prime Minister specifically mentions in his letter, give us some examples of where that would work.

Mr Hammond: Where the principle of subsidiarity would work.

Kate Hoey: Yes, give us something concrete.

Mr Hammond: The principle of subsidiarity—as I understand it and as others are advocating strongly, the Dutch in particular—is that the test should be whether it is necessary and effective for powers to be exercised in Brussels for the effective operation of a single market and the effective operation of the European Union. Where powers can be more effectively or conveniently operated at national level or, indeed, sub-national level, they should be.

Q91 Kate Hoey: You want our Parliament to be able to make that decision.

Mr Hammond: I want our Parliament, in conjunction with other national parliaments, to play a role in challenging the stock of decisions that have been made on this, some of which, in our view, have not been correct.

Kate Hoey: Is that not pretty meaningless, really? Those are just words.

Mr Hammond: No, I do not think so at all. It is a British habit to assume the way we view the world is uniquely British. In this case, I do have to say “British”.

Kate Hoey: I am very happy with the word “British”; it is “Britain”.

Mr Hammond: That is fine. I am not sure I follow the logic of that.

Kate Hoey: You should. I will give you a lesson.

Mr Hammond: In fact, on many of these areas there are many other countries in Europe and many citizens—probably even more than national Governments—who share the kinds of concerns that we have. If we have a mechanism that allows national parliaments, working together, to elevate issues into a process for consideration, that will be an effective mechanism. If 55% of member states’ parliaments come together and make clear their view that something should or should not happen, that demands attention, and we would expect it to get attention.

Kate Hoey: There is no point pushing you further on that, because we just have a fundamental disagreement. The British public would not see that as a very good way of their representation on something having to be amalgamated into everybody else’s parliament.

Q92 Alec Shelbrooke: Foreign Secretary, what should a red card cover and how would the Government ensure it is effective in practice? Can a red-card system work in a common market in effect anyway, or does that lead to countries being able to establish protectionism where it suits them and bring down the effect of a common market?

Mr Hammond: That is why we could not have and would not support the proposal I know some people around this table have espoused of individual national parliaments being able to play a red card. That simply will not work in a European Union of 28. If such a



system was in place, I am afraid that Britain would have a great deal to lose from it. As you have implied, others would leap on the protectionist opportunities it created.

The idea of the red card is that a group of national parliaments—it is as yet undefined how big it should be—where they clearly represented a substantial strand of national parliamentary opinion in the European Union, could block a measure coming from Brussels and was clearly unwanted by a significant portion of the elected representatives of the European Union. Can I just bring in Vijay?

Vijay Rangarajan: To add one point to what the Foreign Secretary has said, the grounds on which that could happen would be many, but, in particular, we know from reports by this Committee and others in both Houses that expanding the grounds from only subsidiarity to proportionality more broadly and giving more time for these kinds of determinations to be made will be really important. It is about trying to make this into a workable mechanism, which does not constrain what Parliaments can do to just the grounds of subsidiarity. However, it is important to be able to say, “This may be an interesting issue, and it may be a good policy, but it should not be decided at a European level. There should be national discretion on this one.” Also, it has to have the ground of proportionality, so that it meshing it into national law. More broadly, we also have to ask, “Is this a good thing to be doing or not?”

Chair: Before we go to Craig Mackinlay, we put in a request asking the Foreign Office whether you would be kind enough to provide us with a letter stating what the Government’s position on the issue of immigration is. There has been confusion generated by a variety of sources. Basically, we wanted to have a clear exposition. We do not have it and, in effect, the Minister for Europe has told us that we cannot have it. I want to register my concern about that, but I will ask Craig Mackinlay if he could ask his next question.

Mr Hammond: I will look into it.

Q93 Craig Mackinlay: Foreign Secretary, access to benefits is always deemed to be one of the pull factors that cause a huge number of new EU migrants to come here. I saw figures last week that said just over 40% of new-entrant EU migrants are in receipt of some sort of UK benefit. I would actually say it is a vibrant economy. The increase in living wage and the lower tax in the future is going to be equally attractive. However, on the issue of the pull factor of benefits, what has been the view of other member states thus far on our demands for this four-year rule? I imagine old Europe is probably not quite as difficult as the new EU countries on this issue. What has been the experience?

Mr Hammond: There are two strands of response. As you suggest, it does break down into old Europe and new Europe. Clearly, politicians in countries which are providing the largest numbers of migrants into the UK have a political challenge in supporting any measures that would appear to disadvantage their own electorate. Amongst the “old Europe” politicians—I met some of them yesterday afternoon—this is more an issue of principle about whether it is discriminatory and whether it, therefore, undermines the principle of freedom of movement. It is less a practical issue and more a principle issue.

I should be honest with the Committee: this is going to be the most difficult issue. In all of the other areas, there are people across Europe willing to engage with us. I am not saying that everybody is positive about every aspect, but there are people willing to engage with us and people recognising the validity of the concerns that we are raising here. People are coming up with ideas and suggestions about how we might tackle them, and there are very few issues of principle being raised against them. It is a pragmatic discussion. There are,



however, people raising objections of principle against what we are proposing in relation to access to welfare benefits. It is the toughest area of the discussion.

Q94 Craig Mackinlay: Very briefly, you have identified that our benefits system is a massive pull factor. How much evidence do you have that that really is the pull factor and that it is not other factors, such as our buoyant economy, that are more responsible? Is this going to be the magic answer to reducing intra-EU immigration to this country? I am a little more doubtful.

Mr Hammond: Earlier, you talked about the pull factor of our vibrant economy. You are absolutely right, of course. In the end, however, this comes down to the same calculation: how likely am I to get a job? How much money will that job put in my pocket? For many people, this is about, “How much money will end up in my pocket and enable me to remit home at the end of the week, net of taxes, net of living expenses, net of in-work benefits received?” I would suggest to you that people who have the self-motivation to leave a village in some rural part of eastern Europe and come to London and seek a job probably have enough about them to be able to do that research. The anecdotal experience is that migrants coming in to the EU from outside, as we have recently seen, and migrants within the EU are extraordinarily well informed about the different systems operating in different countries and how they will be able to interact with them. They will make calculations about their own net position at the end of the week or the month.

It would be slightly counterintuitive to suggest that removing an average of around £600 or £700 a month of benefits from the pay packet would not be a factor in people’s calculation when they look at possibly higher wages in a country like Germany but less generous in-work benefits.

Q95 Kelvin Hopkins: Foreign Secretary, in November last year the Prime Minister said, “We want EU jobseekers to have a job offer before they come here”. Is this still part of the Government’s renegotiation? Will it be policed and enforced?

Mr Hammond: What we have already done is limited the access of EU jobseekers to out-of-work benefits. I am going to ask Vijay to give you the detail of what we have done, because I am sure he knows.

Vijay Ranganathan: As part of the changes to universal credit, as you know, that does not apply to people exercising their free-movement rights within the European Union as a jobseeker. They no longer benefit from the jobseeker’s allowance elements of universal credit when they arrive here.

Q96 Kelvin Hopkins: It is not a question of benefits or credits; it is about whether or not they have a job before they come.

Mr Hammond: No, let me be clear: if you are self-supporting, under the principle of freedom of movement you can come to the UK. Let us say you are a comfortably well off pensioner. Just as many comfortably well off British pensioners want to go and retire in France or Spain and have the right to do so, if you are self-supporting, you can come to the UK, so long as you are not imposing any burden on our public services and our welfare system. What will not be possible is for people who are seeking work to come here as jobseekers and claim out-of-work benefits while they look for work.



Q97 Kelvin Hopkins: The Prime Minister also said a year ago that if an EU jobseeker has not found work within six months, they will be required to leave. Does the Government think this is realistic? Would it be acceptable to the EU?

Vijay Ranganathan: That is already effectively part of the existing Free Movement of Citizens Directive, effectively, and the treaties. Somebody can exercise their free movement rights for up to three months to be in the country without a job. If, after six months, they do not have any form of job that gives them the free-movement rights or, as the Foreign Secretary says, they are entirely self-sufficient in resources, member states can indeed remove them, and that is already part of what has to happen here. The Government are already implementing that kind of system.

Q98 Kelvin Hopkins: Even if they have their families and children settled here, they will all be removed.

Mr Hammond: That is the position. That is not a change we are seeking. That is the position as it is currently understood, based on the treaties and based on judgments of the European Court.

Graham Stringer: How many EU nationals have been removed on that basis?

Kate Hoey: Yes, exactly. What about people gambling on Westminster Bridge?

Mr Hammond: That I do not know, I am afraid.

Kelvin Hopkins: Could you send the Committee the numbers?

Mr Hammond: We can certainly ask the Home Office.

Q99 Chair: I want to ask a question I raised with the Home Secretary yesterday. It is unfortunate. I would say it is a matter of great concern to the Committee that we have been seeking to have a debate on the floor of the House on the EU plan for migration, and on relocation and smuggling. The Government, to put it bluntly, have blocked this for four months. You may not be aware of that, but I am telling you that is the case. We have raised this with the Procedure Committee. It raises a whole stack of questions, and we want that debate on the floor of the House. Would you be good enough to make sure that, as far as you are concerned, it takes place? It raises some of the issues that have just been generated by supplementary questions. For example, what is the definition of an economic migrant as compared to a refugee? What is the definition of an asylum seeker? Are they out of date? Do they need to be revised? As raised by the questions you have just heard, there is the whole implication about the interactions in human rights legislation, around the question of whether or not a person has a right to family and a right to a court hearing regarding deportation.

There are many questions and, in a nutshell, without asking you to give an answer to all those questions, would you please ensure that, as far as you are concerned, we get the debate that is now four months out of date?

Mr Hammond: I am advised that this is a Home Office debate, not a Foreign Office debate.

Chair: It interacts.

Mr Hammond: As far as I am aware, we have unblocked the debates in the Foreign Office area, because you have, as you rightly say, Chairman, raised this with us before. I am very happy to speak again to the Home Secretary about the specific debate you are referring to.

Q100 Chair: Thank you. I wanted to get that on the record. We are now going to move on to a new set of questions that relate to all the most important issues that are



contained in your baskets, given that there is a need for treaty change, which is not on offer as we understand it. Could you please answer the following questions? How could any commitment to deliver the outcome of the renegotiation, which involves either treaty change or secondary legislation, be made both legally binding and irreversible?

Mr Hammond: We envisage that what will happen is that a package will be agreed by the 28 member states and that that decision will be made as a registered agreement, binding in international law, an agreement that interprets the treaties according to the decision the 28 member states have taken. That would then be required to be taken into account by the Courts. That agreement, as we envisage it, would include a commitment to change the treaties to give effect to what had been agreed at the next opening of the treaties.

This is a methodology that is now familiar in the European Union. It has been used before and that is the way we anticipate that it is most likely to be done in those areas that require treaty change.

Q101 Mr Rees-Mogg: Thank you, Foreign Secretary. Has the European Court of Justice of the European Union previously accepted intergovernmental agreements as superseding EU law?

Mr Hammond: As I understand it, registered intergovernmental agreements, as a matter of international law under the Vienna Convention, do have binding force and are to be taken into account.

Q102 Mr Rees-Mogg: Do they override the treaties of the European Union for the purposes of—

Mr Hammond: They are effectively an interpretation. As it has been explained to me, any treaty is a decision by a group of sovereign nations to enter into an agreement. What we are talking about here is an interpretative decision that is the same group of sovereign nations clarifying how they intend that the treaty they have freely entered into be interpreted by the Courts. There is a specific provision in the Vienna Convention on international treaty law for that to be the case.

Vijay Rangarajan: If I could add to that, the Foreign Secretary is absolutely right. An international binding decision can interpret existing treaties. It can also do two other things. The first is that it can take on additional commitments. We are seeing EU member states take on additional commitments outside the treaties but, in a sense, they are linked in—the fiscal compact being the most obvious example.

It can also make a future promise as to their own behaviour as member states, parties to the treaty. The obvious example of that is a promise to amend the treaties. I will give an example: Ireland in 2008. This is the famous one, where the European Council conclusions themselves said that the decision was legally binding and would take effect on the date of entry into force of the Treaty of Lisbon, and they would at the time of conclusion of the next accession treaty set out the attached protocol in the treaty. That is an example of the third kind, where it is a decision of the member states to bind themselves to amend a treaty in a particular way, which was specified at that time.

Q103 Mr Rees-Mogg: The Court's behaviour in this respect has not always been, as far as one can tell, sympathetic to what one has expected. One of the examples in relation to the United Kingdom was in relation to the 48-hour week, where we had an opt-out from the social chapter, and it came back in through another mechanism. I am also thinking of the 1992 Edinburgh Agreement, which made very clear statements on citizenship and those



citizenships being a national issue, in response to which—I might as well quote it—the European Court subsequently declared, “EU citizenship is destined to be the fundamental status of nationals of the member states” and ruled that depriving a person of national citizenship raises questions of EU law. You have a 1992 agreement that the CJEU then takes to a different level. My real question is how we control the Court in terms of its approach to these issues.

Mr Hammond: First of all, there is the legal aspect of this: the court is required to take into account—

Mr Rees-Mogg: “Take into account” does not necessarily mean “follow”, does it?

Mr Hammond: It has significant weight, but I would make another observation. We are talking about something that will have been agreed in a highly politically charged atmosphere by all 28 member states. This is not going to happen unless it is agreed by all member states, making a very clear political commitment, by the 28 member states. Our observation and my observations on the way the Court has operated is that it is sensitive to the political intent of the 28 member states when they are acting together.

Clearly, there will be examples that you will be able to quote and that I could quote where there is not a unity of purpose among the 28 members—and there will be member states who feel aggrieved by the decision-making of the Court—but where the 28 members are clear and send an unambiguous, united signal about their intentions, we find it highly unlikely the Court would seek to challenge that.

Q104 Mr Rees-Mogg: I wonder, Foreign Secretary, whether you really think it is that unambiguous. It is something the United Kingdom will have asked for. If you think about our previous opt-outs, although they have been agreed as part of the treaties, the implementation of them—because they were given reluctantly—has not been this seamless situation you are suggesting. If you at the legal basis cited for issues that have a justice and home affairs consequence, the Government are continually arguing that, even if the legal base is not quoted, our opt-out still applies, whereas the Commission maintains that is not the case: that if it is not specifically mentioned it does not apply. The Commission has consistently tried to do things that are not within the spirit of our opt-out, even though that was agreed by all the then member states. I do not really see how this would be different.

Mr Hammond: First of all, we are on a learning curve. You are quite right to point out some of the challenges we have had around interpretation and implementation in the past. Obviously, we will use what we have learned from those processes to make sure the agreement and the package include precise language on interpretation and implementation. However, I would suggest to you that, in political terms, this is a different order of agreement. We are very clear on what this is about: this is about whether or not the United Kingdom is going to remain a member of the European Union. All members of the European Union accept that this is—I hesitate to use the word “existential”—a very, very important question for the future of the European Union, not just for the United Kingdom. A decision by the United Kingdom to exit the European Union could have very significant consequences for the rump of the European Union as well as for the United Kingdom.

There are not very many people in the European Union who think about these kinds of things who assume, if Britain left the European Union, the rest of the ship would sail along on the same course as before. It would have fundamental implications. The salience of this package is different from agreements that have been reached in the past, but we obviously have to take great care to avoid ambiguity and avoid any scope for backsliding after the agreement has been reached.



Q105 Chair: Could I intervene at that point? I want Alec Shelbrooke to ask the next two questions. However, what you have just said is as much to do with the political consequences. Actually, the European Union is a legal framework, as well as being political. Therefore, the role of the European Court of Justice is fundamental as a matter of the rule of law of Europe. When you say that there are matters of interpretation that you would like to tie down, you wonder whether they will be precise enough and all the rest of it, the bottom line is that this is going to be determined ultimately by a question of law, which will be determined by the European Court of Justice. I will just put that on the record. I notice you are nodding your head, so you do not disagree with me.

Mr Hammond: I was going to say, “Here speaks a lawyer”.

Chair: It is not a lawyer in that context. It is a lawyer who actually understands the nature of the European Union. I am wondering whether you do.

Mr Hammond: I hope I do. My observation would be that these things do not operate in a vacuum. In different systems, if we look at different nation states and different international organisations, the way the law is applied varies. It is politically context-sensitive. My observation is that the European Court has shown quite a strong sensitivity to the political direction of the European Union. If I may, I would give the example of the series of decisions we have had on the subject of access to welfare benefits where many people have observed—this is not simply my observation—that the Court appears to have displayed a sensitivity to the direction of thinking in many of the member states in reaching its decisions.

Alec Shelbrooke: Foreign Secretary, in terms of everything you have said there, the protocols that you might agree are going to have to go for a treaty change. Accepting the arguments you have made, many countries, including our own, have a legal framework now to have a referendum on treaty change. What happens if the people of the sovereign nations were to reject the treaty? Specifically, what would happen in this country? If we have the referendum and we voted to stay in, which is the only way you would get the next referendum, we would bring forward a treaty change and we would have to have a referendum on that treaty change. What would the consequence of this whole process be if, when that treaty change came forward, we did not have perhaps the robustness of, say, the benefit and migration sanctions that are probably the most important thing for the British public and this country voted “no”? Where does that leave the whole situation?

Mr Hammond: That is not quite correct as an analysis of the situation. Different countries have different forms of referendum lock on different types of change. Certainly, in the UK it is around a change that transfers powers to the European Union. I can be very clear that the package we envisage is not a package transferring powers to the European Union. We do not believe that the UK referendum lock would be engaged.

Other countries have different provisions. In Ireland, a referendum is required where something is proposed that touches or would impact on or conflict with the Irish Constitution. In France, there is a requirement for a referendum in circumstances where there is an impact, but it is undefined. I have probed French colleagues on this. It is essentially a question of political judgment as to whether a referendum is required in France. It may be that some countries in the European Union would need to hold referenda. However, we do not think that would be the case in Britain or in Ireland.

We all know the history of what has happened when referendum consent is required. If a referendum were held, let us take a worst-case analysis. If a treaty change were presented



and repeatedly failed to get through referendum in a single country, in the end there would have to be some way of resolving the impasse, but in the meantime we would rest on the international law agreement we had between the member states.

When we agree our package, we need the interim provision to be robust in the interim, and we need it to be robust for as long as it need to endure until the treaty changes have been ratified in all 28 countries. If that were to be a long period of time, we need to ensure that the interim decision can endure and be robust for however long it needs to be.

Q106 Alec Shelbrooke: Very briefly, the most important point I am picking up from yourself is that the negotiations the United Kingdom Government are entering into will, effectively, be in effect before a treaty change happens and is ratified. Is that what you are saying? We would have an interim position, which would mean the changes we are putting in place would come into effect from that moment, when the Prime Minister says, “This is what I have achieved; this is the thing.” They would be in effect before the treaties were changed and before they were ratified. Is that the position?

Mr Hammond: It may be different for different areas of reform, but I would expect, in areas that ultimately required treaty change, that they would be implemented by a binding decision, binding in international law, and then brought in to the treaties at a future opening.

Q107 Chair: One might wonder what the value of a treaty change was if you could do it by that method.

Mr Hammond: Is that not the experience of the changes the eurozone sought to make in 2011? Actually, they have been able to make perfectly sound and binding arrangements outside the treaties.

Chair: That was political toleration of the situation you are trying to remedy now by virtue of creating a difference between the eurozone and the boundary with the European Union.

Q108 Damian Green: Foreign Secretary, you have talked about 27 other countries having to agree to this. That is the Council of Ministers squared at the end of this. I am quite happy to imagine that, at that point, the Commission would heave a sigh of relief and get back to the day job. What about the European Parliament? What role do they play? Could they put a spoke in the wheel?

Mr Hammond: They play an important role, but they do not operate in a vacuum. Of course, I met with some European Parliament colleagues yesterday in Brussels and, indeed, some of them are here today. I will be meeting with them later today. They do play an important role and they are very much interested in this process. However, the political party system means that colleagues in the European Parliament work very closely with colleagues in national Governments. I do not see it as us having a discussion over here with our colleagues in Germany, France and Poland, and then a separate discussion over there with members of the European Parliament representing Germany, France and Poland.

They are colleagues together and they will have views across their political organisations about how best to respond to the challenges Britain is raising. Of course, we have to keep reminding ourselves that, for many of our European colleagues, much of this agenda is an agenda that they support. This is not all stuff that people are being asked to enter into reluctantly. There is an enthusiasm to embrace the economic reform agenda across a large part of the political spectrum, an enthusiasm to see a European Union that is leaner and, therefore, focuses on doing what it needs to do in Brussels better while allowing nation states,



and in fact regions within the nation states, to exercise powers that can be exercised at that level.

We should not think of this as an agenda that consists entirely of British exceptionalism; it is not. A lot of it is about sensible proposals for the reform of the EU that will make it a more effective, more competitive and better functioning organisation in the 21st century.

Q109 Chair: We only have five minutes to go, so I am going to ask the next question. We are deeply concerned about the level of engagement between the Government and Parliament on the renegotiations so far. We agree with the conclusion of the House of Lords EU Committee that the process has been opaque to say the least. The Minister for Europe told us that Parliament would only be able to debate “the final offer” at the conclusion of the renegotiation. Yet the Government has been obliged to publish the Prime Minister’s letter to Donald Tusk and make a statement to the House. As Foreign Secretary, how do you intend to provide for meaningful parliamentary involvement in the next stages of the renegotiation? I mention the fact that I have already had a letter today from the Minister for Europe, indicating that we will not be able to receive a proper explanation about the current position on immigration.

Mr Hammond: I would not accept that we were forced to publish the letter to Donald Tusk.

Chair: I think I know the circumstances well enough to know that is the case.

Mr Hammond: The reality, Mr Chairman, is that a letter circulated widely in 27 capitals would inevitably be in the public domain, and it was right we informed Parliament what was in that letter. There will be bits of this process that are conducted in the public domain. We will obviously make sure that Parliament is informed first, where there are initiatives that are UK initiatives. There will, however, be other bits we have to do privately. This is a negotiation, and there will be discussions not simply with the UK sitting on one side of the table and the other 27 member states plus the Commission on the other side of the table. There will be some bilateral discussions; there will be some discussions in smaller groups.

However, the Prime Minister has kept Parliament informed of the key stages in the process. I am sure he will expect to make a statement to Parliament after the December European Council, where we expect there to be a substantive discussion on the UK’s proposals. We will ensure that we keep Parliament updated on the process, but I would ask Parliament to understand that this is a negotiation and, clearly, we cannot conduct negotiations with all of our cards turned face up for inspection by those people we are negotiating with.

Q110 Geraint Davies: Briefly, in your assessment, what would be the impact on Britain and other countries from us leaving the EU? The whole focus has been on the negotiation, but have you done an impact assessment? What would happen if we left?

Mr Hammond: I have already said the impact on the entire EU would be significant. Right now, the EU, having faced this year the eurozone crisis in Greece, is now facing a crisis of confidence around Schengen and the way in which external migration is managed. The European Union is facing some very large challenges, and the exit of a major country—the second largest economy in the European Union—would potentially have very significant ramifications for the European Union and what its future looks like. However, a British exit would also have a very significant impact on the UK. It would require us to undo decades of thinking about how we drive and power the UK economy, how we ensure the standard of



living of British people and how we protect our national security. It would require a radical rethink, and I am sure that in the short term it would have negative impact on the UK. How we were able to regroup and move forward would be something that the history books will ultimately determine.

At the moment, however, it looks like the UK would face a very big set of challenges. It would be a process that would take some time. It would not be a question of exiting immediately. There would be a very significant challenge of negotiating the arrangements for our exit with our European partners.

Chair: We have to conclude now. Hopefully you will come back and see us again before too long. Thank you very much for coming, Foreign Secretary.

Mr Hammond: I would be delighted to come back. Thank you.