



## Treasury Committee

### Oral evidence: [The economic and financial costs and benefits of UK membership of the EU](#), HC 499

Tuesday 3 November 2015

Ordered by the House of Commons to be published on 3 November 2015

[Watch the meeting](#)

Members present: Andrew Tyrie (Chair); Mr Steve Baker, Mark Garnier, Helen Goodman, Stephen Hammond, George Kerevan, John Mann, Chris Philp, Mr Jacob Rees-Mogg, Wes Streeting

Questions 93 - 200

#### Examination of Witnesses

*Witnesses:* **Dr Robin Niblett** CMG, Director, Chatham House, **Andy Lebrecht**, UK Deputy Permanent Representative to the EU, 2008-12, and **Professor Michael Dougan**, Jean Monnet Chair in EU Law, University of Liverpool Law School, gave evidence.

**Q93 Chair:** Thank you very much for coming to give evidence on this extremely interesting old chestnut of a subject, which is going to come to a head, as it has on occasion in British politics, with the commitment to a referendum. I would like to begin with a question perhaps to you, Dr Niblett. François Hollande has told us that the EU is not à la carte. Is that not just fighting the last war, or the last war but one? Europe has been à la carte a long time, and with a Europe of 28, it is bound to become even more à la carte.

**Dr Niblett:** Thank you, Chairman. Thanks for jumping in the deep end with that. “À la carte” carries fears, in continental Europe in particular, that it goes along with the idea of cherry-picking, and cherry-picking you will find German leaders and many other leaders also saying they are against. Metaphors are always risky because you end up interpreting them the way you want to. I think what François Hollande or German politicians I have heard say Britain cannot cherry-pick or there is not a Europe à la carte available mean is that you do not get to pick which laws you obey and which you do not, and you do not get to repatriate some things and not repatriate others, and that somehow the EU is a coherent whole. I would say that Europe has become multi-tier, not multi-speed. In other words, not everyone is going to the same place, which multi-speed implies. Multi-tier implies that in broad areas of policy Governments are finding the way

to be able to engage or not, and are able to negotiate such outcomes. The UK is the best example.

**Q94 Chair:** We have Schengen, we have the eurozone and there are numerous other lesser examples of various opt-outs and derogations. Europe is de facto very much à la carte and it is in the nature of politics that states will cherry-pick, is it not? Whether or not people like the phrase, the unitary objectives of the six have long since gone and been replaced by a much more diverse EU—or am I wrong?

**Dr Niblett:** The UK is an example of a more diverse EU and has examples to prove it, but most other EU members—I would say even those who have not yet joined Schengen generally do want to. Those who have not yet joined the euro are obliged to or in many cases are planning to or want to be part of it even obliquely. The UK does stand out in wanting to have a more explicitly multi-tier relationship or à la carte relationship.

**Q95 Chair:** Mr Lebrecht, what would we get if we went down the Norway route—left and then, as a much larger country than Norway, sought to renegotiate direct access to the single market and obey a lot of their rules? Is this really membership by fax, as has been suggested?

**Andy Lebrecht:** Even the Norwegians have used that expression. If you compare membership of the EU with membership of the European Economic Area, which is what Norway has, the Norway option looks unfavourable. On the one hand, the cost to the Norwegian taxpayer is not markedly different from the cost to the UK taxpayer in terms of net contribution to the EU budget per head. The four freedoms of the single market, including freedom of movement of people, apply to Norway as they do to the United Kingdom. Most critically, Norway is obliged to obey most of the rules of the European Union, in particular those applying to the single market, but it has no influence on the shape of those rules.

**Q96 Chair:** They write a cheque each year for the privilege as well, do they not?

**Andy Lebrecht:** They do indeed. That is what I meant when I talked about the cost to the Norwegian taxpayer. They pay almost as much; they have to obey the rules; but they get no influence over those rules. It is difficult to see how that is a better option for the UK than remaining as members.

**Q97 Chair:** What about the Swiss option, Professor Dougan? That is a series of bilateral agreements. How do you feel about that?

**Professor Dougan:** I am not sure the Swiss option is any more attractive than the Norwegian option, though for slightly different reasons. On paper, Switzerland looks like it has a greater say over whether it decides to participate in particular areas of the single market or broader EU regulation, but in practice there are numerous disadvantages to that

freedom. First of all, the scope of the Swiss agreements is very limited; they only cover certain sectors and not others. Financial services, for example, is much more problematic for the Swiss than for the Norwegians. They take a very long time to negotiate. The negotiations often stall or collapse altogether. To be honest, the content of the agreements themselves is still dictated by the single market rules. It is effectively a “take it or leave it” deal for Switzerland when they decide whether to take it or not. Probably more seriously than in the Norwegian case, there are much greater concerns about market fragmentation between Switzerland and the EU as compared to Norway and the EU, because the EEA has a whole series of institutions and processes for maintaining homogeneity between EU law and EEA law, whereas the Swiss agreements do not provide for that. Almost every time that EU legislation changes, new market fragmentations become built into the relationship. And the Swiss still have to pay.

**Q98 Chair:** When Roger Bootle came before us, he was hedging his bets a bit. He sat on the fence resolutely until the very last minute, then he fell off a bit on one side and said he was really a leaver, and that what that should constitute is not leaving and then renegotiating en bloc access to the single market but something short of that: not committing to joining the single market in full, which would be renegotiated not as a series of individual agreements but directly—at least this is what I took him to say—with the EU. This is a very beefed-up version of the Canada arrangement. What do you think about that, Professor Dougan?

**Professor Dougan:** I am not sure it is so much of an option as I think it is what the EU would prefer as well. In relations with Switzerland, the EU has effectively said that the bilateral model is gone, that they are not satisfied with it, for many of the reasons I have just given, and they want to conclude a more horizontal agreement with Switzerland. I think that would be true for us as well. Probably the key point to bear in mind there, though, is that market access for the purposes of the single market is a totally different beast from market access for the purposes of any free trade agreement other than the EEA. The EEA is effectively the single market for these purposes. When we talk about having a free trade agreement with the EU, whether it is the Canadian version or any other version, we are not really talking about anything comparable to the single market in terms of market access and market integration.

**Q99 Chair:** That brings us neatly to TTIP. Why do I not end where I began my series of questions before I bring in other colleagues? Is a TTIP-style option a serious runner, Dr Niblett? If so, why, and what does British business think about it?

**Dr Niblett:** Chairman, do you mean, “Is TTIP something British business is in favour of as currently being negotiated?” or do you mean that the UK could do its own TTIP?

**Chair:** The UK could engage in a TTIP-like operation.

**Dr Niblett:** I have a couple of comments on that. The US Trade Representative, Mike Froman, was pretty clear about the United States’, in his opinion, lack of interest, at least under this Administration, in engaging in a bilateral deal specifically for us.

**Q100 Chair:** Is that going to change after the presidential election?

*Dr Niblett:* It is possible a Republican Administration might have more vestiges of loyalty to an older view of the special relationship, if I can put it that way without going into a whole different thing.

**Q101 Chair:** You think that exists.

*Dr Niblett:* I was about to say, my having worked 14 years in Washington and seven or eight here in London, the Americans are very—

**Q102 Chair:** Did you feel special?

*Dr Niblett:* No, in that sense. Actually, I feel a special bond with the Americans, because we see a lot of the world in similar ways, but they are brutally hard-nosed when it comes to trade, and so what Mike Froman says probably reflects a US perspective. All US trade agreements of a TTIP style, which are to do with breaking down regulatory barriers—therefore, the most difficult area—are in essence in the US a shared competence between the US Congress, which oversees regulatory agencies, and the Executive branch. Even if an Administration wanted to go for a TTIP type of arrangement with the UK, they would have a lot of fun with their congressional committees.

**Q103 Chair:** You are basically telling us we are not going to get much change out of the Americans, however nostalgic we may feel about our wartime connection with them and our language.

*Dr Niblett:* That is what I am saying. The NAFTA idea that was floated about seven or eight years ago is equally nostalgic.

**Q104 Chris Philp:** I would like to continue on the theme of trade, if I may. I would like to start by returning to Professor Dougan. You said a moment or two ago in answer to the Chairman that you thought there was a difference between the Canadian-style free trade agreement and full access to the single market. Could you just elaborate on exactly what those differences are between the EEA/single market and a more vanilla free trade agreement?

*Professor Dougan:* What makes the single market fairly unique in terms of international trade—and I should point out I am an EU public lawyer rather than a trade lawyer, but EU public lawyers have to know quite a lot about these things—is that it has tried to tackle these non-tariff, regulatory barriers head on and very thoroughly. Non-tariff barriers—the regulatory barriers—are at their most difficult when they arise from mere differences in national legislation and there is no protectionism and no attempt to discriminate; it is just differences in national law that create market fragmentation. The way the EU has done that is through a combination of limited harmonisation over core public interest requirements, combined with mutual recognition of all other aspects of national legislation that might create barriers to trade.

That system of harmonisation plus mutual recognition really depends for its operation upon a very high level of mutual trust between the member states, and it is one of the main functions of the EU institutions and bodies to create and maintain that mutual trust. We have to have a legislature that can establish the common rules; we have to have bodies that can survey and enforce the common rules; we have to have networks of national authorities and European authorities that talk to each other on a daily basis and communicate and negotiate to decide and so on; and we need an independent judicial system that will interpret and enforce the rules for the benefit of everybody. That is what makes the single market and market access in the single market so thorough and so difficult to replicate, because very few—if any—other free trade agreements do any of those things to the same degree. They try to tackle tariff barriers and they will tackle some non-tariff barriers, but usually on the basis of discrimination and fairly easy things to spot and solve. That is what makes it so different.

**Q105 Chris Philp:** TTIP aims to replicate some of those concepts, does it not, if it is successful?

*Professor Dougan:* To a limited degree.

**Q106 Chris Philp:** Andy Lebrecht, I would like to return again to a line of questioning the Chairman pursued a moment ago, which is—you are a former diplomat—whether the UK could come to a TTIP-style bilateral arrangement with the US. We just heard from Dr Niblett that this may be challenging, and I heard the remarks made last weekend. We know America as a nation wants the UK to stay part of the European Union, for a variety of reasons, partly because they want our influence inside the EU. Do you think those remarks by the US last weekend were simply posturing and they did not really mean it? If push came to shove and we came to them in five years' time for a bilateral trade deal outside the EU, would they really turn us down, their oldest ally?

*Andy Lebrecht:* I would make two points. Certainly, I would take Mr Froman's remarks seriously, partly because I think the United States' strategy at the moment is very much focusing on regional agreements. It has put a lot of effort into the Trans-Pacific Partnership and now into TTIP. What they are saying is, "If we cannot have global agreements"—that was the objective until the Doha negotiations froze—"we will have regional agreements." That is their priority before bilateral agreements with other countries. That does not preclude ultimately them talking to us, if they want to talk to us, but that brings me on to my second point. I have also had experience of negotiating with the Americans on trade, and I would echo what Dr Niblett said. They are ruthless negotiators in pursuing their trade interests, and the United States is a very much bigger economy than the United Kingdom economy, and that would certainly be reflected in any deal we eventually managed to reach with them.

**Q107 Chris Philp:** In a world in which the United Kingdom left the European Union, would there be any circumstances in which the TTIP framework could be adopted or piggy-backed on by non-European Union members? In rather the same way that the Trans-Pacific Partnership collects together a series of nation

states into the trans-Pacific framework, could non-EU members like ourselves, Norway and Switzerland piggy-back on TTIP for the purposes of improved free trade with the US, do you think?

**Andy Lebrecht:** It would depend on whether or not we were in the single market. Clearly, if we were in the single market, as Norway is, then we would be applying the same rules as the rest of the European Union and there would be a model there. If we were not in the single market and we were applying different rules, then it would have to be a completely separate negotiation.

**Q108 Chris Philp:** To take those two examples, Norway probably could piggy-back on TTIP if it chose to, but Switzerland would have challenges because it is not part of the EEA and therefore not part of the single market.

**Andy Lebrecht:** It would be more difficult. It would not be straightforward for Norway, because there are bits of Norwegian policy that are not in the single market—for example, agriculture, and agriculture is a very important part of the negotiations with America—but clearly the more aligned the rules are to the European Union single market rules, the easier it would be. The converse is true, of course.

**Q109 Chris Philp:** Dr Niblett, do you think it would be fair to say that the European Union is not that good at securing trade agreements? For example, it has taken over eight years in terms of a free trade agreement with India, and it still has not been concluded. Do you think we would be better off, particularly with emerging economies, just conducting bilateral trade agreements outside the EU framework, given it has taken them eight years to conclude—they still have not concluded it—a free trade agreement with one of the world's largest and fastest growing economies?

**Dr Niblett:** I think it is fair to say that anything the EU does ends up being slow and complicated because it is 28 member states trying to come to agreements when they have different economic profiles, different areas of competitiveness, different political systems, and often, when they are negotiating, different political parties with different perspectives behind them. Given that the European Commission has to take a mandate from those Governments, it does make the EU a slow trade negotiator. I would say that it takes two to tango and India has not proved itself to be one of the most open economies at all sorts of levels. Quite often, you will find that other economies are also slowing down these particular agreements because they are not ready for them either. Where there is a clear bilateral sense of agreement, as there was in the deal with South Korea, these agreements can be struck, and can be struck relatively quickly, though I recognise that they are definitely very complex to do and, as I said, the EU is slow.

I will simply say, just to link to your last point with Andy Lebrecht, that if the UK outside the EU wanted to strike a number of bilateral trade deals separately to those with the EU, then it would have to think about how it piggy-backs onto something like TTIP afterwards, because whatever deal it had struck with that other third country—let us say the UK did a bilateral with India—would then have an impact on how it would or would

not be able to step into TTIP. Rules of origin and so on would suddenly become very complicated.

**Q110 Chris Philp:** Thinking about the potential free trade or single market relationship between the UK and the EU were we to leave, would you agree that we would be in a strong position to negotiate either of those agreements, bearing in mind that we run quite a significant trade deficit with the rest of the European Union? That is to say they send more goods and services to us than go the other way. In particular, our single biggest country-to-country trade deficit is with Germany, running at about £30 billion a year. China is second, at £22 billion. We run a trade surplus with America, to the tune of £9 billion. Given that we have a £30 billion trade deficit with Germany, they have a pretty strong incentive—have they not?—to come up with the goods, as it were, pretty quickly, whether it is a simple free trade agreement or a more integrated single market agreement. Our negotiating position is strong, is it not?

**Andy Lebrecht:** This is a very difficult area to forecast. I think the EU would focus on three things. First of all, if we voted to leave, there would be a lot of voices in the EU who would want to make our life very difficult thereafter.

**Q111 Chris Philp:** Just out of humbug?

**Andy Lebrecht:** Not out of spite, but to discourage other countries from doing likewise. They would want to send a very strong message to others of their members that, “If you vote to leave, life will be uncomfortable afterwards.” That will be a very powerful factor in the way they negotiate.

Secondly, although we would negotiate with the EU as a single body, just as South Korea had to, the EU position will be the summation of 27 member states’ views. Predicting what the balance of that view will be will be difficult. Let me just give you an example. In the case of cars and the question, “Should we have tariff-free trade in cars?” if you were Germany, you would probably want to have tariff-free trade in cars, for obvious reasons—they export a lot of cars to us—but if you were, say, Slovakia or Poland or Spain, you might think if the UK had to face a 10% tariff on its exports, maybe a lot of that foreign direct investment from Japanese companies, for example, in our car industry would no longer go to the UK but would come to their countries instead. You might see a rather more nuanced position than perhaps the headline figures suggest.

The third point is the question of services. It is going to be very difficult for us to negotiate a deal that would give us access to services, which are much more dependent on the regulatory framework than on tariffs. The conclusion is it is very difficult to predict the outcome of that negotiation.

**Q112 George Kerevan:** The UK has not independently negotiated a trade agreement since 1975. Based on your experience, do we have the expertise, capacity and depth to engage suddenly in a range of bilateral trade agreements across the world?

*Andy Lebrecht:* No.

**Q113 George Kerevan:** I will let you expand a bit on that.

*Andy Lebrecht:* We have a Department, BIS, which once upon a time conducted those negotiations. What it does now is participates in European Union negotiations, but as one of 28 member states influencing the direction of those negotiations. That is a very different task requiring very high levels of expertise but a relatively smaller number of people than would be required to negotiate a large number of bilateral agreements, so we would have to build up the expertise in those areas.

**Q114 George Kerevan:** What kind of expertise? We can all make value judgments about what might happen afterwards, but just in terms of the sheer technical element, what kinds of numbers of people? What kinds of job specifications?

*Andy Lebrecht:* I could not predict numbers, I am afraid, but if you look at the South Korea agreement, for example, it is probably about 40 pages long and deals with trade in a vast number of products. You would need people with the expertise to understand how trade agreements work, to understand our interests and communicate with stakeholders about those interests, and then to negotiate with the countries concerned. For every agreement that had to be negotiated, at any one time you would need a specific team. We are talking significant numbers and a fairly broad range of expertise.

**Q115 George Kerevan:** Starting from scratch, given that you have to build up that expertise, how long would the average—it may be a difficult question to answer—bilateral negotiation take, and therefore serially, if we are having to replicate where we are now? What kind of time window are we looking at in order to produce a reasonable number of bilateral agreements across the world to replicate where we are within the EU?

*Andy Lebrecht:* We are entering into a world of guesswork. As you say, we have not negotiated a bilateral agreement for a very long time. Others may have expertise that I do not have on this sort of thing, but most trade agreements take a good two or three years to negotiate, I would have thought, at best. If you are talking about a large number of agreements—we have nearly 50 agreements with the EU at the moment—then you are talking about quite a lot of time and quite a lot of resource.

**Q116 George Kerevan:** Mr Niblett?

*Dr Niblett:* I would simply echo that. Having not been a trade negotiator or worked in the UK Government, it is hard for me to know in this space what its resources are. I am conscious that BIS and the FCO—those who would be involved in it—are non-protected Departments at the moment. I have just been involved in signing up to a thing to say that I think we are a little bit out of balance in the commitments being made to the various aspects of the UK's international influence. Having committed to 2% in defence



and 0.7% in official development assistance, the Government have not necessarily been focusing on—let us call it—the co-ordinating power, convening power, brain power, and investing in those people. I would imagine it would require a significant increased investment in talented people who could be doing similar work for law firms and being paid a lot of money. You would have to invest significantly for the UK to punch at the kind of weight it would want to for the size of economy it has and to negotiate not only the extension or the renegotiation of the deals that it would be stepping out of but all the new ones that are meant to be the answer to being outside.

**Q117 Chair:** You are not bidding for a job.

*Dr Niblett:* Certainly not. I have seen what trade negotiators have to do and I am quite happy where I am on that one.

**Q118 George Kerevan:** Something occurred to me when you were answering one of the latter questions from Mr Philp. Much of the current trade between the UK and the EU is not finished product for finished product, but integrated supply chain, particularly in automotive products. How would a UK exit impact on the supply chain and on the subsequent negotiations regarding tariffs and access? Would there be particular problems?

*Andy Lebrecht:* I think the answer would depend on whether we were in the single market. If we were in the single market, then it is barrier-free trade in goods, so there should not, in theory, be major change. If we went for a free trade agreement, you would not have that fluidity, if you like, and then it would depend on what was negotiated in terms of tariffs. If you negotiated zero tariffs, that would have a much lesser effect than if there was a 10% tariff in the motor sector. We have an economy, if you like, particularly in this sort of area, that is built on a particular economic and legal framework. If you change that framework, you change the dynamics of the economy.

**Q119 George Kerevan:** So there is a particular risk that individual component suppliers within the remaining EU supply chain might find it to their advantage to apply tariffs into the UK in order to restructure their supply chain to favour themselves.

*Andy Lebrecht:* That was a point I was making earlier, yes.

**Q120 George Kerevan:** Just to pick up on some of the residual questions from Mr Philp, if the UK was to leave the EU in short order, next year or at the beginning of 2017, it is likely that TTIP negotiations would still not have been finalised or ratified. What would happen on both sides? Would TTIP have to go back into the melting pot totally if we left, or would the Europeans just press on regardless?

*Professor Dougan:* This probably relates to a slightly bigger question about what happens to existing trade relations to which the UK is party in its own right, through the

EU or with the EU, and also existing trade negotiations. It is a very uncertain legal question. It is probably as much a matter of diplomacy and politics as it is of law, but when it comes to existing negotiations we can give a fairly reliable answer, which is that the UK would become excluded. It would be for the remaining parties to those negotiations to decide how much of the UK's contribution to the deal they want to go back and look at again. From the point of view of the UK's participation in existing negotiations, the answer seems fairly clear.

**Dr Niblett:** If I may just tag on there, I think there would be a heavily political dimension to the question. If the UK were to leave the EU, the United States would be deeply concerned about the future of the EU, not just the future of the UK, and I would think politically there would be a desire and an emphasis to try to strengthen the remaining EU. It would at least provide a slightly greater political motivation to go ahead and complete that agreement so at least the remaining EU is not then under further fragmentation pressures, which may follow this type of an issue. Financial services—a key area where the UK would be interested—is a space the US Treasury has been quite keen to keep out of TTIP, so that dimension might be simplified and certain areas might not come under the regulatory co-ordination or equivalence plans that are part of TTIP, but from the political standpoint, my judgment would be the US would make a strong effort to try to complete it.

**Q121 George Kerevan:** Dr Niblett, you intrigue me with your very clear assessment of the American negotiating stance. I would be intrigued for a similar view on what China's negotiating stance might be post a Brexit. Clearly, Britain's current Administration is pivoting towards China in trade terms. Are the Chinese similarly hard-nosed negotiators?

**Dr Niblett:** Definitely. They are maybe even harder-nosed negotiators. China is interesting, in the sense that there is a bit of a symbiotic relationship that goes beyond the UK's membership of the EU. The UK's role in helping the RMB internationalise and the role the City has played in that is not absolutely connected to its position within the European Union. The Chinese definitely see the UK market as a market in itself. They have not yet done the car investments and so on that Andy Lebrecht was referring to, so they want to get engaged in our infrastructure investment, whether it be energy or transport. They want the "made in Britain" and "made in China" brands to somewhat be interlinked or fudged or blended together a little bit. They have a number of advantages. I might even say the Chinese will work with what they have, but divide and rule is something that certainly they have tried to apply to countries within the EU, so there would be some adjustment in that sense. Having said all of that, I would take President Xi's closing comments, as communicated by the Chinese Foreign Ministry as he was departing Manchester, at face value—and he made a similar statement at the Guildhall dinner speech he gave—which were that they see the UK as being an advocate for China in the West and within the EU and that they would like to see the UK remain a strong player within the EU.

**Q122 George Kerevan:** It seems to me that it is a one-way street, in the sense that we are a relatively open economy as it is and China appears to be seeing

us as a market for their goods. What would we get in return from any bilateral trade agreement with China?

**Dr Niblett:** The main area where the UK sees real opportunity in the future from China's growth is through China's adjustment to what they are calling their "new normal", which is moving from an investment and export emphasised economy to one that brings services and more value-added goods. The UK has a great opportunity potentially in breaking into the Chinese service market, but, again, the Chinese are very hard-nosed. They have an indigenisation strategy alongside it. They will take you up to a point and then they want to take over, as German manufacturers are discovering on the manufacturing side.

I would say, simply put, that vis-à-vis China, although the EU is a slow actor, the weight of the 500 million market is the kind of weight that China pays a lot of attention to. I would also note the EU is often described as a slow actor in creating new agreements, but it is not just about opening agreements the EU is important on; it is also on defence. The EU is sometimes a lot better at defence—for example, with anti-dumping duties, as we saw on the solar panel dispute, where Angela Merkel had to get involved, and as we see with the British Government calling upon the EU to investigate China for dumping steel and affecting Redcar. The EU becomes very important in that particular area. I think it would be very difficult for the UK to open up a services market to China without the clout of reciprocal access of some sort to a bigger market than just the UK market, which they have in any case.

**Q123 Chair:** Dr Niblett, you have been pretty robust in pointing out the hard-nosed and unsentimental attitude of the US to all this. They are currently making noises saying they would much prefer to keep us in and to have us in. How much should we as a country really care what the US thinks? They will adjust whatever happens. Is it not the case we need to work out what is in our interests first and then go and negotiate with them as best we can? What are we going to lose from the US specifically if we ignore what appear to be their expressions of concern at the moment?

**Dr Niblett:** I would say the UK should pursue its national interests on this point. Just to deviate for a second, the UK's position and relevance to the United States on the security front in my opinion will remain whether we are inside or outside the EU; the UK will be a key partner to the United States and the United States will be extremely important for the UK's security, from intelligence to nuclear co-operation to military operations. In the end, on these trade issues, we should be as hard-nosed as the US. I would completely concur with that. Just because the US says the UK should stay in the EU is not a reason for the UK to stay in the EU. On the hard-nosed front, the US has been historically a major investor in the United Kingdom and in the UK market, and plenty of US companies see the value of those investments as having barrier-free access—

**Q124 Chair:** Including financial companies.

**Dr Niblett:** Including financial companies. They see a value for barrier-free access into the EU market. You could potentially have that outside the EU, but you would have, as Andy Lebrecht—

**Chair:** We will be taking evidence later on on that very question.

**Q125 Stephen Hammond:** Good morning, gentlemen, and thank you for coming to give evidence this morning. There are some who characterise the single market as two different schools. One of the schools is a group of countries who see it as a tool for social and political integration, and then there are others who see it as a tool to maximise trade. First, whilst I accept that is an oversimplification, do you agree with that characterisation? Secondly, which of those schools of thought is winning out?

**Andy Lebrecht:** It is a rather out-of-date characterisation. If it was not out of date in 2009, then the impact of the recession certainly made it more so. If you look at Spain, for example, which was very much on the social model side of things, it learnt the lesson that it is by pursuing liberalised markets that you get your economy back on its feet. There have been quite big changes in a lot of those countries.

All that said, certainly in my experience in Brussels, there is an intellectual and philosophical divide in the Council between what I would call a British-led view, which is for open markets and better regulation—everything that those phrases encapsulate—and countries that have a tradition more of solving problems through regulation and perhaps less willingness to accept the rule of the market. Who is winning? Over the past 15 years or so, the open markets side of the argument has been winning. Particularly under the Barroso Commission, we saw a much more economically liberal approach to policy making. What we are seeing now is much greater recognition of the Better Regulation agenda, in particular with Vice President Frans Timmermans, who has been tasked with regulating less, withdrawing unnecessary regulation, etc. None of this is to say that there are not problems to be solved and sometimes the balance of outcomes is not quite what we would want, but, overwhelmingly, we win the arguments.

**Q126 Stephen Hammond:** Is there anyone who dissents from that view?

**Dr Niblett:** I do not dissent from it. I would just add that the blend of political and economic has always been there. With the formation of monetary union, that most political step in the EU's history, the nature of who would be inside it and outside it had a heavily economic direction. German business, to my understanding, insisted that Italy should be inside monetary union, despite their failures to live up to all the things they were meant to live up to before joining, because they were worried that Italian business outside the EU would undercut German business in those northern competitive machine-tooling areas that the Turin companies and so on are so good at. They have always blended their own hard-nosed economic interests with political. Germany, which exports brutally all over the EU, proves that.

**Q127 Stephen Hammond:** Could we explore this a little more? Inside the new Commission, for instance, if we look at capital markets union, President Juncker has said this is a new flagship policy, it is very much designed to show how financial services deliver in the real world, and it is a new shift. Do you think this is another step down the road to embedding in the single market and the regulatory framework that market liberalisation and deregulation must be embedded, because it has to be pro-growth that wins out?

**Professor Dougan:** The Commission's programme for 2016, which sets out not only the plans for capital markets union but also the digital single market, energy markets and so on, makes clear that the new Commission's views on market integration and liberalisation—the two are not necessarily the same thing, but in this case they are—chime pretty well with a lot of what the UK has advocated for quite a long time.

I would build a little bit on what Andy and Robin have already said, though, by pointing out that these debates happen—and I agree they are slightly outdated in some respects—at two levels. They happen at the level of daily policy making by the EU—where to bring the single market next and what to liberalise next—but they also play out at a much bigger level when it comes to major treaty reforms and major treaty amendments. It is worth bearing in mind that across Europe, the Treaty of Lisbon, the last big treaty negotiation, was seen as a triumph for the UK's essential view of Europe, with the clarification that Europe is not a sovereign state, that it is merely an association of sovereign states and that it is an organisation of limited powers and attributed competences. There is a debate to come, and it is a debate that we can see the Chancellor perhaps engaging with today, about what the role is of the single market compared to the role of the eurozone. Rather than a confrontation between political integration and social integration or economic liberalisation of the type that we had in the 1980s and 1990s, maybe the next debate is to clarify that relationship between the eurozone and the single market. That is a rather different question—equally important, but rather different.

**Q128 Stephen Hammond:** Just pursuing that point in terms of the differences between the eurozone and the single market, what should the UK be seeking to put into treaty that emphasises the UK point of view? It is true—is it not?—that if all legislation were repealed member states are bound by treaty above everything else.

**Professor Dougan:** Part of the uncertainty in answering this question is because we do not quite know yet what the eurozone itself would like to see. With that caveat, we can identify two main concerns that the UK could express. The first concern is that integration in the eurozone will fragment the single market: as the eurozone adopts policies that are restricted to those member states, they will touch upon issues of trade that will re-fragment and recreate regulatory barriers within the single market. The second concern is the caucusing concern: the idea that the eurozone now effectively has an automatic majority within the Council, and that it might decide on policies beyond the eurozone that affect the entire EU and then pass them through the Council almost as a bloc vote.

Those two concerns have to be put a little bit into perspective. For example, we have already mentioned that flexible integration is already part of daily life in the EU. There are market barriers that arise through flexible integration—the developments in the

field of intellectual property protection, for example—in which the UK does participate but other member states do not. That inevitably creates a degree of market fragmentation, if you like. We have to accept that flexibility leads to a degree of single market fracture. We also have to accept that building alliances is just a natural part of life within the EU. What we probably should not accept is that that alliance is stable and permanent, but building alliances is a natural part of life. We should not overstate the problem of the eurozone as some coherent bloc vote. The eurozone is still made up of very diverse countries with very different interests. Their interests will pull in very different directions. It is as likely that the UK will find itself in agreement on a lot of policy issues with some eurozone states as it is that the eurozone states will agree with each other.

In the light of all that, there is a package of measures that the UK could legitimately propose and, if it secured it, would be quite a substantial achievement for the UK and for the EU as a whole. A clear statement that the single market takes priority would be very useful. In the context of enhanced co-operation, we already have an explicit treaty commitment that enhanced co-operation is without prejudice to the single market and that you have to take into account the interests of non-participating states when you are deliberating on your own enhanced co-operation measures. If we had a similar statement when it came to the single market and the eurozone, that would be a very important high-level statement of principle.

The second thing we could ask for is some sort of emergency brake for single market legislation, based on the model of social security co-ordination at the moment, whereby if the UK or any other member state felt that a proposal threatened to undermine the integrity of the single market, it could be referred to the European Council for a resolution. I would not follow the other models of emergency brakes, by the way. I would not allow it to lead to an automatic authorisation of enhanced co-operation, but I would see it as a high-level issue that gets transferred to the European Council for decision.

Maybe the most important would be to try to integrate the eurozone bodies more closely under the existing EU framework. For example, again following the model of enhanced co-operation, we could say, “We want eurozone discussions to take place within the context of the ordinary Council meetings. That means that we can listen, we can participate, we cannot vote but we are present at the table when these things are discussed and we are able to air our views on them.” Put that together; it is a pretty attractive package.

**Q129 Stephen Hammond:** I accept that point, but is it not true that most of the eurozone countries have already explicitly rejected the last point you made? Can I just go back to the first point you made? Were that statement to be made—and it would be a powerful statement, because it would put the principles of the single market in supremacy over the eurozone—in practice, how much latitude then would eurozone Governments have? They would be forced to implement that, as I understand it, which is the treaty obligation or the treaty statement, or that statement of principle, which would override their own domestic political and economic priorities.

**Professor Dougan:** From a legal perspective, what it does is give grounds for judicial review. We could have seen that in action to a degree with the eurozone clearing house judgment, if push had come to shove. One of the UK’s main criticisms of the eurozone clearing house rules was not just that they were beyond the competence of the

institution to adopt but also that they clearly discriminated between undertakings across the single market. If push had come to shove, that argument would probably have won even if the competence argument had been lost. What these statements do is give very concrete grounds for judicial review. It is not just grounds for political negotiation within the Council; when push comes to shove, you can defend your fundamental interests through legal means.

On the other point about whether they would agree to be absorbed into the Council, the negotiations are just beginning and we should probably go in with quite a robust set of demands and let those demands be compromised. I would not give up from the start.

**Q130 Stephen Hammond:** Dr Niblett, notwithstanding what Professor Dougan has just said and how important and how beneficial that would be, if you flip it the other way round and say there is a centrifugal force inside the eurozone that pulls it tighter and tighter together, if you are not in that eurozone and the single market does not have that statement, there are some significant disadvantages of that for Britain if we stay inside the EU.

*Dr Niblett:* I would second the points that Michael just made there. A eurozone that is stabilising within the single market and within single market rules is ultimately good for the UK. Eurozone countries have demonstrated that they need more of a deus ex machina to drive them towards types of efficiency that the UK has had, for various reasons, in services and financial services in general. A strong eurozone market therefore is going to be important for us. That is good. The areas where the UK can have influence are important and will not be undermined by being outside the eurozone—for example, energy markets; trade, critically; broadly security, but I will throw sanctions in there as well and those different economic types of tools. To my mind, the trade agreement out there right now that would have the biggest positive impact on the UK would be more of a single market for services in the EU than exists right now.

**Q131 Stephen Hammond:** Bringing it back to what Mr Lebrecht said right at the beginning, although you have said you think there is a movement inside the EU, is the reality not that the deus ex machina for some of these countries—Ireland, Spain, Portugal and Greece, for instance—in terms of pulling away from deregulation and pro-market was the Troika bail-out conditions imposed on them and that there is no real political will inside these countries to continue down that track?

*Dr Niblett:* It can take a push. When you say, “Is there a will in the country?” the United Kingdom fought the deregulatory pushes of the person who this room is named after very strongly. These are always debated incredibly intensely internally. I travel a lot around Europe. My sense is there has been quite a sea change. Spain in particular I would pull out; it is even starting in France. It is slower, perhaps, but the balance of travel—which we have had a couple of questions on—because there is no other alternative, is for these EU countries to try to be a bit more efficient in these areas.

**Stephen Hammond:** I do not think all of us have fought that move.

**Q132 Chair:** What all three of you seem to be saying is that a central argument put by those advocating leaving—particularly, for example, Nigel Lawson—that the eurozone will inevitably form a bloc because they have so many common interests and they will meet informally even if in a formal sense we are put back with everything but a vote in the meetings, is plain wrong and a misjudgment of what is going on in the EU, and that they are not going to become a unified bloc.

**Dr Niblett:** I will use the same terminology, Chairman, as was used about the Iran negotiation: mistrust, but verify. There will be instincts now and again that could emerge politically. You could have different Governments that go into power amongst some of the stronger leading ones that may wish, if there were the capacity to, to use the eurozone in a more protectionist sense within the single market, which is why I strongly endorse what Michael was saying, and I personally believe one of the most important aspects of this negotiation is to ensure the primacy of the single market vis-à-vis the eurozone. To me, this is essential for the future, not because I think the eurozone is going to come together particularly quickly maybe now, but ultimately, in the long term, this is a very important question.

**Q133 Mark Garnier:** If I can continue to talk specifically about the eurozone and the relationship between those who are in the eurozone and those who are not, perhaps, Dr Niblett, can I start by following on from the Chairman's very incisive, intelligent and welcome questioning? How optimistic are you that the extent of integration required to make the single currency function properly will be achieved? One of the key questions a lot of people have been asking—particularly the people who are quite keen to get out of Europe—is that if you are going to have currency union, that suggests that you then have to have fiscal union, and if you have fiscal union, does that mean you then have to have political union, and to what extent is that unacceptable to member states? Do you think we are ever going to get to a state where it is going to work in terms of driving towards this fiscal union?

**Dr Niblett:** The politics across the whole of the EU at the moment are more fragile than they have been in decades. For Governments to abdicate more sovereignty right now is probably tougher than it has been for a very long time, whatever the needs and pressures of deeper eurozone integration. Given the rise of anti-EU parties across the whole of the EU, there is not the permissive atmosphere in Europe right now that there was in the 1980s and 1990s to push forward with integration. That is the first point I would make about political union emerging out of eurozone union.

**Q134 Mark Garnier:** You think it is very unlikely.

**Dr Niblett:** The sort of political union that that phrase implies—we could try to identify it afterwards—is unlikely. The divergences between France and Germany remain existential for both countries in terms of their perspectives. What Germany requires in order to really allow political union to happen of its currency—its taxpayers' currency—with other EU taxpayers goes beyond what the French Government are willing to accept in



terms of loss of sovereignty. So I am not lengthy in this answer, you then end up with lots of agreements around those central realities, which will be more integrated than they are now. I do not doubt the eurozone will integrate more. It already has moved towards some looser form of common deposit insurance scheme over and above the supervisory mechanisms and the common resolution mechanisms. These things will move forward. There may be somebody called a eurozone Finance Minister, but then we have an EU Foreign Minister right now who does not have what you or I would consider the sovereign power of a Foreign Minister. We should not be misled by superficial changes of titles and names of moves. There are some really core problems with going the whole way towards political union around the eurozone.

**Q135 Mark Garnier:** Nonetheless, is it not the case that it is incredibly difficult to manage your economy if you are within the eurozone? Greece, for example, would have done very well by devaluing its currency and by increasing the money supply. It is having significant problems that being within the eurozone makes it impossible to resolve. Over the last five, six or seven years since the financial crisis, because we are outside the eurozone, we have had much more control over our economy and have been able to deal with it. Given the fact that you have this imponderable question of how countries within the eurozone can resolve crises—and there are going to be any number of different ones coming up; once we have got this lot out of the way there is going to be another set in 20 years' time and this and that—how do you untangle that Gordian knot in terms of trying to get something that works without political union, ultimately? Does anybody else want to try that answer? You are looking—

*Dr Niblett:* I do not mind keeping going; I just do not want to hog. I am happy to share a thought or two, unless Andy wants to come in. Let me say a couple of words and Andy may want to come in. It is, as we said, very difficult, but we have to be very careful not to interpret the rest of the EU through Greece. Greece has had an exceptionally badly run—

**Q136 Mark Garnier:** But Spain, Portugal, Italy and Ireland have all had their problems.

*Dr Niblett:* Italy has been running a primary budget surplus for the last three to four years. It has a very large debt, as you know, but it has highly competitive parts of its economy—globally competitive parts of its economy—and uncompetitive parts of its economy. Spain, over the period of the eurozone crisis, in its response to it moved to having a trade surplus from having a trade deficit. I could go through each of these countries. Portugal has become quite attractive for foreign direct investment. The Chinese are looking at Portugal and Spain as places where they think they can cement the far end of their One Belt, One Road. The point I am making here is there are opportunities for these countries. Greece has a particular set of problems and I am worried that some of the countries that may become future members of the EU share some of those problems, but it is a very small part, as you know, of the eurozone, never mind the whole EU. To that particular point, the EU and the eurozone in particular is still serving more of a long-

term beneficial disciplining fact on its members than a negative one. It is a matter of judgment and balance and it requires good governance.

**Q137 Mark Garnier:** So, on balance, it is a better thing.

*Dr Niblett:* On balance, it is improving the competitiveness of its members over time.

**Q138 Mark Garnier:** Do either of you want to add anything to that?

*Andy Lebrecht:* Really just briefly to agree with what Robin has said. You describe an incredibly difficult problem. The obvious answer, political union, is incredibly difficult and certainly I would agree not achievable now, so the answer has to be putting some synchronism into the system and improving where you can, and perhaps iteratively. I do not know where we will be in 50 years' time, but certainly in the foreseeable future, I think we will see some action to deal with the areas we can grapple with, but there will not be a neat and easy solution à la United States or something like that, certainly in the lifetimes of most of us.

**Q139 Mark Garnier:** In the general conversation you were having with Stephen Hammond a little bit earlier about the single market, some of your comments were referencing the fact that there is a little bit of caucusing going on within the eurozone, and there is a certain amount of interest in that. I am particularly interested in the relationship between those in the eurozone and those who are outside the eurozone. By definition, each of those outside the eurozone is quite small because they are the one country with sterling or the one country with whatever currency it is, whereas there is a larger group that has a common currency. Do you think the double majority voting system demonstrates that there is within the eurozone an appetite to try to safeguard the interests of those who are outside the eurozone and recognise that that is an incredibly important thing?

*Professor Dougan:* The double majority voting that is used in the European Banking Authority was a very important victory for the UK in recognising that the non-eurozone states should be protected in decision-making processes that might be dominated by the eurozone countries. There are interesting questions about the long-term sustainability of that solution, and those questions partly depend on the attitude of the other non-eurozone states. Theoretically, the majority of states that are not currently in the eurozone are legally obliged to join the eurozone when the conditions are right. Whether that theory will work in practice is really up for grabs. We all know that Sweden is theoretically in that same position but has unilaterally decided that it will not join the eurozone, regardless of the conditions, until it reaches a political decision to join the eurozone. There is probably an appetite on both sides, in the eurozone and outside, that that should be extended to the other countries that are not currently within the eurozone but are theoretically obliged to join. I do not think there is much of an appetite to rush for another expansion into economies that may bring some of the same problems as exist already.

If that becomes a long-term situation where we have a group of nine countries, say, that are not in the eurozone, then having a voting mechanism that seeks to balance nine against 19 makes a lot of sense, but if that scenario does not materialise and if we see the number of non-eurozone countries drop further and further, then having a double-voting right begins to look like a national veto for one or two member states. That is why it is probably not such a useful negotiating demand, for example, for the UK as part of general voting within the treaty, because, when nobody really knows what the future is going to hold, to be stuck with that rule into the future is really quite a dangerous thing for the eurozone states to bargain away. That is why I prefer the idea of an emergency brake, for example.

**Q140 Mark Garnier:** This is the Ioannina compromise. You think that is a runner.

*Professor Dougan:* An emergency brake?

**Q141 Mark Garnier:** Yes. The reason I asked that question is surely an emergency brake just means you—

**Mr Baker:** After you have lost control, you can do something.

**Mark Garnier:** Yes. Actually, that is a very good point. After you have lost control, is the emergency brake the only thing left? Alternatively, you are heading for this car crash and you put the emergency brake on, but when you take it off again, you still hit the car crash. It is not necessarily a terribly good analogy, but I hope you follow my general thinking. Do you want to comment on that?

*Professor Dougan:* It depends on what you negotiate as your emergency brake. The two models that we have at the moment are quite different. The model for social security co-ordination is basically that a member state objects to a social security co-ordination measure because it thinks it will affect fundamental parts of its social security system; the legislative process at the EU level is then suspended and the issue is referred to the European Council for a resolution. It will be a resolution; it becomes a decision of the European Council whether to proceed or whether to simply stop the process.

The other variant is that the European Council can stop the process but then the member states that want to proceed can go ahead automatically and agree the measure within themselves without the participation of the member states that object. In the context of talking about single market-eurozone relations, that is not a model that we would want to go down, because effectively we would be stuck with exactly the problem that we want to resolve.

One of the main things to bear in mind for the UK is that an emergency brake in the single market will not just be for the UK; it will be for other member states as well. Given it is usually in our interest to see single market legislation adopted, we would have to be very careful about phrasing an emergency brake to make sure that it was used, for example, purely to protect the integrity of the single market, not merely because a member

state felt that fundamental interests of its economy or society were at stake. A lot depends on what we manage to negotiate.

**Q142 Mark Garnier:** In your criticism earlier that part of the problem with Europe is you have 28 different opinions about how it should move forward, if you start adding an emergency brake to all of that, you are just going to make that problem even more compounded.

**Professor Dougan:** That maybe underestimates the degree of negotiation and preparation that goes in to most of the measures that the EU adopts. Thinking back to some of the discussion before, I do not think we should underestimate the degree of influence that the UK holds over these things, either. Sometimes it is easy to fall for the presentation that we are a victim in all of this or we are quite a passive player. Even when it comes to eurozone reforms, there is no inherent reason why we should not exercise our diplomatic or economic or political influence over these issues. A lot depends on how we decide to position ourselves as well as how the eurozone decides to position itself.

**Dr Niblett:** To second the points that have just been made, double-qualified majority voting is not just a weighting asset. If the eurozone were to enlarge—and I take the point it is less likely to enlarge in the near future because of the crisis that has just taken place—those countries that are non-eurozone members, apart from us, are generally wanting to be included somehow in the broader banking union structures; they have a different outlook, potentially, on a regulatory basis to financial markets. They are not exporters of financial services the way we are; they do not have the City of London based within them. The UK is *sui generis* compared to the other non-eurozone members, not just because of its size but because of the importance of the financial market to London and to the UK. This is where, in the end, the emergency brake, however it is designed—Michael has done a very good job of describing how he would do it—is essential.

**Q143 Mark Garnier:** On the financial services, there are clearly a number of incredibly important issues where the Luxembourg compromise gets in itself compromised. For example, we talk about the fact that banking is an incredibly important part of our economy—that financial services is 12% of our GDP. Germany would argue, in a similar way, that the automotive industry is 12% of its GDP. Whilst they can step in and use the Luxembourg compromise on the automotive industry, were we to try to do that on banking, the argument goes that every economy needs a banking system within it, therefore how can you have a veto, if you like, and use the Luxembourg compromise, so that falls foul. Does it become very difficult for us in terms of financial services to try to argue a particular case?

**Professor Dougan:** Just as an observation, the Luxembourg compromise is something that died quite a long time ago.

**Q144 Mark Garnier:** But the theory behind it is—

**Professor Dougan:** The theory behind it and the practice have both died. The emergency brakes that exist within the treaty—

**Q145 Mark Garnier:** Are nonetheless a national veto.

**Professor Dougan:** They are an effective veto, and they are effectively the written version of the Luxembourg compromise. There are only three of them; they are very specific to particular areas. Two of them the UK does not participate in anyway because they relate to justice and home affairs. Really, when we talk about the Luxembourg compromise, it is of historical interest. Single market legislation in theory and in practice can be adopted by qualified majority vote and no country has a veto over it. In practice, despite enlargement, most voting within the Council is still done by consensus. In most cases, measures are adopted with the support of all 28 member states, but the idea that any one has a veto in any field of EU law where a veto is not written into the treaties is of historical interest only.

**Q146 John Mann:** In the real world, we all know that for every major infrastructure project and throughout the services sector in particular, Britain is open for business and anyone can come and get work here, but everywhere else in the European Union, there are all sorts of barriers put in. That is still true, is it not?

**Andy Lebrecht:** I would not say everywhere in the European Union, but it is certainly the case that some countries, like Germany, for example, have been pretty good at protecting parts of their economy—the professions, for example, and you talk about construction. That is one of the reasons why the Government said that opening up the services sector is one of their primary objectives. We do have a Services Directive, which was agreed some time ago now, and one of the biggest problems with services is that that directive has not been properly enforced. It is one of the areas where, certainly when I was working in Brussels under the coalition Government, the Government were extremely keen to encourage the Commission to use its big stick wherever countries were not applying that directive properly. It seems to me that that is very much in the UK's interest.

Beyond that, there is scope for expanding that directive. It has a lot of loopholes in it—a lot of exemptions. Some of these areas are very tricky. Take healthcare, for example. The UK itself is not keen, for all sorts of perfectly well-argued reasons, to open up the provision of healthcare services to all and sundry from across the European Union. That is not a measure of the UK being protectionist in a particular area; it is a measure of how difficult these areas sometimes are. But potentially, the UK has an enormous amount to gain from breaking down these remaining barriers in many European countries.

**Q147 John Mann:** When I had a business, I never got a single contract in Germany and neither did anybody else because every single one went to the German companies. In France, every time you got a contract, there were all sorts of additional costs built in. Indeed, in Brussels, you never got a single contract because if you were not on the Brussels list you never got anywhere. It was the same in Scotland and Wales, by the way—particularly Scotland. It is not

changing. It has not changed, has it? I have not seen a change in the 30 years we have been in membership at all. It remains as protectionist as a country chooses it to be, and France and Germany in particular choose it to be protectionist in their own interests.

**Andy Lebrecht:** In general, at the macro level, the UK has a massive surplus in its trade in services with the rest of the European Union, so somebody is getting out there and doing it. All that said, the process of breaking down the barriers, as I said earlier, is an ongoing one. There is still plenty of work to be done.

**Professor Dougan:** I would make a couple of points. First of all, we have to divide the areas where market barriers still result from fragmented regulation within the single market. I agree completely with Andy: creating the single market is not a one-off act; it is something that is constant. Every time the business changes or regulation changes, the single market has to catch up with it.

The second point I would make is that the balance of competences review that was conducted by the Government through the civil service over the last several years highlights that the experience of a lot of UK businesses and workers and enterprises does not tally with the experience that you just described. These are empirical statements, I agree, but most of the evidence that was submitted to the balance of competences review favoured open markets and participation in the single market, and saw the benefits of trade.

**Q148 John Mann:** That is an entirely different point, is it not?

**Professor Dougan:** It is an entirely different point if we are talking about whether the single market regulation is responsible for barriers or not.

**Q149 John Mann:** That is not the question at all. The question is not whether the regulations are there; it is how they are being applied. That is the issue.

**Professor Dougan:** That was the third point I was about to make. A lot of these issues are not about the rules; a lot of these issues are about the enforcement of the rules. Again, if we are talking about what makes the single market very different from a lot of other free trade areas, it is the enforcement mechanisms that go with the single market—the ability to rely on single market rights before your own national courts, for example, and the strong enforcement powers of the European Commission in bringing member states to the Court if they do not implement properly or respect properly the single market rules. There must be a residual—I am merely saying this as an intuitive observation—degree to which sometimes capitalism does not work very well. You can have lots of rules that say “be competitive”, “buy the right contracts” and “get the most efficient deals” but if somebody does not want to do it because you are a foreigner, we cannot force them to. There will always be a degree of residual protectionism, which simply comes from markets that do not function as markets should.

**Q150 John Mann:** Dr Niblett, to give an illustration, with Crossrail, the way the infrastructure contracts are configured allows all sorts of overseas companies to procure huge amounts of work. If that was a contract in France, Germany, Italy or Spain, that would not be the case, would it?

*Dr Niblett:* On that last point I am going to let somebody else come in, because I am not sufficiently knowledgeable about EU procurement law. My understanding is that under EU procurement law, they would not be able to exclude you legally.

**Q151 John Mann:** But that is not how it is done, is it? That is not how it is done, because that would go straight to court. How it is done is the configuration of the contracts. It is happening already with High Speed 2. If you have a spec that requires lots of subcontractors to be party to an overall package, you configure that to fit what your national strengths are. That is how you rig a market in terms of the European Union rules in terms of major infrastructure. It happens routinely, does it not?

*Dr Niblett:* I do not doubt it happens. Maybe it happens. I do not know. I do not know these particular cases as you know them. What I would say is it happens everywhere. This may be a meeting about the EU, but the United States has managed to avoid taking a tanker deal from anything that looks like an Airbus contract, even after it was approved by Congress, and they kept writing the specs until they got the specs right for another US carrier to be able to win it. Japan invests massively in the United Kingdom, but its foreign investment as a percentage of GDP is only 3%. There are no rules. I travel to Japan quite a bit. I have talked to companies. They say, “Where are the rules?” There are no rules. It just does not happen. I am not in business—I am in business, actually, because Chatham House has to survive as a business, but a non-profit business—but nonetheless, I would simply say that you will know, as a businessman, this is how some stuff comes. What you want is rules that make these as few and far between as possible, and I would hope that the EU is doing that. Certainly, if we are still exporting 45% of our total exports to the EU and have a surplus in services, as Andy said, somebody must be getting it right.

**Q152 John Mann:** Let us take an example from this week of the British problem with regulation: the cheese industry. The British Government this week determined that traditionally made English stilton could not be put forward to the European Union to be described as stilton under European Union laws because the British Government have regulation that has pasteurised milk banned, whereas the European Union does not. There, the regulation is the regulation within Defra. Are we not overly obsessed with what the regulation is and is not? In this case, ironically, the European Union would be quite happy to have real traditional English stilton called stilton, but this week the British Government have banned that. Is our obsession with reading the regulation, whatever it is, fundamentally a difference in culture that is inhibiting and a problem for British business?

*Dr Niblett:* Again, I am not in any of the Government Departments relevant to this. Andy has been in government and will maybe come in on that point. I was simply saying that we go back to the point that regulation is often made and implemented domestically,

not just by the EU. EU regulations take you one place; domestic regulations take you another. They all have their nonsensical elements in them. You can have open trade agreements; if people do not want to buy stuff, they do not buy stuff. I am not being helpful. I feel your complaint, but I am not sure we can help it.

**Andy Lebrecht:** All I would add is that the prohibition on non-pasteurised milk is a British one. It is there for health reasons. Whether it should be or should not be, I am not competent to judge, but that is what it is there for. It is a British rule, so it is not the European Union that is causing this problem; it is our own rules.

**Q153 John Mann:** I will move on to one other question, but my point is it is our obsession with the regulations. Could you imagine the French banning traditional French stilton, if such a thing existed, from being called stilton? It simply would not happen. We manage to do so in an EU context at the British level. It sums up our problem.

I have one other quite separate question. I have a lot of constituents who are living in Spain in retirement. On day one after Britain leaves the EU, is there anything, particularly in terms of property and property rights, and healthcare and access to healthcare, that I ought to be advising them to think about at this stage that you could see—I appreciate we do not know exactly what will happen—is a potential likely problem?

**Chair:** If you could give your advice to Spanish expatriates briefly, it would be greatly appreciated.

**Professor Dougan:** I would look very carefully at the terms of the withdrawal agreement that the UK would have to negotiate with the EU, because there are a whole host of issues about dealing with people who live across the UK and rest-of-EU borders who study, who work, who have social security rights through travelling and who have health insurance. An enormous amount of very technical questions would have to be negotiated and thrashed out between the remainder of the EU on the one hand and the UK on the other. There are no answers; they would have to be negotiated.

**Q154 Chair:** Does anything else need to be added to that?

**Andy Lebrecht:** Healthcare is the particularly interesting one, because we have reciprocal arrangements and everything, which gives them all their security. The answer has to be based on what we would negotiate with the rest of the EU, and there are two issues. One is where you want to end up. Do you want to end up retaining the healthcare rights? The second, and just as important, is the transitional arrangements. If you are going to move to a completely new regime, you would have to have very extensive transitional arrangements, otherwise you would be disrupting a lot of people's lives.

**Q155 Mr Baker:** Before I ask you about migration and welfare, I just want to pick up on that. I was expecting you in that answer to mention the Vienna Convention. Do people not have grandfather rights under the Vienna Convention in the event that we leave the EU treaties?



**Professor Dougan:** It is quite possible that some accrued rights will be protected. We would have to look very carefully at which rights they were, how they were accrued and the particular conditions that related to them, but this would all have to be negotiated properly and thoroughly, because the degree of disruption to a lot of people's lives, not just in social security but in lots of fields, would be considerable.

**Q156 Mr Baker:** Would your starting position not be that if somebody had accrued a right to own property in Spain and live there, they would retain that right after we had left the EU?

**Professor Dougan:** We would like to think so. It might be very different, for example, with a pension right, where your accrual relates to the date on which you had made contributions. From the moment of withdrawal, what do your contributions get you in the future? It really depends on the particular type of right you are talking about and the legal regime that governs it. I do not think there are any very clear answers here at all.

**Q157 Mr Baker:** How far do you think that EU migration is driven by the welfare system in contrast to labour market conditions?

**Professor Dougan:** I can give a fairly clear answer to that. There is very little evidence to suggest that benefit migration is a significant problem with EU migrants for the UK.

**Q158 Mr Baker:** Is that view generally shared?

**Andy Lebrecht:** It is my experience, yes.

**Dr Niblett:** I do not know.

**Q159 Mr Baker:** So the panel is universal in thinking that it is probably not a factor. If I was to put that to you another way, do you think if the Government secured the four things it has said it wishes to secure in relation to welfare and migration, there would be any material change in the levels of EU migration into the UK?

**Andy Lebrecht:** I would have thought not greatly. It seems to me that the main driver for intra-community migration is economic, and economic in terms of jobs. The fact is that the UK economy over the last few years has been growing much faster than most of the countries in the rest of the European Union, and that is what is driving it.

**Dr Niblett:** I really do not know the economics well enough to be informed. I would simply say what I understand is that there can be some element of wage attractiveness sometimes if you are able to access some in-work benefits. I do not think the Government are making this up as a thing to focus on. I do not think it is the main driver. The main drivers are the relative growth, the relative flexibility of the labour market, the ease of getting work, the rule of law, the greater transparency we have in the

UK—all sorts of aspects. I would not feel confident leaving this table saying that it has no bearing at all on anyone's decision. That is my rather legal—I am not a lawyer—answer.

**Q160 Mr Baker:** It does not sound like we are able to put any kind of quantitative estimate around the extent to which proportionately migration would fall if we achieved everything the Government have set out. Is that right?

**Professor Dougan:** We should learn a lesson from the experience of enlargement itself that attempts to quantify migration tend to fail quite miserably.

**Q161 Mr Baker:** One of the things the Government want to do is to restrict access to benefits until people have paid into the system for four years. Does that require treaty change, please?

**Professor Dougan:** This depends on a number of variables. There are two main variables that we have to bear in mind. The first variable is whether the UK wants special treatment to do this where other member states could not. If the UK wants special treatment, then it is much more likely to require treaty change. If it wants to have changes that apply to all member states potentially, whether on a voluntary or a compulsory basis, there are ways of avoiding a formal treaty change that could be done through secondary legislation.

The second main variable, and just as important, is the categories of people that the Government want to target. If the Government want to target economically active people—people who are in employment—then it is almost certainly going to require treaty change. If the Government want merely to tackle economically inactive people who want to claim welfare support, and even if we agree that there is not much evidence empirically that they constitute a particularly large group of people, they are much easier to deal with without treaty change. It can be done through national measures; it can also be done through amending EU legislation. They are the two main variables we have to play with.

**Q162 Mr Baker:** If it was dealt with through national legislation, would it not still have to apply equally to British citizens and all EU citizens at the same time?

**Professor Dougan:** The case law here is changing quite quickly. There have been a series of judgments from the European Court of Justice—the Brey judgment, the Dano judgment and the Alimanovic judgment—that indicate that member states have much wider room for manoeuvre to restrict non-contributory benefits for economically inactive people than a lot of people might have assumed before these judgments came along. The Court says that insofar as that entails an inherent degree of discrimination between your own nationals and migrant EU nationals, because their right of residence is not secure whereas your own nationals' right of residence is, that inherent discrimination is not necessarily a problem. The legal situation here is changing very quickly. It is quite complicated, but the Court of Justice certainly seems to be indicating that there is a lot more room for member states to restrict access by the economically inactive to non-contributory benefits than we thought might have been the case in the past.

**Q163 Mr Baker:** Would anybody like to add to that answer? This answers the point I was going to go to next, with Open Europe's analysis. They suggested that secondary legislation could be used and easily amended, but it sounds like the answer is much more complicated on that, depending on the extent to which we wish to conduct policy on the basis of exemptions from treating people as EU citizens equally.

**Professor Dougan:** I thought the choice was between purely national measures and EU legislation. A lot of these things in the case of economically inactive people could be achieved through purely national measures. If you wanted to make it fairly safe and secure, then you would negotiate changes to the relevant EU legislation. When it comes to the economically inactive, I do not think it would require treaty change. The economically active, yes, but not the economically inactive.

**Q164 Mr Baker:** I turn to the evidence of the European Council on Foreign Relations. Their summary of the French position was that the proposal would "put in jeopardy the European requirement about equality among European citizens and will be opposed as such". Are you saying that this principle of equality amongst all European citizens is now diminishing and possibly even disappearing?

**Professor Dougan:** That is a very nice statement of rhetoric, but I am not sure it has any particular legal relevance. That is the honest answer. Equality between EU citizens might well be a political aspiration and a nice rhetorical device. Legally, there are different categories of EU citizens, who enjoy very different categories of rights depending on their employment, their economic status and their studying. Each of those categories has very different extents of rights to equal treatment and to welfare benefits within the host state. There is no such thing as equal treatment between EU citizens at the moment. It is a legal construct, but the idea of equality between EU citizens is political rhetoric; it is not the legal reality.

**Q165 Mr Baker:** Does that put at risk the free movement of people around the European Union?

**Professor Dougan:** It depends on which people you are talking about. That is my point. Legally speaking, there are different categories of EU nationals who enjoy different types of rights. Your rights as a permanent resident after five years of lawful residence in a member state are much more extensive than your rights of residence even as a worker, let alone your rights of residence as an economically inactive person. The same goes for access to welfare.

**Q166 Mr Baker:** If I was to put to you one of the particular circumstances in Wycombe that causes a great deal of resentment, it is that some of my constituents who are British citizens have extended families outside the EU, which might be in Pakistan, Sri Lanka or the Caribbean in particular in my case, and their families will face substantially different migration barriers to those faced by people

coming from elsewhere in the European Union. That causes genuine resentment. I do not have time to give you any particular examples, but I am sure you take the point. What would you say to those people in the context of the points you have just made about European citizenship about the basis on which we conduct migration policy? Perhaps, Dr Niblett, you would like to come in.

**Dr Niblett:** What I would say—it might not work—is that the UK has entered into a deep reciprocal agreement, whereby those other EU member states are taking British products, goods and services, to a large extent but not from all companies, in return for which, given some of those countries are not as competitive as the UK, we are willing to accept their workers to come and work in our country. That is the quid pro quo: that countries that are hugely uncompetitive compared to some of the more competitive EU countries have opened up their markets completely to goods from the more competitive countries. In return, we allow the safety valve of the movement of workers. We do not have those deals with India or Pakistan or whichever of your constituents may be feeling particularly aggrieved by it.

**Mr Baker:** That is a particularly interesting response. I must leave it here for the Chairman, but I would just observe that people from the Caribbean often put back to me on these sorts of things—well, you get the point—that we stopped preferring their bananas, for example, and it caused them particular hardship. I am sure we will return to this at some stage.

**Chair:** We may return at the end of the hearing.

**Q167 Mr Rees-Mogg:** I am going to ask four brief questions, picking up things that

have been said so far, and leave Helen to go on to the bits about what happens if we leave. First of all, on foreign Governments and what they have to say, as a general rule of diplomacy, do foreign Governments not tend, when interfering in the domestic affairs of other states, to go along with what they think that Government wants? It would be extremely bad manners for the American Government, the Japanese Government or the Chinese Government to come along and say, “We think it would be a jolly good thing if the UK left the European Union.” That would just be outside diplomatic norms. Mr Lebrecht, you are the expert on governmental machinations.

**Andy Lebrecht:** I wish all foreign Governments were so supportive of what the British Government wanted. There may be some truth in what you say, but if you look at countries like the United States and Japan, for example, they have an enormous amount invested in this country in economic terms. I suspect as well, particularly in the United States—the point was made earlier—they want a sane and strong European Union and they think that our remaining a member of the European Union would help to achieve that. There is a certain amount of genuine national interest in what they are saying.

**Q168 Mr Rees-Mogg:** Some national interest and some good manners. The Japanese, I seem to remember, were quite keen we should join the euro.

*Andy Lebrecht:* Your memory is better than mine.

**Q169 Mr Rees-Mogg:** We have had some discussion on the UK influence in Europe, and it sounded as if it was all going Britain's way, but at the European Council, the UK is in the minority more often than any other member state. It may be going very well for us in some informal sense, but when it comes to a vote, we seem to be on the wrong side of it.

*Andy Lebrecht:* The European Council very rarely votes. It operates by consensus usually. Clearly, we did not support the election of Mr Juncker to be Commission President, but if you look at what the European Council produces, you will see the British influence. The best example of that is the five-year strategy that the European Council agreed in June 2014, which was effectively the political agenda for the European Union. Somebody once said it could have been written in London, and I was not involved but I am certain that large parts of it were written in London. It was about better regulation; it was about extending the single market; it was about foreign security. It was our priorities. That did not happen by accident; that happened because the UK Government machine, if you like, led by the Prime Minister, negotiated it in the European Council.

**Q170 Mr Rees-Mogg:** I believe it is right that we were outvoted 40 times in the last Parliament under the coalition Government. That is quite a lot. We may be getting some influence into documents, but when the documents are put into policy, are we then losing the votes? They are talking a more British talk, but the action is still flowing in a perhaps more Franco-German fashion.

*Andy Lebrecht:* One has to be very sceptical about inferring from voting patterns what countries feel the particular proposal is, for a number of reasons. Sometimes, we decide for reasons of principle to be outvoted even if we are quite happy with the substance. Quite a good example, and one you will know better than I do, is the Capital Requirements Directive IV, where we voted against because of the last-minute injection of the ban on bonuses. We wanted to challenge the directive in Court and so we judged it would be right to vote against. The fact of the matter is that was an incredibly important directive and we had some very big negotiating objectives, which we achieved. We voted against the directive because of one small part of it, but overwhelmingly that was a directive that the UK very much supported.

*Dr Niblett:* I do not know directive by directive how this panned out and how the UK has been outvoted here and there. I would simply note the UK economy is doing very well and it is inside the EU, doing better than most other countries in the EU. The OECD ranks it as having the second lowest product market regulations in the OECD, never mind in Europe, and it has labour market regulations comparable to those of the United States, Australia and others. In the macro sense, which is what I have a slightly better feel for, we seem to be getting a fairly good balance.

**Q171 Mr Rees-Mogg:** As an aside, when the rest of the EU is doing so badly, comparatively, economically, it seems interesting at least to say that our membership of the EU is a causal effect to our successful economic performance.

*Dr Niblett:* No, I did not say it was a causal effect. I said it is not preventing us.

**Q172 Mr Rees-Mogg:** It is not preventing us. It may be we would be even better if we were free. I also want to come back to the Services Directive. The broad pro-European argument has tended to take this line over a long time that there are things coming down the track that will be very good for us, and it is always jam tomorrow. I have great sympathy with what John Mann was saying. My investment management business has always found it easier to sell our investment management products into the United States, Australia, Singapore and so on than into the European Union, however much there may be ideas that it is easier to do it with Europe and that the regulation and so on has been more brought together. I just wonder whether we should not be a little bit sceptical about the opportunity of getting this pot of gold at the end of the rainbow—that we never quite reach the end of the rainbow.

*Andy Lebrecht:* There are two issues, as I said before. One is there are areas where the regulation could be improved and extended. Procurement is one where a directive has recently been agreed. Fundamentally, it is about enforcement. As a member, you can bang on about enforcement, get the Commission to do its job, take people to court if they are not obeying the rules and all those things. If we were outside, we would have recourse to none of those. Yes, it is unfinished business, it is hard work and these are difficult areas, but without any doubt it is moving in the right direction, and that is why we are doing well exporting services to the EU.

**Q173 Mr Rees-Mogg:** Professor Dougan, I have been keeping you in reserve for this specific question on the emergency brake. With our experience of the Luxembourg compromise, would you recommend that the emergency brake is a part of treaty change or is a political agreement?

*Professor Dougan:* The latter can lead to the former in time. I would like to see it enshrined in the treaty in time, if only for reasons of transparency and certainty, but I do not think there is anything to stop this becoming a political agreement in the meantime. It would be possible for the member states within the context of the European Council to come to a political agreement that, pending a future treaty change, we will allow a member state that has fundamental reservations about whether a particular proposal will endanger the functioning of the single market to have the issue referred to the European Council. With the Commission on board, it can withdraw the proposal and keep it on hold while the European Council decides. So, preferably treaty change in the longer term, but it could be done through political agreement in the shorter term.

**Q174 Helen Goodman:** I would like to ask you some questions just to clarify the process of withdrawal if people voted no in a referendum. As I understand it, if people voted no, the Government would then have a short period

of reflection and notify the EU that we were going to leave, and at that point we would move into a two-year process for negotiating with the EU. During that time, would we have to accept all new EU legislation coming through as well as be subject to the EU laws and the EU institutions relating to what had previously been agreed?

**Professor Dougan:** There are probably a couple of things to point out. First of all, the timescale is by agreement. Although the treaty refers to two years as a default position, the leaving state and the remainder of the EU can decide a different timescale. They can make it much shorter from the entry into force of a withdrawal agreement, and that withdrawal agreement could be extremely brief or it could be very detailed. They can also extend the two-year period if they wish to because they have issues that still have not been resolved and really need to be resolved before withdrawal. The process is much more flexible than just two years.

The withdrawal process as set out in the treaty is quite sketchy, but it says nothing about the idea that, after a notification and before a formal withdrawal, you are no longer a member of the EU. It talks about excluding that member state from negotiations over its own withdrawal, but it certainly does not talk about the exclusion of that member state from all of its other existing and current obligations, so we can assume the answer to your second question is until the moment of actual withdrawal, the UK would remain a member state like any other, save for the withdrawal process.

**Q175 Helen Goodman:** Fine. So we would have a negotiation with the rest of the EU, and we do not know, because those people who want to leave have not said, what would be negotiated. We have discussed a number of models and the Chairman asked about them at the beginning of the session. We would then be in a position of making an agreement with the EU and then making changes to domestic legislation to enforce them, and that would be a separate process. Is that how you understand it? That is how I understand it.

**Professor Dougan:** I would go slightly further and say that the withdrawal agreement would necessitate certain consequences, but most of the domestic consequences are regardless of the withdrawal agreement. It would be a process we would have to undertake regardless of what we agreed with the remainder of the EU in the context of that withdrawal agreement. Just to be clear, the withdrawal agreement would not be establishing a new trade relationship with the EU; the withdrawal agreement is essentially about the logistical process of leaving the EU and all of the terrible things that we would have to sort out because they are so complicated, like what to do with people and their acquired rights, or what if they have not acquired those rights—very complex technical stuff. Internally, within the UK, we would have an even bigger job to do to decide which bits of EU law will remain part of our legal system, which bits of EU law will cease to be part of our legal system but we want to have back—and we would have to positively take steps to do it—and which bits of our law we would want to dispense with because we want to redesign it.

**Q176 Helen Goodman:** So we could decide, “They do not want to agree with us”—for example—“on environmental law, but we think the environmental

standards are really good and so we are going to carry on with them.” In that instance, would we need to legislate, or could we just leave what is on the statute book on the statute book?

**Professor Dougan:** In some cases, we will definitely need to legislate. We need to draw a distinction here. As a general principle—it would require quite a comprehensive review—if EU legislation has been implemented in the UK through Acts of Parliament, those Acts of Parliament will stay on the statute book and remain part of UK law unless and until we decided to repeal or amend them. If EU legislation has been implemented by statutory instrument, the situation is a little bit more complicated; we would have to check that the legal basis of the statutory instrument would remain in place even after a withdrawal. We would have to check that the content of the statutory instrument was self-identifiable and did not just make cross-reference to EU developments.

**Q177 Chair:** About 90% of it is in SIs.

**Professor Dougan:** That would have to be dealt with. Probably the most important bits that would need to be addressed are what we do with EU measures that have direct effect within the UK system without any implementation. That covers some really quite important measures of environmental protection, consumer protection and so on. We would have to look at those on a case-by-case basis, decide whether we wanted to legislate and replicate those measures and enact them into primary legislation or some other scheme that transposed them into UK law so they became domestic standards rather than EU standards. It would be a very big job.

**Q178 Helen Goodman:** It certainly would not be a case of passing one law headed “Leaving the European Union Bill”.

**Professor Dougan:** It would be a comprehensive review of UK legislation and statutory instruments, and the EU regulations that have not been transposed.

**Q179 Helen Goodman:** Fine. I just want to ask you about the negotiations and the possibility of having different agreements with different countries. For example, it might be in our interests to have one type of relationship with the French but a different type of relationship with, say, people in the Czech Republic. How easy do you think it would be to negotiate that? I am looking at Mr Lebrecht now because he has the most negotiating experience.

**Andy Lebrecht:** It would depend on whether it was a matter of European Union competence or not. If it was defence, for example, we have, and could still have, a particular relationship with France, for example, but if it is agriculture, for example, individual member states do not have competence to negotiate trade agreements on agriculture because that is a matter of European Union competence, so in that context I would have thought it would be impossible.



**Q180 Helen Goodman:** That is very interesting. I want to pick up on some of the questions my colleagues have been asking. One of the main reasons that a large number of people want to leave the EU is that they feel their working conditions have been undermined by the arrival of people particularly from eastern Europe who are prepared to work for lower wages. If we were to be negotiating arrangements and agreements purely in the British national interest, because we have large numbers of people overseas in Spain and France, we might feel it would be appropriate to maintain free movement with Spain, France and perhaps Germany, but we would not wish to maintain those arrangements with, perhaps, Bulgaria, Romania and Slovakia. Would that fall into the area of competence in the EU that would be impossible to negotiate?

**Andy Lebrecht:** I am not a lawyer, but I would have thought so. You only have to look at what is part of free movement—things like healthcare, whereby our people in Spain benefit. How would you have an arrangement with Spain, for example, on healthcare but not with any other country when co-ordination of healthcare is a question of EU competence? It sounds like a very complicated scenario you are painting.

**Professor Dougan:** We have a little bit of insight from how the EU has dealt with Switzerland, including fairly recently. In the context of the EEA, but also in the context of a strong bilateral trade relationship like that with Switzerland—I mean strong by comparison with other free trade arrangements, not strong by comparison with the single market—the EU’s position has been pretty unyielding. Free movement of persons applies in full, with no exceptions. You have the same free movement of persons between Norway and the other member states as you do within the member states themselves, for example. A few tensions have arisen in the Swiss relationships when there were Swiss referenda that called for greater migration restrictions, including greater migration restrictions on new EU nationals. The EU’s response to Switzerland was pretty robust: “Either fall back into line with what you agreed, or we will not rule out reserving our ultimate sanction of simply terminating our free trade arrangements with you, and certainly not concluding any further free trade agreements, in retaliation.” We can get a sense from these examples that the EU’s position here is pretty robust. Free movement of persons does apply to close relationships.

In a way, the problem might lie a little closer to home. If we are thinking about the impact on bilateral relations between particular member states and the UK, one of the most important will be the bilateral relationship with Ireland, especially when it comes to free movement of persons. Let us not forget that a UK departure from the EU would be—

**Q181 Helen Goodman:** That is a bit different, is it not? Citizens of the Republic of Ireland have had longstanding rights in Great Britain from before EU membership, including even the right to vote in British elections. Say what you were going to say, but I am not sure that is such a good example.

**Professor Dougan:** The problem for Ireland will be that, for Ireland, a UK departure is something bordering a national trauma, because of the way that its relationships, both legal and economic, with the UK might be disrupted. One of the questions that Ireland will have to address is whether it wants to retain the Common Travel Area with the UK or whether it wants to move closer to the rest of the remainder of

the EU, which might well include joining Schengen. That is a very difficult policy dilemma for the Irish Republic to have to deal with, but it is the type of bilateral relationship that we will have to address if and when the time were to come.

**Q182 Helen Goodman:** Returning to the issue that is at the forefront of the minds of British voters—the question of people from eastern Europe—are you seriously suggesting that, even if we were to leave the EU, we would not be able to negotiate that no more people should come under the free movement arrangements from those countries? Are you seriously suggesting that would be non-negotiable?

**Professor Dougan:** No. It depends on what the UK wants to get. In principle, after withdrawal, the UK will no longer be bound by any free movement obligations; the UK can decide its own immigration policy for what will become EU nationals after the UK has left. The Polish point is a politically difficult one to play with other member states. The easy answer for other member states to the Polish workers question is to say, “That was your decision. Nobody forced you to open your borders fully after enlargement. You took a conscious political decision of your own to allow full free movement, whereas the great majority of other member states decided to impose restrictions. These are partly problems of your own making.” That is quite a difficult political argument for the UK to respond to when it comes to dealing with this issue.

**Dr Niblett:** This, in the end, is a very political issue. The British, in my opinion, will not have an easy time of saying, “Now we are out, we want to keep all the good stuff and we do not want the stuff that our citizens do not particularly like. We want to have access to the markets; we want to have all of the stuff that was the single market, but we do not want the people.” The deal for the EU is all four. As many people point out, and I point out very often, there is not a single market in services yet; it is 30% or so and there is a long way to go, but when you are out and you are trying to negotiate a new deal, the idea that you would be able to negotiate, “We will not take any of the workers, but, by the way, yes, we expect to have the same access we had to the economy”—we will not. There will be a trade-off somewhere in between. If you do not want workers from the EU coming in, like they do in the Norwegian and Swiss models, then you will have to work out what you will be giving; you will not get as good access to the single market.

**Q183 Helen Goodman:** Professor Dougan, if we were to decide that not only did we not want to take more people from the other European countries but we thought some people who have been living here for some time might be required to return to their original countries, how long would people have to have lived here to have acquired rights of residence under other legal frameworks?

**Professor Dougan:** Again, this really depends on what deal the UK wants to reach with the rest of the EU. As Robin says, if we want a well-integrated deal, then, if not full free movement, some degree of free movement will be part of that. If we want to say we are not interested in a close deal and we want to have very basic trading relationships with the single market, then we will be free to determine these issues for ourselves, subject to any international obligations—for example, in the field of asylum or refugees. It will become a full issue of national competence. Really, this is not so much a question of law; this is a question of balancing power and influence. How much do we want to call

ourselves theoretically free to do whatever we please versus the costs that that entails in terms of influence over international developments that we want to have control over? What balance do we want to strike in that regard? This is not true just of the free movement of people; this is true of services, of capital, of the environment—of every possible field of activity. We have to decide what the value is of being theoretically free on paper to do as we please over the actual likelihood that we can get what we want. That is a very difficult balance, and free movement is no different.

**Q184 Helen Goodman:** But what you are saying, Mr Lebrecht in particular, is that it would not be at all easy to negotiate different arrangements with different countries on this issue of free movement.

*Andy Lebrecht:* Correct.

**Q185 Wes Streeting:** My questions are largely related to life after Brexit and come to some of the tensions and the big question that Professor Dougan just posed us. First, I just want to clarify something following on from John Mann's questions. Last night, the House of Lords debated the issue of whether British expats in the European Union should have a vote. Did I hear correctly that for those people who are currently living in the EU the big questions for them and their circumstances in terms of property, pensions and a whole load of other things that affect their day-to-day lives will be completely uncertain until the outcome of the negotiations for exit is known? Is that correct?

*Professor Dougan:* Yes. That is true.

**Q186 Wes Streeting:** That is completely outrageous. It should form part of our consideration when the Bill comes back to the Commons, because these people are in complete limbo and have no say.

On agriculture, which is, put mildly, a sensitive area of EU trade policy, even countries like Norway, as members of the European Economic Area, are subject to tariffs on imported EU products. Do you think it likely that we can get tariff-free access to agricultural markets after Brexit?

*Andy Lebrecht:* If we negotiated an agreement that kept us inside the common agricultural policy, then, as part of that, we could have tariff-free access, but I would assume, given people's attitude in this country to the common agricultural policy, that is precisely what we do not want to do.

**Q187 Wes Streeting:** But you are clear that, in order to gain tariff-free access, it would be unquestionably conditional on continued membership of the common agricultural policy.

*Andy Lebrecht:* Almost certainly, yes.

**Q188 Wes Streeting:** Do any of the other members of the panel differ in their views? There is complete agreement.

Turning to a different question, we have talked about the Swiss relationship, and in particular in terms of access to service markets, there has been a breakthrough for the Swiss through a series of bilateral agreements, but at the moment the EU and Switzerland are negotiating a new institutional framework that would allow EU rules to be automatically incorporated into the Swiss legal system. Does this effectively show that in terms of the appetite of member states at present, you are not going to get access to the single market, particularly in services, without adoption of relevant EU law? Is that a correct assumption?

**Professor Dougan:** This comes back to one of the points I discussed before. Market access in the context of the single market is something on a completely different scale to market access as we would understand it in other—let us call them ordinary—free trade agreements. Market access in the context of the EU means playing by all of the rules of the single market game in that sector, and those are regulatory standards; they are not just non-discrimination provisions, or tariff barriers, for that matter. Under both the EEA with Norway and also the Swiss bilaterals, the main challenge is finding a mechanism so that every time any measure of EU law is introduced, amended or updated that is relevant to that sector, that change takes effect also within Norway or Switzerland—the homogeneity principle. It applies not just to legislation; it also applies to case law. There have to be mechanisms to make sure that judgments of the European Court of Justice are also reflected in your own national courts and practice and interpretation. That is really where the tensions arise within the EEA or the Swiss bilateral agreements; it is when those mechanisms for homogeneity break down.

For example, in the case of Norway, we have seen that happen relatively recently, really since the financial crisis, in the field of financial services. The Norwegians have taken the view they are not comfortable with EU legislation in the field of financial services, which involves greater powers for the European supervisory authorities, so they have effectively, together with the other EEA states, refused to sign off these measures as being part of the EEA agreement that will be automatically incorporated into their own national legal systems. That really means that automatically there becomes a fracture between the Norway, Liechtenstein and Iceland part of the single market and the rest of the single market. That fracture will continue to grow for as long as the EEA states feel uncomfortable about adopting those parts of the new single market regulation. It is not perfect by any stretch of the imagination, and that is still one of the most advanced types of free trade arrangement that exists in the world.

**Q189 Wes Streeting:** Given that we are now seeing live examples of these tensions in the way that you describe, how likely is it when negotiating Brexit and an ongoing relationship between Britain and the European Union that the EU will insist that the agreement means that certain parts of EU law are automatically put onto the statute book and that the British courts have to adhere to judgments of the European Court of Justice in the way they do presently?

**Professor Dougan:** Practice, which is the best indicator we have to work on, suggests that if you want extensive access to the single market, the price you have to pay

is homogeneity with the rules adopted by the EU for the EU, and you have little say over that and little influence over it; you just take it or leave it. If you want to take it or leave it for some sectors and not others—that is the Swiss bilateral model—you pick sectors and work on those; if you want to do it across the board, you have the Norwegian model, where you sign up to everything, but it is basically a simple question: do you want market access in the sense of the single market as you enjoy it now? If you do, you need to respect homogeneity. If you do not want that, then we can go our separate ways and trade terms.

**Q190 Wes Streeting:** There seems to be a clear view about what Brexit looks like if we want to remain beneficiaries of a single market that is effectively abiding by the rules but having less of a say. That is probably why, in his prize-winning Brexit essay, Iain Mansfield wrote that the UK should seek to negotiate free trade agreements with China and Russia as a high priority were it to leave the EU. It sounds like we are not going to get much joy with the EU member states we have significantly upset by causing turmoil through British exit. Taking that scenario, where we take ourselves off to Moscow and Beijing having shunned the democracies of Europe, how high in China and Russia's priorities do you think the UK would figure when it comes to negotiating trade agreements?

*Dr Niblett:* As I said earlier, the Chinese have a particular focus on the UK, and if we wanted to negotiate a trade agreement with them of some sort they would look into it very closely. As it is, China, I believe, does not have market economy status. It would be an incredibly complicated negotiation to be meaningful. You could do something that looks like an agreement, but it would not be a deep agreement—let us put it that way. The UK's ability to negotiate improved access in the areas where it has particular advantage—i.e. services—will be dependent on what we are willing to give in return, because we will not be able to be part of offering access to a 500-million-person market; it will be access to a 60-something-million-person market. The price will be higher. We go back to what is sovereignty and what is not sovereignty. Unfortunately, sovereignty is a very fungible term, because at that point you are having to compromise on maybe something you would not have compromised on if you were inside the EU.

**Q191 Wes Streeting:** That follows neatly into my next question. Our inquiry is looking particularly at the economic implications of Brexit or otherwise, but, given our relative size to Russia and China, there is clearly a political implication. If we were to pursue those sorts of deeper trade relationships with Russia and China, there are clear implications for British foreign policy—are there not?—in terms of our reliance on those states and realignment of British foreign policy.

*Dr Niblett:* The example of how sanctions were imposed on Russia is a very interesting one. Norway, which was not at the table when those sanctions were designed, ended up being almost uniquely hit by the externalities of bans on deep sea oil exploration. Not only would it be a geopolitical statement if the UK were to leave the EU and go and strike trade deals with China and Russia, if they were available—in Russia that is an interesting question—but we would also be contributing to a weaker EU. The question is

whether a weaker EU is in the UK's geopolitical interests as well. Maybe I am getting off subject here.

**Q192 Wes Streeting:** It is a subject of my interest, but it is probably outside our scope.

Unless an agreement was reached following Brexit, access for UK services providers to EU markets would be determined by the WTO's General Agreement on Trade in Services. I wonder if you could just say a bit about how market access under GATS would compare with that provided for under EU treaties.

**Professor Dougan:** I am going to give a qualified answer, in the sense that, as I said before, I am not a trade specialist; I am a public law specialist. It is very clear that market access in the context of the WTO is of a much more limited nature than market access in the context of the single market. It is much more concerned with tariffs and with non-tariff barriers of a discriminatory nature. That is around about where the single market was in the 1970s. That is how far back in international trade terms we are talking about, and the level of sophistication, market integration and liberalisation that we see.

There is one other possibility, which links up with your previous question. I have heard quite a lot on the news, in debates and so on that somehow there are these global standard-setting bodies that will take over from the EU, as it were, to help tackle the type of non-tariff regulatory barriers that the EU is currently uniquely good at tackling. It is worth just mentioning those quite briefly. It is true that in certain sectors, such as banking and insurance, there has been a push towards greater standard setting—of regulatory principles, anyway—at a high international level, but, as a general proposition, it is just not true that global standard setting is anywhere near as advanced in terms of its range, scope or strength as single market or WTO standard setting. In a way, much more important is the question of democracy and legitimacy. The EU looks like a paradise on earth of democracy, accountability and legitimacy compared to the other types of organisations we are talking about. If one of the main criticisms of the EU within British public discourse is its lack of accountability and its lack of democracy, that criticism is amplified multiple times when it comes to these other bodies that we are talking about in other contexts.

**Dr Niblett:** Could I just tack on right at the end there? I agree with both those points. Which group is likely to be amongst the most influential inside those global standard-setting bodies? It will be the EU, because it is the one that is most advanced in those types of laws and represents a 500-million-person market that has got to that level. The UK would then be not part of that dimension.

**Q193 Chair:** I have just been asked to ask you, Professor Dougan, to confirm whether Irish citizens have a right to vote in the UK referendum.

**Professor Dougan:** I am not sure. I would have to double-check.

**Q194 Chair:** You are a lawyer, professor. These are the sorts of questions that we rely on lawyers for.

While we are on relying on lawyers, you made an extremely interesting set of points on a complex area that another colleague has asked me to follow up on, which is migration and benefit discrimination. We would be very grateful if you could supply, if you do get time, the Committee a written note on that and also another point that has just been asked about by Helen, migration and our relationship after departure—how we would handle the migration issue were we to leave.

Robin Niblett, you threw in at one point the figure of 30% service coverage in the single market. It would be very interesting to see any analysis you have seen of where that figure comes from and how robust it is, bearing in mind, for example, Goldman Sachs presumably think they are in that 30%, since they are so strongly supportive.

*Dr Niblett:* I will come back to you. It was a Mario Monti study done for the Commission two years ago.

**Q195 Mr Baker:** I was going to pick back up on benefit tourism, but, Professor Dougan, when I brought up this issue about the French saying that proposals on benefits would put in jeopardy the European requirement about equality and so on, I think you replied something along the lines of it was nice as political rhetoric but was not there in the law. Can I just tell you some of the other things it says on this European Council on Foreign Relations summary? For Germany, this is “not doable”; it is “against the principle of free movement”. For Ireland, “it would violate the principles of free movement”. Italy “supports the current EU regulations that forbids discrimination against workers”. For the Netherlands, “these regulations could only be discussed ... if they are non-discriminatory”. For Poland similarly; for Spain similarly; for Sweden similarly. I am trying to reconcile what you have said about the legal position of equal treatment of people with the positions of the nation states, which say that they would only support our benefit measures if they did not violate the principle of equal treatment of citizens. How am I supposed to reconcile what you have said with the positions of these countries?

*Professor Dougan:* I would draw a distinction between the political fora and the political actors that are making those statements—that is their job and that is the forum in which they make those statements—and EU law. EU law is not made by political discussions in the European Council; it is made through the treaties, through legislation and through case law. The treaties, the legislation and the case law, if you want to know what the legal position is, tell us what the rights are, the limitations on those rights, the restrictions and the means of reversing those rights. All of those political discussions in a political forum are very important in terms of the future direction of negotiating positions and future legislative developments, but they are not EU law. I would draw a very simple distinction in that regard.

**Q196 Mr Baker:** There is a fundamental disconnect between what politicians want to happen and what actually happens in the law.

**Professor Dougan:** Eventually, politicians make the law, so they can discuss these things, but they have to change the law if they want to change existing rights and obligations.

**Dr Niblett:** I am interpreting here, because I do not have that piece of paper. I would interpret those statements as saying that the Polish politicians, the Italians, etc, want all EU citizens, theirs included, to be treated equally under these laws. They may be treated differently depending on whether they are permanent residents, temporary workers, not working, or living; as long as they are all treated equally in those categories and there is not special dispensation whereby if you go to the UK one particular type of category or a particular nationality is discriminated against, then they are okay. This is not just about the law; this is a broader, rather illegal statement, if I may say.

**Q197 Mr Baker:** If I reflect on some of the things that I have heard said today, the EU is becoming multi-tier, which I do not think is in the treaties; anything the EU does ends up being slow and complicated; and the US would be concerned about the future of the EU without the UK. The mind boggles; do we fear it would lapse into illiberalism and nationalism? Professor Dougan, you talked about the clash of interests. I thought the EU was supposed to deal with economic nationalism and tensions. Indeed, Mr Lebrecht, I am sure you said—I cannot quote you; I did not write it down verbatim—that there were voices within the EU who would want to send a message to others to discourage them from leaving. Does this not, taken as a whole, tell us something fundamentally about the character of the European Union and the disconnect between its noble principles, which we have just touched on, in the law versus the political intent, and the way things actually work out?

**Dr Niblett:** I would say: is there not a disconnect between Britain's desire to have its cake and eat it and its noble intent?

**Q198 Mr Baker:** Yes, but that is not really answering the question. The question is: how does the EU function? Of course we all want to have our cake and eat it. The question is whether or not the European Union is functioning as it is supposed to and whether that is in our interest.

**Dr Niblett:** Your question was different to that, but you have rephrased it that way. Your question was more about whether this is the kind of EU that lives up to its values. I would say the EU, like any group of political entities, is complicated and slow-moving and does not work beautifully. Where is the surprise?

**Q199 Mr Baker:** If I was to summarise all that I have learnt today, I would say it sounds awfully like resistance is futile. Although it is deeply flawed, there is not much we can do about it; it is all too difficult.



**Professor Dougan:** I would disagree with that entirely. Again, that portrays the UK and the other member states as passive actors. The EU operates through compromise, through negotiation and through bringing together 28 countries with sometimes similar interests, sometimes very different interests, and finding ways of living in an accommodation. That accommodation will often be messy and will often be difficult. We do not know what would happen if we did not have those structures, but we doubt it would be any better. We should not underestimate that the EU is the creature of its member states and the UK is one of the three big member states of the EU and we are not merely passive actors in what happens within that organisation.

**Andy Lebrecht:** If I could just add to that, we have to see the EU as something completely innovative. It is not copying anything that has happened in the world. It is growing; it is iterating; and it is becoming a reflection of something that everybody wanted to reject—the divided Europe that we had in the middle of the 20th century. It is iterating. It is getting better. It is facing difficulties, but that is precisely what we as a country need to deal with as a member. If we opt out, we cannot deal with the problems.

**Chair:** The staff have told me that the answer to the Irish and, for that matter, Maltese and Cypriot question is that it is planned at the moment that they should have the vote.

**Chris Philp:** It is the General Election franchise plus Gibraltar, from memory.

**Helen Goodman:** No, it is not.

**Q200 Chair:** We will discuss this outside this meeting. I want to end the same way I ended the last hearing on Europe. You are entitled to take the fifth; after all, there is a secret ballot. Which way are you intending to vote as things stand?

**Professor Dougan:** I want to remain a member.

**Andy Lebrecht:** I will vote to remain as well.

**Dr Niblett:** I am on the record as saying that the UK will be stronger and safer inside than out. I would like to see what we get in the negotiation, but that will only make my position unequivocal as opposed to in favour.

**Chair:** In our first hearing, we had two tentative ins, one tentative out and one very clear out. Today, we have had three firm ins. It is always worth asking that question. Thank you very much for giving extremely interesting, detailed and robust evidence for over two hours. We really appreciate it. Thank you for taking so calmly our request for further information.