



# HOUSE OF LORDS

Revised transcript of evidence taken before  
**The Select Committee on the European Union**

Inquiry on

## **VISIONS OF EU REFORM**

*Evidence Session No. 5*

*Heard in Public*

*Questions 41 - 52*

TUESDAY 24 NOVEMBER 2015

4.05 pm

Witnesses: Dr Sara Hagemann, Professor Anand Menon and Professor Simon Hix

Members present

Lord Boswell of Aynho (Chairman)  
Baroness Armstrong of Hill Top  
Lord Blair of Boughton  
Lord Borwick  
Lord Davies of Stamford  
Baroness Falkner of Margravine  
Lord Jay of Ewelme  
Baroness Kennedy of The Shaws  
Lord Liddle  
Baroness Prashar  
Baroness Scott of Needham Market  
Baroness Suttie  
Lord Trees  
Lord Tugendhat  
Lord Whitty  
Baroness Wilcox

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**Examination of Witnesses**

**Dr Sara Hagemann**, Assistant Professor, European Institute, London School of Economics, **Professor Anand Menon**, Professor of European Politics and Foreign Affairs, King's College London, and **Professor Simon Hix**, Harold Laski Professor of Political Science, London School of Economics

**Q41 The Chairman:** Good afternoon, witnesses, and thank you very much for giving up your afternoon to talk to the EU Select Committee. First, I would like to remind you that this is a formal evidence session. We will be recording. The normal rules are that we turn that into a transcript and send it to you for any factual corrections. Two understandings that I would like to make clear are, first, do not feel that you have to answer every question in extenso if your colleagues have admirably done so, but if you want to add something, we will allow a degree of self-management if you are happy to do that. Secondly, we have quite a bit of time, but I am conscious of your time, and it is important that we should try to get into it as much—not informality, because this is a formal session—cut and thrust as to the sense in which you feel issues are arising in what for us has been a voyage of discovery, with our first report being largely about the process of renegotiation, reform and referendum. This report tries to take it a little bit further to look at some of the underlying issues and visions. In that context, I am delighted that we have assembled this afternoon's panel. Many of them are known to us personally: Professor Anand Menon in the centre and then, alongside him, Professor Simon Hix and Dr Sara Hagemann—if I pronounce correctly; I have taken tuition from one of your

former pupils who is, of course, now working for this committee and who is a Danish national. We are delighted to see you all. If you have no questions to us or anything you want to say initially, we will kick off straight with the questioning. By way of context—I used to do this as a Minister—I sometimes think that if you have the same agenda, although you will have seen roughly what we are interested in, often it is quite indicative of at least a common set of interests. I will kick off, if I may, with perhaps the obvious text, which is the Prime Minister's letter to President Tusk and his separate, more detailed speech at Chatham House, both on 10 November. Do you feel that this takes you any further in your understanding of the United Kingdom's vision for EU reform?

**Professor Simon Hix:** I think that the four baskets, as they are described, are well flagged and well understood. There was pressure of course from the other member state Governments to put something more detailed on paper. I think that they are grateful that it is now on paper, but there was frustration that it is not in more detail than it is. The question you ask is about the Prime Minister's vision of EU reform. I think that there is a tension in what he is asking for between what is reform of the EU in general and what is reform of the UK's relationship with the EU. The other member states have also pointed that out. Certain elements, you can argue for example, clarification of the difference between the eurozone and the non-eurozone states, the national Parliaments provisions—are generalisable. But then a UK opt-out of ever closer union plus new rules to allow the UK not to pay in-work benefits to EU migrants are clearly just specific to the UK, and it is hard to make a case that these have general implications for the EU as a whole. My sense, and I have travelled quite a lot in the past few weeks and months in the EU, is that most of the other member states do not see this as a Europe-wide agenda—of course, they are busy discussing other matters. This seems like a very peculiar, particular British problem that requires a British solution. There is quite some misunderstanding of certain elements of what the Government are asking for, particularly in relation to in-work benefits.

**Professor Anand Menon:** I would like to underline what Simon said about the tension between EU reform and British specificity. It will be an issue that will haunt the Government both in the renegotiation and then trying to sell the deal to the British public afterwards. There are two other points that I would like to make. It struck me that there was an interesting difference between the speech and the letter when it came to benefits. The letter provided a little more wiggle room on the question of in-work benefits than the speech seemed to do. On that, I am not wholly clear which the position is: what the Prime Minister said or what he wrote. The final thing that came as a surprise to me in the speech was the emphasis on

security, which struck me as being wholly new. We had had all sorts of teasers about the renegotiation process and what the Prime Minister saw the EU as being for in the months and years leading up to the letter, but the speech at Chatham House was very security-heavy compared to anything that he had said before.

**The Chairman:** And, for the record, that predated the horrible events in Paris, so, in a sense, it was almost a precursor of the way that things might have changed.

**Dr Sara Hagemann:** I fully support what has already been said. One issue is the timing with which the Government are pressing for the renegotiations to happen. In that respect, whether any coalition partner, so to speak, can be found on each of the renegotiation points is very time-sensitive. The fact that we are now looking for an important agreement or something already to happen in December is an issue that needs to be considered also with regard to whether this is a UK renegotiation or a wider reform agenda with the other European countries.

**Q42 The Chairman:** Thank you. Arising out of those answers, which were very helpful, are perhaps three follow-up comments. First, as you rightly recorded, there was an interest in security, which was relatively new. There is also very strong emphasis, almost to boil down to one or two words, on flexibility and diversity. Did that strike you as it struck me? Secondly, when you are looking at the issues—and I think Professor Hix talked about misunderstanding—is there a sense in which you could say more about who is misunderstanding whom? Is it that other member states or other political interests like the European Parliament are not au fait with what the Government are trying to do, or are you suggesting that there is a misunderstanding in the British political debate, or where does that lie? The third question is whether, while I appreciate your comments about this being a UK-specific set of negotiations about particular UK issues, the Prime Minister has hit on issues that might be of interest to other member states but in a UK-centred way. If I can pursue the thought with Professor Hix on this, you mentioned migration and talked about the rules for benefits for migrants, which is clearly, as you said, a UK interest. On the other hand, the issue of migration and freedom of movement, for example, goes much wider than the UK. So is there a sense in which these UK interests in the negotiation are a proxy for issues that might be of wider interest to citizens of Europe in other member states as well?

**Professor Simon Hix:** I think that is right. I would say that there are three areas where several other member states—I would not say all of them—have shared interests with the UK and appreciate that the UK has raised them. One is clearly access to benefits. Some member states would like even broader rules to allow them not to provide any benefits. For example, in

Denmark, they think that—and Sara might be able to comment in more detail on this—in response to the Court of Justice ruling on the German case they can deny benefits. I will come back to the issue of in-work benefits in a moment. On national Parliaments, I think some member states would also like to strengthen national Parliaments, whether or not it will be exactly the red card scenario that the Government have put on the table. The Netherlands in particular has raised that issue; I think that Sweden is sympathetic too. I think that there are other member states that are worried about the growing potential split between the eurozone and non-eurozone member states. There is pressure particularly from the Benelux—not from Germany—and from France to have eurozone Ministers meetings who are not just the eurogroup of Finance Ministers but Social Affairs Ministers and what might come next—meeting of Environment Ministers and so on. That has raised a lot of concern in some other member states. They like the fact that Britain is formally putting this on the table, and there needs to be some security for non-eurozone member states in that. On the flipside, I think that there is a misunderstanding from the UK's perspective. Talking about eurozone and non-eurozone as if all the non-euro member states are in the same camp is not right. Britain is the only member state that has not signed up to either the banking union, the fiscal compact treaty or the euro plus pact. Of any of the new architecture that has been built to tackle the Eurozone, the UK is the only member state not to have signed up to at least one part. Most of the other member states, except Denmark and Sweden, are still formally signed up to the idea that they will become members of the euro at some point, even if it is now acknowledged that none of them will join in the near future. That means that they are much more sympathetic to the idea of being part of how the new eurozone is designed, because they expect to be part of it at some stage in the future. So I think that there is a bit of misunderstanding in London from that perspective. I also think there is another misunderstanding in London. I have heard the Prime Minister and officials from No. 10 and the Foreign Office say repeatedly, “We don't mind the eurozone building deeper economic and political integration. If that is what they need to do, then that will be in our interest to do that as long as we are not part of it”. I do not think that is the view of almost any of the other non-eurozone member states. They do not want a two-tier Europe, because they see that they will be on the second tier of that Europe. If the implication of what Britain is asking for is a formalisation of a two-tier Europe, I think there is very little support for that from other non-eurozone member states.

Let me say one thing about in-work benefits. I think there is a lot of misunderstanding on the part of other member states about what that means. In central and eastern Europe in particular, it has been billed as “Britain wants to discriminate under EU law against our nationals in the

UK, and that is not fair and it is illegal. We wouldn't allow any change of the treaties". I met an adviser to Manfred Weber, who is the leader of the EPP group in the European Parliament. He did not really realise that this was part of the British welfare state: that in-work benefits were designed to get people out of welfare and into work. All member states are allowed to design their own welfare state for their own citizens, and they all discriminate in different ways. Changing the framing on that could go quite a long way towards getting more support for that in the other member states.

**The Chairman:** Any more comments from the table?

**Professor Anand Menon:** Just a couple of points on that. I am delighted that we are not going to agree on everything absolutely. I am slightly sceptical about the idea that we can persuade some of the central and eastern European states that what we are trying to do is not discrimination for those in work. Simon is right to the extent that many member states did not really understand, and probably still do not, what working tax credits are and were meant to be, but that does not mean that they will accept a situation where in-work Poles are paid less than in-work Brits for doing the same job. I would be a little hesitant on that. Just to go back to what you said about flexibility and diversity, Chairman, I have two points. First, I absolutely agree with Simon that we should not assume that other euro "outs" share our view of how this should develop. I think that all the other euro "outs" do not want to see thick legal lines separating the "ins" and "outs", because their future is less certain than ours. Secondly, and the referendum debate has made me think about this a lot more than I ever did previously, I wonder at what point the Government will start to explain to the British people just how flexible an EU we already have. What is staggering about the British situation is not so much what we are hoping to achieve but what we already have in the way of derogations and opt-outs from key areas of EU activity. We have a flexible Europe already. I think this will be an interesting debate, because the Government are caught between, on the one hand, saying that we have an EU that we like and, on the other hand, saying that we have an EU that we have reformed because we did not like it. How they finesse that will be quite interesting.

**Dr Sara Hagemann:** I support those points, but perhaps a small remark would be that, of course, the flexibility is not only with regard to eurozone co-operation; there are other areas where we have seen a need for some flexibility for either a single member state or a group of member states. I am sure that that will need to happen on a more common basis in the kind of EU that we are heading towards. That is not necessarily a bad thing. As is pointed out in Cameron's letter, it is necessary for the co-operation to continue on a sustained level so that there is some flexibility for all the countries involved. The question, of course, is whether

there should therefore be some sort of defined basis, which is of course what the treaties are supposed to be for us; that is, to have a set of obligations that set out exactly the remit of the EU core for all member states to participate in and then flexibility in a number of areas of co-operation, whether it is the eurozone, plus even defence and security issues et cetera. It is important that that is recognised as an organic process.

**The Chairman:** I will want to bring in other members in a moment. On the points that you have just made, do you think that that need for flexibility is a function of a Community now at 28 rather than being, for example, at the time of our last renegotiation, at nine, or a smaller number? Secondly, are you in effect feeling after a sort of approach where there are certain principles like, by analogy, the principles of the four freedoms as being core competences, then others where a degree of discretion is left to the member states?

**Dr Sara Hagemann:** I do not think that it is necessarily about the size of the Union at the moment, because we see some of the divisions being between old member states. It is, rather, the degree of co-operation that we have in many policy areas today. The newer member states now play their own strong role in these policy areas, but they tend to align with groupings of the old member states, not as a separate bloc. It is important not to think that it is because of enlargement that we now have a situation where we need concentric circles of co-operation. It is a function of the time and the integration that we have reached.

**Q43 Lord Blair of Boughton:** Thank you, Lord Chairman, and good afternoon. My question in a way goes backwards from here, in the sense that it is not about the relationships with other EU countries but those inside the United Kingdom. How would you respond to suggestions that the Government's reform proposals are disproportionately driven by an agenda from London at the expense of the interests of the other nations and regions of the United Kingdom?

**Professor Anand Menon:** I largely agree with that suggestion. It is interesting that the Prime Minister and other Ministers talk a lot about the need for subsidiarity but that stops in London, and the devolved regions have noticed this and ask, "Why doesn't it apply to us, too? Why don't we have more flexibility?" I would say two things on the differences in the UK. There are big regional differences. If I can simplify rather crassly: in the south of England, the narrative you hear is that the EU is some sort of socialist plot that tries to hamper the effectiveness of British business. If you go above Nottingham, the line that you will hear is that it is some sort of capitalist conspiracy that disempowers workers. Those two narratives co-exist about the same institution.

**Professor Simon Hix:** The truth is surely somewhere between.

**Professor Anand Menon:** The truth is surely somewhere between, but it is very much the former that figures in the reform agenda, which is that we need to cut red tape. There has been talk, which was not in the letter or the speech, of dealing with EU employment laws, social policies and so on. That is a London and south-east agenda in so far as these things are clear. Of course, then you have a Scottish Government who are publicly in favour of more social Europe, who are far more comfortable with membership of the European Union than the British Government and who are rather irritated at having played no role in reformulating the renegotiation agenda. I do not think that Scottish and English public opinion on the European Union is all that different, but I think that Scottish public opinion is probably more permissive; that is to say, it is not such a big issue in Scotland, which means that the Government have more freedom. The notion of permissive consensus that we used to talk about in the old days of European integration still applies in Scotland in a way that it does not in England. I would have to say that the agenda is rather London based.

**Professor Simon Hix:** Except migration. It is hard to make the case, Anand, that what the Government is asking for on migration is a London agenda. London is the part of the country that is most comfortable with EU migrants and a multi-ethnic, multi-religious and multinational society. That is driven by East Coast Conservative Back-Benchers in constituencies where they are threatened by UKIP. That is my reading of that.

**Professor Anand Menon:** But again, Scotland is different.

**Professor Simon Hix:** Scotland is different, but concerns about migration are not London based.

**The Chairman:** I wonder, to put it rather bluntly, if you think this difficulty with the regions of the United Kingdom and specifically with the devolved territories within the United Kingdom is the result of accident or design. Is this because the machinery does not exist to bring their views to Westminster and get them into the system, or are the Government not particularly anxious to do this in the initial stages at least of their renegotiation?

**Professor Anand Menon:** The machinery certainly exists in the sense that when you are dealing with normal legislation in the European Union, the Scots and Welsh authorities get to have an input into the policy of the British Government. There is a routine policymaking system for taking into account the views of the devolved authorities. If that is the choice you are giving me, I would have to go for the first rather than the second.

**The Chairman:** We are not going to be political here, but it is useful to get a steer.

**Lord Davies of Stamford:** My question related to in-work benefits, Chairman. Would you rather I held it back.



**The Chairman:** I would rather. We will assume it later, but do come back and remind us.

**Q44 Lord Jay of Ewelme:** I, too, go back to the Prime Minister's speech on 10 November. In it, the Prime Minister acknowledged, as Anand Menon indeed has already mentioned, that "threats to our security ... have grown enormously in the last few years", but none the less insisted that those threats reinforce the central argument of his Bloomberg speech that "the main, overriding purpose of the European Union is ... not to win peace, but to secure prosperity". Do you agree with that assessment, and do you think the Government paid enough attention to the changing geopolitical context in developing its vision for the EU's reform? As a supplementary to that, how far do you think the events in Paris may affect the climate, form and conduct of the negotiations?

**Professor Anand Menon:** There are several parts to an answer to that question. European integration was created to secure peace on the continent and to secure it through economic means, so peace and prosperity were very closely tied from the start. The world has obviously changed since then. Now we are preoccupied not with peace between member states but with securing the stability of the region around Europe. Most member states—we are not alone—have not invested enough effort in giving the European Union the tools to do this. The larger member states have been more at fault than the smaller member states when it comes to failing to realise the limitations of national capability. No member state has the wherewithal at the moment to ensure its own security or the security of the European neighbourhood. What is very interesting coming out of Paris is that, yes, this will mark a step change in collaboration, but interestingly enough the French have asked for bilateral collaboration and have very specifically said, "This absolutely does not mean via the European Union", because for the last 10 years they have become increasingly frustrated with attempts to collaborate over foreign and security policy in the European Union. I would maintain, for what it is worth, that only if this collaboration takes place properly multilaterally can Europe give itself the wherewithal to tackle the challenges that it so evidently faces at the moment. These bilateral initiatives might serve as a short-term fix, but they will do nothing to address the longer-term issue of capabilities.

**Professor Simon Hix:** I would say a couple of things. First, in response to Paris, I think we are talking about the implications for the UK and the UK's current relationship with the EU as distinct from the implications for the EU as a whole. It is having a polarising effect on the debate right now in the UK; the more pro-European, or slightly more European-sympathetic, are saying, "This is a reminder of the importance of collective European security, shared European values, solidarity with France in a dangerous world. This is why we must not

leave”. Those on the other side of the debate are saying, “This is why we need to pull up the drawbridge. It is open borders that have meant that terrorists could come from Molenbeek to Paris and Saint-Denis and bring weapons with them”. It is having a polarising effect in the short term.

On the longer-term implications, I think it could go in two directions for Europe as a whole. You could argue that it will increase pressure for there to be another step forward in the integration of security services, the sharing of data, the strengthening of FRONTEX and external borders, and so on. It could have another implication: it could lead to the collapse of Schengen, or to a new Schengen—a mini Schengen. I heard today from a Dutch student of mine that there is discussion in the Dutch press about there being a mini Schengen of Benelux and Germany, because there is an issue with Greece: if Greece cannot police its borders, do we kick it out of Schengen, do we shrink Schengen or do we have a new Schengen that replaces the old Schengen?

**The Chairman:** There is a bit like the argument about the euro area as well, is it not?

**Professor Simon Hix:** Exactly. It is a similar kind of argument.

**The Chairman:** There is an interest in integration, but a worry about having the resources, or internationalising the resources, to deliver that integration. Is that your view?

**Professor Simon Hix:** That is right. What I found interesting about the speech was that the Prime Minister made a political case for Europe in addition to an economic case. It is too often misunderstood in the UK that from almost every other member state in the EU, European integration is primarily a political project, not an economic one. In the UK we have always argued that we want economic union, we do not want political union. That has been the mantra of so many generations of politicians. Most of the rest of Europe, possibly with the exception of Sweden and perhaps of Denmark, has said no: creating a market on a continental scale is a political project; it is about creating institutions to govern that market in the way we want to govern it in an increasingly competitive world; protecting our European values; security vis-à-vis Russia, if you are in eastern Europe; the preservation of democracy and stability, if you are in southern Europe; peace and reconciliation between France and Germany. Ultimately, it is a political project for everybody else, and I think that is often misunderstood in the UK when we assume that it is purely about economics.

**The Chairman:** Dr Hagemann, do you have any thoughts on this?

**Dr Sara Hagemann:** No, I can only support what has already been said, although I would perhaps point out that the geopolitical concerns vary across Europe as well, so it is not just about prosperity versus geopolitics. There are various kinds of geopolitical challenges that we

are facing in eastern and southern Europe, and it is extremely important that that is adequately recognised in both the bilateral and the multilateral discussions at the European level. For example, certain eastern European countries have privately voiced the frustration that although what happened in Paris was a huge tragedy, it is not as though a threat is emerging all of a sudden only for some of the old, prosperous member states; there are very real challenges on the eastern and south-eastern fronts as well. Geopolitics has suddenly come heavily on to the agenda, where they feel it should have been already for a while.

**Q45 Lord Jay of Ewelme:** I have a short follow-up question for Professor Hix. You talked about the two reactions to Paris: the sense on one side that there are collective European values and collective European security, but on the other that this is too dangerous and we should pull up the drawbridge. Do you think there is a generational split in Britain on that?

**Professor Simon Hix:** I do not know, to be honest. The polling data on the response to Paris is not out yet. We will know in a few weeks when the data comes back from seeing how people responded. We know that younger people in the UK are generally more prone right now to being on the “remain” side, and older people are more prone to being on the “leave” side. The battle is for the 35 to 60 year-olds. That is the battleground. I would think that the under-35s were polarised even more in a pro-European direction and the over-60s were polarised in a more anti-European direction as a result.

**The Chairman:** On that point, could you give us any information or impression that you have as to whether the supposed propensity of younger people to remain is about their appreciation of Europe as a political project rather than a purely financial transactional project? Is there any loading in that judgment or not?

**Professor Simon Hix:** We did a survey experiment a month ago, and we are looking at the data now. We randomly gave different groups of people different arguments: a political argument for and against Europe, a cultural argument for and against Europe, an economic argument for and against Europe. There does not seem to be any age effect. The same things influence people across the age range. People are more responsive right now to anti-cultural-type arguments—the “protecting our society from immigrants” sort of argument. That seems to be the one that people respond to most.

**Professor Anand Menon:** I have spoken in a lot of schools over the last year about this, and the one question that has been asked at every school is, “If we leave, will we still be able to travel to other European countries?” This seems to be a burning issue among kids of that age: what it means for our ability to go to other European countries.

**Lord Tugendhat:** Professor Hix used the words “European values” a while ago. I wonder whether one can use those words quite as easily as he appeared to do. Until recently, I think we all had a fairly clear idea of what European values constituted; they took the form of a liberal, secular, multiracial society—a society in which one of the ultimate social sins would be racism. I think recent events have demonstrated that those are not European values but western European values. One of the consequences of the migrant crisis was, first, the Germans forcing through a measure on a qualified majority vote, overriding a matter of vital national interest, which was a serious matter, but the reaction to that from Mr Orban, the Poles and quite a number of other people on the eastern side of the European Union has been a quite explicit challenge to the values that until recently we would have regarded as common values, and a willingness to state quite openly that it is one people, one state, one religion, certainly no Muslims, and basically nobody not like us. Those feelings might have been felt beneath the surface in a number of eastern European countries for all sorts of historical reasons, but they are now being overtly stated, and this distinction between what were hitherto regarded as European values on the western side and what people on the eastern side are now willing to express is a very serious development and something that cuts across other divisions within the European Union.

**Professor Anand Menon:** As a bit of preamble, I would question the premise of the question. I think we need to bear in mind just how recently liberal social attitudes have prevailed in western Europe.

**Lord Tugendhat:** Oh sure, I agree with that.

**Professor Anand Menon:** I do not think that western Europe was a particularly tolerant place in the 1970s. That tolerance has occurred relatively recently, even here.

**Lord Tugendhat:** The important thing is that they are being challenged by Heads of Government and by other leaders of society.

**Professor Simon Hix:** That is true, but I would add to what Anand said. I think we should bear in mind that in the European single market there is the general non-discrimination directive, which has had to be applied in all these member states. Some of them have found it more difficult than others to apply—Poland in particular, given the rules in that directive on non-discrimination on the grounds of sexual orientation—but they have had to apply it. There is also the race directive, non-discrimination in the workplace on the grounds of race, and they have had to apply that.

The other thing to bear in mind is that most of these societies are only recently immigrant societies. The Czech Republic is not, actually; it has quite a significant Vietnamese migrant

population that is quite integrated into it. It is also quite for western Europeans to misunderstand the actual volume of migrants passing through these territories. It is very easy for us to sit in Britain and say, “We’ll take 20,000 from the region”, but when you actually look at the people walking through the Czech Republic or Romania to try to get into Germany and Sweden, it is a very different issue that is not just about racism, although there is certainly an element of it.

On the other side, you can argue that racism is growing in western Europe. We are seeing rising numbers of attacks involving Islamophobia, documented throughout western Europe; rising numbers of cases of anti-Semitism—the numbers have doubled in the UK in the last two years and increased dramatically in France, and the volume of Jews coming from France and the UK to Israel is at record levels; and a rise in support for racist parties in large parts of north-western Europe. So I do not think it can be laid just at the table of eastern Europeans.

**Lord Tugendhat:** But all this illustrates my point about the use of the words “European values” in the way you used them before. They are, I am obviously sorry to say, losing their validity.

**The Chairman:** I think we will move on from that area. We will come back to the issues of migration a little later, but there is a lot of business to get through first.

**Q46 Baroness Kennedy of The Shaws:** The Prime Minister is committed to securing legally binding reforms, and he cited the protocols and other instruments agreed for Denmark and Ireland as examples of how the EU has secured such reforms in the past. Were they helpful precedents? As our Dane on the panel, Dr Hagemann, perhaps you would give it a go first.

**Dr Sara Hagemann:** I feel compelled to answer that. You might know that there is a referendum in Denmark, next week in fact, on the Danish opt-out in security matters.

**Lord Davies of Stamford:** Sorry, I did not hear that.

**The Chairman:** Justice and home affairs.

**Dr Sara Hagemann:** Yes. Basically, the Danes are looking to get the UK model, which for Denmark would mean that we would go from having a full opt-out to having the possibility to opt in—the possibility to remain inside co-operation but, on a case-by-case basis, agreeing to take part in police co-operation, FRONTEX et cetera. In general, the protocols that have been negotiated and have ended up as part of the treaties have been helpful to the extent that when there was a need for flexibility in a few specific cases, this was the way to recognise the different status of our country and to get that agreement on board. It was a big win for the Danish Government of the time to secure very broad support in the parliament. That led to all

parties in parliament except for two smaller parties changing to a pro-European stance in general.

It should be said that one reason why we are having the referendum on the Danish opt-out—it has been a matter of debate for a long time—is the very difficult negotiating position of the Danish representatives and Ministers when they are in Brussels, always having outsider status and seeking to be included. It is a tool that can be used as a last resort for securing an agreement without having full-on treaty change, but it is also significant enough for the countries that have secured special provisions.

**Professor Simon Hix:** I will add a little to that. First, the examples of the Irish and Danish protocols could be examples in a certain sense in that if a protocol is unanimously agreed at a Heads of Government meeting, it is not legally binding. It is politically binding in the sense that when the treaty is next reformed it gets added to the treaty, and then it becomes legally binding. That does not mean that you need to have a full intergovernmental conference to reform the treaty; it can be added to the treaty next time there is enlargement. There are other ways in which you can add things to the treaty when there is treaty reform.

However, there is a problem in some of the things that the UK is asking for, which are distinct from what Denmark and Ireland got in their protocols. This was pointed out by Jean-Claude Pirijs, for years the legal adviser in the Council. He said that you cannot put something in a protocol if it is in contradiction to something that is already in the treaty.

You can add something in a protocol that clarifies an article in the treaty or one aspect of an article in the treaty that applies to one particular member state. He pointed in particular to the in-work benefits issue and the idea that you could not put something in a treaty that says that one of the founding principles of the EU does not apply to one of the member states, because that would contradict one of the core elements of the treaty.

**Baroness Kennedy of The Shaws:** So you are saying that they are only useful precedents in certain contexts but not in all.

**Professor Simon Hix:** My reading of it would be that you could put into a protocol that the UK is not bound by the ever-closer union article, but you could not put into a protocol that the UK is allowed to discriminate against other EU nationals. That is my reading of what he said.

**The Chairman:** Thank you. That is helpful. We now go straight on to ever closer union.

**Lord Borwick:** I wanted to ask about the interpretation of the phrase “ever closer union” and whether we are all talking about the same thing. The protocol has talked about “an ever closer union among the peoples of Europe in which decisions are taken as closely as possible to the citizen”. The Prime Minister has said that the British people do not believe in it, and the

Presidents' report seems to talk about closer union meaning political union among the people. Do you think that the British people understand what ever closer union means, or do they all have different opinions as to what it means?

**Professor Anand Menon:** I think the British people have been fed a load of bunkum about what the EU is and does for many years now, from both sides: the federalists are as prone to make things up as the people who would like us to leave, and there is polling evidence that levels of understanding of the European Union in this country are lower than in any other member state. So the Prime Minister is undoubtedly right that people do not understand, and in so far as people do not understand in a certain direction they would think that the EU does too much, because that is the line they have been fed. This partly goes back to my earlier point about the degree of flexibility that we have already managed to get for ourselves in this country. People are simply unaware of this, and it has not really figured in government rhetoric that we have managed to carve out a niche for ourselves in the European Union where we can do the bits we like, we can opt out of the bits that we do not like, we can decide to do some other bits that we are not sure about, and we have the unique ability to opt in. There is a lot of explaining to do about the situation that we find ourselves in now.

I should add that in June last year the European Council made a further amendment in its conclusions on ever closer union and stressed yet again that different states might want to go at different paces and that this does not apply in the same way to all member states. That is now part of what the European Council has unanimously agreed, but, again, it was not particularly well explained to the British public after the summer.

**The Chairman:** Following up on that we have Baroness Suttie and then Baroness Falkner. Perhaps the two questions can be put together and then others can also ask supplementaries.

**Baroness Suttie:** I have a quick question. You said, and I was not aware, that polling showed that the UK has the least understanding of the European Union. Has that been differentiated by age group in the UK?

**Dr Sara Hagemann:** I do not know about the UK, but it has been differentiated across Europe. I do not want to tell you something incorrect. I would rather come back to you with that data, if I may.

**The Chairman:** If it was not an unreasonable burden on you, sending us a bit of data on that, if you have it, would be very helpful.

**Professor Simon Hix:** What Anand is referring to is the six-monthly Eurobarometer opinion polls, which include a batch of questions that are meant to tap into people's understanding of the EU, such as how many member states there are and where the European Parliament sits.

As an index of understanding of the EU, the UK is well off the bottom of all the member states on that index.

**Baroness Suttie:** Of all of them?

**Professor Simon Hix:** Of all of them. Ten or 15 years ago, we were in the middle, and we are now way off the bottom. There are not enough observations in that data set to break it down by age group.

**The Chairman:** Okay. Anything that you can send us on that would be helpful.

**Baroness Falkner of Margravine:** I have a very quick question on ever closer union. I recall reading a story in, I think, the *FT* a couple of weeks ago that ever closer union matters to the UK because it has been used in 13 instances in rulings by the ECJ on different areas. The ECJ has used the preamble to the constitution and now in an article of the constitution to justify its judgment. Could you comment on that?

**The Chairman:** It is an issue about judicial activism, is it not?

**Professor Simon Hix:** I am not a lawyer, but my understanding is that the ECJ uses all elements of the treaty when it can and when it is necessary, and although there has been reference to this, my legal colleagues at the LSE cannot think of a single case where it has been decisive in the ECJ's ruling. The ECJ does not say, "We have to rule this way because the treaty says 'ever closer union'". I do not think there is any evidence that the ECJ has ever done that. I think it has mentioned it in its opinion on 13 occasions, but I do not think it has ever been decisive in the way it has ruled.

Having said that, it is symbolically quite important. If the UK gets an opt-out from it, that is probably more significant than if it is just removed from the treaty altogether, because if it is removed from the treaty altogether it applies to everybody. If it is just the UK having an opt-out from that article in the treaty, when anything comes up in the future the issue will be, "This is a separate question for the UK. Are you involved in this? We can go ahead without the UK. We will go ahead without the UK", and there is a presumption that the UK will not be involved. So in a sense the UK would formally recognise that we have a unique and separate associate status, if you like, of the European Union that no other member state has.

**Dr Sara Hagemann:** Exactly because of that point, it is very important that consideration is given to which other member states might therefore want to join in a certain opt-out if it was in a protocol, and to the kind of dynamics that would create again in terms of concentric circles of co-operation and the like.

**Professor Anand Menon:** I just want to add that we should not forget the political aspect of this. The "leave" campaign is going to try to centre its strategy on the argument that there is



greater danger and uncertainty to being in than there is to being out. That is because if you are in you are part of the ratchet that takes us from a common market to where we are now to the European army that Juncker has talked about. Symbolically in terms of the politics of the referendum, therefore, if the Government can turn around and say, "Look, we are not part this ever closer union, so we are in no danger of being dragged along despite ourselves as we might have been in the past, that will play a really important role in the referendum.

**The Chairman:** I am going to have to slightly restrict the Committee now, because these answers, although hugely interesting, are taking some time, and I want to cover the whole field if we can. Baroness Scott has a question that is closely associated with the work on green cards.

**Q47 Baroness Scott of Needham Market:** That is right. I wanted to come back to the question of the role of national parliaments. The Government have been very clear that they do not really see that there is such a thing as a Europe-wide demos and that democratic legitimacy is held in national parliaments and therefore Governments. The logic that follows on from that is the red card or some sort of veto by national parliaments. Could you comment on the extent to which this sense of democratic deficit and the role of national parliaments and Governments is shared elsewhere in Europe? Is there any difference between the attitudes of Governments and of the parliaments themselves? Could we end up with a situation where parliaments are given a power that they do not even particularly want?

**Professor Simon Hix:** Perhaps I can say some things about the democratic deficit and then Dr Hagemann can say some things about national parliaments. Again, this is an area where there seems to be some misunderstanding. In the UK, when we talk about a democratic deficit we automatically assume that everyone else understands what we mean by that. We mean the House of Commons, the House of Lords and our national parliament. Everybody else thinks it is about trying to create a European demos of some kind. It was pointed out to me by a German official how ironic it was that Cameron was writing a letter in 13 other newspapers in Europe proclaiming that there was no European demos. If he believes that there is no European demos, why is he addressing that letter in 13 other places in Europe and making that case, because clearly by doing that he is recognising that there is a European demos. Most of the other member states do not see it in such black and white terms. That is why there was such broad support for the Spitzenkandidat model. I think people accept that the EU needs to be more accountable and more legitimate and that the public need to be engaged much more in it. That was why all the other member states bought into the idea of some kind of contest for the Commission presidency and why, at the end of the day, we were in a minority of two

in the European Council in not accepting Juncker as the winner of that contest. It was far from perfect, but I think every other member state accepted that it was part of trying to open up the EU to some kind of direct, democratic contest and to engage European publics. Most of the other member states' media covered this. They were recognised candidates, and the member states saw Britain's position as part of the democratic deficit. Purely talking about national parliaments misses how a lot of the other member states see this.

**The Chairman:** Just on that issue, the European Parliament's turnout is still quite low, and I think this is part of the Government's argument as I judge it, in saying that there is no demos because people do not vote for it enough. Do you have a comment on that side of it?

**Professor Simon Hix:** Yes. Turnout went up in the member states where the campaign was quite high-profile. It went up in all the states in western Europe and went down in eastern Europe, where candidates were not campaigning and where there was no engagement in the campaign. The European Parliament has just passed a new draft regulation on electoral rules to try to formalise the Spitzenkandidat process—candidates have to be declared 12 weeks before an election and so on. That will now be on the agenda of the European Council and I think that most member states will agree to it.

**Dr Sara Hagemann:** I am quite sceptical about the argument that there needs to be a demos as such. I think that some of our member countries struggle with word “demos”. This is about the politics and the due political interest et cetera. I am not sure that we need to talk about a demos necessarily. The point about national Parliaments and the democratic deficit more broadly is extremely important. On the proposal for a red card system, there is still some scepticism in some countries, but I think they could be won over. There is recognition generally that national Parliaments should play a greater role in European policy-making. I personally think that the red card system will have extremely little effect. There might be a couple of cases where it would end up being used. We already have a yellow card system in place. The question needs to be turned around and we should ask, “It's not about when Parliaments can veto legislation; what are the possibilities for influencing legislation in the first place?” A lot of work has been done on improving the accountability of policy-making in Brussels vis-à-vis the national Parliaments. I know that House of Lords and your Committee have also produced important work on this. A lot of options are still on the table for making real reforms for enhancing the democratic accountability of policy-making in the EU. I am sceptical whether the red card system as such could make a significant difference. I would foresee such a red card system being agreeable to most of the member states and being brought about without a treaty change—as secondary legislation, for example. So as a

renegotiation point, the Government could potentially be successful on this specific issue, but, in some respects, others would think it to be a missed opportunity for not making more far-reaching changes to the democratic chains of delegation.

**The Chairman:** I think that we will go on now to the euro area, to ask Baroness Falkner, who chairs our finance and economic Sub-Committee, to lead. I think that Lord Davies of Stamford has a supplementary on this, too.

**Q48 Baroness Falkner of Margravine:** Again, the question is about the “asks” in the renegotiation. The Prime Minister has made a lot of legally binding principles and safeguarding the UK’s interests in terms of eurozone “ins” and “outs”. How do you see that? Do you think that it can be achieved and, if so, what would be the mechanism for achieving it in terms of financial services legislation?

**Professor Anand Menon:** It depends on exactly what we are trying to achieve. It strikes me that Lord Lawson was absolutely right in saying that there is a danger for euro “outs” if the eurozone integrates further that the eurozone will start to caucus and that, as Simon said, it will start to have Eurogroup meetings across different sectors. One relatively simple way of addressing this is for non-euro states to have automatic observer status in all those meetings, so you do not end up with situations where decisions are discussed without the knowledge of non-euro states. If what we mean is, “We want to be able to stop anyone passing regulations that we do not like about the City”, that is a whole different ball game and I am afraid that I cannot come up with an easy solution that will be acceptable to other member states.

**Professor Simon Hix:** Anand stole my line on the observer status; I was going to say the same thing—I think that a lot of people are saying that as one of the things. I can imagine a couple of others. One would be a protocol that generally reasserts a principle that is already in the treaties, that says that nothing can happen in the eurozone that undermines the coherence and governance of the single market. That is an easy win that reminds people of this and could be invoked at certain points if the eurozone seemed to be doing that. A second thing that might be more difficult is something that harks back to a European Council conclusion two years ago, which said that if rules are being passed in the single market that undermine a particular sector of the economy that is heavily concentrated in one member state, it will endeavour to reach consensus. This was the sort of phrasing used in a European Council conclusion meeting that could be reinforced in some sort of protocol, which essentially said that, with the financial services industry concentrated in the UK, for anything that is passed by QMV, the British Government could use that to ask for it to be kicked up to the European Council summit meeting for it to be resolved.

**The Chairman:** There are precedents for the double-majority approach.

**Professor Simon Hix:** The double majority is not really practical in this sense. The eurozone would not allow a double majority. In a sense, what you are doing is allowing non-eurozone member states to have some veto over what is going on. There was some discussion of the banking union principle and the double majority. Banking union has generalised; I do not think that that is possible and I do not think that there is any appetite for it.

**Baroness Falkner of Margravine:** How does that sit with your view of how the financial transaction tax was dealt with—enhanced co-operation in other words?

**Professor Simon Hix:** I think that nobody really minds if there is enhanced co-operation and the eurozone wants to do something that adds to costs of business. Let us say that they wanted to harmonise corporation tax or tax bases within the eurozone. I think that there would be less opposition to that. If you had a protocol that said, “Nothing can happen in the eurozone that would undermine the single market”, that would provide a legal basis to say, “If enhanced co-operation looks like it is then threatening something in the single market, that would in the minimum be kicked up to the European Council for discussion and, at a maximum, be challengeable before the Court of Justice”.

**The Chairman:** Dr Hagemann, it was not your comment initially, but one of you mentioned different approaches to the eurozone. It happens that Denmark and the UK are the two countries with the permanent, enshrined opt-outs, and others have de facto opt-outs. How does this sort of debate engage in other countries that are not currently members of the euro area?

**Dr Sara Hagemann:** There is great concern along the same lines about simply being left out with further co-operation on the table. I think that these views are shared between other non-euro member states.

**The Chairman:** So there is potential for some constructive alliances there.

**Dr Sara Hagemann:** Absolutely, but I also think that within the eurozone group a number of countries would welcome such an arrangement, because the views of the UK are shared by some of these “insiders”.

**Lord Davies of Stamford:** That is a very helpful answer, with which I agree. Given the nature of the time constraint, I think we should move on.

**The Chairman:** I think we will go straight to Lord Whitty, on competitiveness.

**Q49 Lord Whitty:** One of the Prime Minister’s points is competitiveness, but it is slightly ambiguous what is meant by that. On the one hand, you could argue that there have been developments which move down what one presumes the Prime Minister means by

competitiveness in Europe—indeed, he acknowledges that to some extent. The Juncker commission appears to be on the same page. On the other hand, some would suspect that what the Prime Minister really means is getting rid of particular regulations or opting out of them, particularly on the labour market, for example. How far would it be seen by the other member states as a bit of a contradiction in the British position in that it stresses the completion of the single market on the one hand but wants to opt out of some of the regulations that are key to that single market on the other?

**Professor Anand Menon:** There are several things there. On opting out of certain pieces of legislation, it is not just about the member states but the European Parliament as well. That strikes me as being very difficult to do. On the broader question of competitiveness, I would say three things. First, we underestimate in this country the degree to which Britain has been fundamental to both creating and driving forward the single market since its inception. When the French speak about “une Europe anglo-saxon”, they mean it in a bad way and are trying to say, “We have done something to them that they don’t like”. That notion would be alien to many Brits, but, across a lot of Europe, there is a notion that we have foisted this single market on them which is liberal, British and horrible, and they are slightly perplexed that we are now complaining that it is not quite right. Secondly, on the competitiveness agenda, I wonder whether the way that we are going about achieving this, in terms of the renegotiation and the referendum, is as effective as would have been a strategy of saying, “Let’s put our shoulder to the wheel and use the Brussels system like we always have and be the leading player on capital markets union and the digital single market”. I suspect that we could have achieved what we are going to achieve and more just by playing the game. We have slightly left Brussels. We have taken our eye off the ball on day-to-day policy-making in Brussels, because we are obsessed with this referendum renegotiation issue. Thirdly, the big thing that is missing from the competitiveness agenda is services.

**Professor Simon Hix:** I was going to make that last point. On the competitiveness agenda and what is being put on the table by the Commission and the Timmermans Commission is exactly along the lines of the refit agenda, less-but-better regulation, the digital single market and the TTIP negotiations. There is a lot of interest in a lot of member states which are opposed to these types of things and see this a very British agenda, as Anand said. I cannot help but think that we could have got an even better agenda from a British point of view had we worked at the centre to try to negotiate it. One thing missing from this that was in some of the early drafts of the first Commission work programme was a new services directive. The Commission was committed to a new services directive. Everyone expected this Commission

to put it on the table. At the behest of Germany, it has been withdrawn. Small businesses in the services sector are creating most new jobs in the modern economy in Europe. We do not have an integrated services market. We have an integrated goods market, but we do not have an integrated services market.

**The Chairman:** Perhaps if I might interpose. This is not even being considered by Lord Whitty's Sub-Committee yet, but the new Commission communication on the internal market seems to be beginning to pick some of these issues up. If you want to make an input now rather ahead of that debate, feel free to do so.

**Professor Simon Hix:** I would say that the digital single market is important, but it is only one bit of the modern services economy in Europe. We have the services sector in London—not just financial services but the creative industries. In some ways it is easier for those creative industries to be trading in other parts of the world than it is in other parts of the single market, given the non-tariff barriers to services sector integration in Europe. I agree with Anand that, had we been front and centre in the debate on that, we could have seen an even more ambitious Commission than we currently see.

**Lord Whitty:** Would that position be compatible with pressure on creating a genuine single market in practically all areas of service, except the most important? We still argue British exceptionalism or City of London exceptionalism on the financial services side.

**Professor Simon Hix:** I am not sure, in that we have gained enormously from the fact that the financial services sector is one of the sectors in the service economy that is more integrated than the others, and we have benefited enormously from that. There are other types of services—whether it is art, architecture, design, fashion and media; all the other things that we excel in—where we do not have a European single market. Largely, it has been France and Germany resisting that. That is absent from the current Commission's agenda.

**The Chairman:** Let us sweep on then to the question of migration. Perhaps I could preface it by saying that you could almost encapsulate the Prime Minister's speech and letter as saying, in relation to the four freedoms, freedom of movement of goods, capital and services is okay, but freedom of movement of people seems to be questionable. I put that as a context, because clearly this is an area of some political sensitivity, as you have already said. I would like Baroness Prashar, who heads our relevant Sub-Committee to lead on this area, which I think will probably exercise most of the rest of the time we have.

**Q50 Baroness Prashar:** Thank you, Lord Chairman. As you have seen from the letter, the Prime Minister makes an argument that we have to cope with the pressures of free movement. He also argues that, because there is an expanding population in the UK compared to other

European nations, there have to be proposals to deal with some of the pull factors, which have been alluded to. Against that background, do you think that it is peculiarly a UK preoccupation or something which challenges the EU as a whole? What is your assessment of the proposals and what will be the challenges of achieving them?

**Dr Sara Hagemann:** If I can start off with a broad point. I was struck by how the letter did not just point out the costs to the UK but acknowledged that there is a cost to the sender countries of having people migrate—the able workforce, the often well-educated part of the population. I thought that that was a way of opening up a debate or negotiations, with this acknowledgement that there seem to be direct costs. There are costs in the UK, but the costs are different but very real in other countries. We had a debate yesterday where it was suggested that we should perhaps think about Europe in terms of receiving countries, exchange countries and then sender countries. Of course, in that respect, the UK’s challenge is different from that of some other countries. There are countries that perceive—I do not know whether the numbers always add up—that there are similar problems for their welfare states. It is very much part of the debate in the Scandinavian countries, the Netherlands et cetera. They are very much following what is being proposed by the Government here. There is a clear interest in finding solutions. On the specific proposal for rather strict constraints on in-work benefits, that is the trickiest of all the negotiation points that have been presented by the Government. It will be difficult to find a compromise that everyone can agree to, because of the very specific focus here. As Simon has pointed out, other countries have wanted to go further, but with regard to other benefits. The proposal on in-work benefit claims is a difficult position for the Government to have put up so squarely in the negotiations.

**Professor Anand Menon:** I very much agree. I think that we are pretty much there when it comes to benefit tourism. The ECJ has laid the groundwork for saying, “You can’t just come here to claim benefits”, but for people in work it is very hard to see how you can come up with a solution that in practice discriminates between Brits and other EU nationals in the workplace.

**Lord Tugendhat:** Can you speak up?

**Professor Anand Menon:** It is very hard to see what solution can be found to a situation where you try to limit in-work benefits on the basis of nationality. The suggestion from EU lawyers is that, even if you try to find a clever way around this by saying, “Let’s make it residence”, the danger is that you will fall foul on the basis of indirect discrimination, because the court knows who that is going to hit primarily, and it will be non-British nationals.

**The Chairman:** The reality of the situation would be, in a factory, with two people operating the same machine, one might be a British national and one might be an Irish national—this could be in Belfast, for the sake of argument—and they would effectively be on different terms and conditions. That is what the gravamen was about, or the sensitivity of this.

**Baroness Prashar:** When you say “fall foul” of indirect discrimination, is that the UK?

**Professor Anand Menon:** No, the EU.

**Professor Simon Hix:** Let me say a bit about the politics of this. Britain, by accepting a lot of central and eastern Europeans, was very popular among central and eastern European Governments and was seen in a very positive light. I think, historically, Britain as an open, multi-ethnic and multiracial society has been seen with a sense of envy by a lot of other member states in Europe and has a sort of credit with them. Since the debate has happened inside the UK, and since we had the British Government’s response to the fear of being swamped by Romanians and Bulgarians, it has completely changed the politics of this and the relations to Britain in central and eastern Europe. I was in Bucharest three weeks ago and was told by an adviser there that Britain is poisonous in the Romanian debate because of the way that the British Government basically said to Romanians, “Do not come to Britain. We don’t want you”. This was splashed all over the pages in the Romanian press. There is a sense of: why would they want to do anything to help Britain on this very difficult issue? Having said that, I am a bit more optimistic than my colleagues here about whether a compromise is possible. This is largely to do with the fact that, if it is framed around the idea that we just do not want people to come here, then we do not have a hope in winning it. Rather, it should be framed around the idea that we all have our own welfare states. Through our own welfare states, we all discriminate against nationals from other member states in different ways. For example, in pensions provision, we discriminate. In healthcare, in certain contexts, we discriminate. In support for higher education, we discriminate. We say that, at the point of paying fees for higher education, we do not discriminate, but we give grants only to British citizens below a certain income. We do not give grants to other EU nationals. So in many elements of our welfare state, we discriminate in terms of what benefits are available to our citizens and not available to those from other member states. That is the same in every other member state. If it is framed like that and if it is explained that this is an integral part of the British welfare state and, by the way, it has been pretty successful in getting people out of poverty, that resonates far more with a lot of other member states, which also face issues with trying to use instruments within their welfare states to get people out of poverty and into work.



**Q51 Lord Davies of Stamford:** I have two brief questions. First of all, I agree that it will be very difficult for the continentals to concede anything that looks as though it compromises the principle of the freedom of movement—I personally do not think that they should—but residence is possibly the way forward if you want to find some solution. We already use that for out-of-work benefits, and that affects British citizens coming in from abroad. My two questions are these: first of all, presumably if there is some decision to discriminate against other EU citizens for the purpose of in-work benefits in this country there will be similar discrimination imposed by other EU member states against British workers in their countries. It would surely be politically impossible for British workers to go on receiving exactly the same benefits in other EU countries when that concession has been made to the British Government in relation to their nationals in this market. Secondly, would it not be contrary to the Belfast agreement to discriminate in any way in this country against people who are citizens of the Irish Republic while being resident and working here?

**Professor Simon Hix:** I do not know about the Irish legal issue, but you can argue that there is already discrimination in the way that welfare states in other member states work. A lot of them work on the basis that you get benefits only after you have accrued a certain amount of time paying in. So, for example, if you are a British worker going to Belgium, you are not entitled immediately—

**Lord Davies of Stamford:** You are answering a different point. For reasons that we need not go into, and which I personally regret, we are talking about a renegotiation that is seen as a big political negotiation between the United Kingdom and the rest of the European Union. If we receive what would seem to be a benefit to us and a cost to the others in terms of a right to discriminate in this area which up till now does not exist, will they not say, “Well, you can’t have British citizens working in our countries getting off scot-free. We will not give all the benefits that we are currently giving to British subjects working in our country if our citizens do not get the same benefits as they have been receiving up till now in the United Kingdom”.

**Professor Anand Menon:** But surely the prior question is why they would agree to that. They are not going to agree to a unanimous decision that they then have to retaliate against. It is far easier just to block the original decision surely.

**Lord Davies of Stamford:** As I say, the likelihood is that they will, but in the event that they agree to this, will there not be a corresponding cost for British workers elsewhere in the EU?

**Professor Anand Menon:** I also think that you still have to go through the European Court of Justice.

**The Chairman:** Clearly, we are not going to resolve this tonight. It is a very difficult issue, as I think everyone on the Committee and our witnesses agree. But in a sense, the messages that I am getting are that full-frontal discrimination between two people in identical circumstances with differing nationalities but who are both citizens of member states will be very difficult. On the other hand, if you can define the class of persons either by contribution record or residence or whatever the test is, providing that that is not tantamount to indirect discrimination, you may have some chance of negotiating. You are nodding, Professor Hix. Is that the sort of way we are feeling our way through this?

**Professor Simon Hix:** I am not a lawyer, but that is my reading of the various discussions that I have witnessed both here in London and in some of the other member states in the last few weeks. That is how I would frame it.

**The Chairman:** Thank you for that. We have five or 10 minutes before we need to get on to our deliberative session. This has been very fruitful. We have a clutch of questions about the response to the Government's proposals and how it seems from the other side of the continent. I was going to suggest that my colleagues might put those three together for a collective answer. I will ask them each to pose their questions and then we will put it together and then wrap up. Baroness Armstrong, first.

**Q52 Baroness Armstrong of Hill Top:** As you have gone on, you have sort of answered this question, but we wondered how both the EU institutions and other European states were responding to the letter, the documents, and the speech and so on.

**Lord Liddle:** Do you think that the British Government are taking sufficiently into account the institutional dynamics in Brussels and particularly the European Parliament and its role?

**Lord Trees:** Could I broaden it a little to take that further and look at it from the outside? It seems that the elephant in the room in these discussions, and we have not heard it from you today or in previous evidence sessions, is the geopolitical and economic balance in Europe and the effect that a UK exit would have on that. Is that not an issue of concern to the other 25 member states, excluding the Franco-German axis, which would be completely dominant within an EU without the UK? Is it of concern to the populace in the remaining 25 states, and might that influence their Governments' response to the British negotiating position?

**Professor Anand Menon:** Can I take that final question first? I think there is a balance-of-power issue. The way the European Union works is that people look for allies and friends, and the fact is that the French do not want to be left alone in the EU with the Germans, the Germans do not want to be left alone in the EU with the French, and the others do not want to be left in an EU alone with the French and the Germans. From wherever you look, we play a

sort of balancing role. But there is a political dynamic as well; if we leave, all those countries with significant Eurosceptic parties will start to face political problems of their own. The first thing that would happen in France in the event that we left would be Marine Le Pen saying, “They can do it. Why can’t we?” I think there would be political contagion as well as balance-of-forces contagion. Some member states genuinely like us and want us to stay in, but it is not simply because of that that they are all opposed to the notion of us leaving; it will lead to very difficult situations.

**Lord Davies of Stamford:** Are you saying that if we left, others would want to leave, or that if we got derogations, others would want the same derogations?

**Professor Anand Menon:** On a political level, it would strengthen Euroscepticism in other member states, which sitting Governments do not want to happen.

**Lord Davies of Stamford:** Would it lead more people to say, “We want to leave”, or “We want the same derogations”?

**Professor Anand Menon:** I will limit myself to saying that it would strengthen the weight of the political forces in member states in favour of leaving or of renegotiating—so, either.

**Lord Davies of Stamford:** Which?

**Professor Anand Menon:** There are a variety of political forces in Europe. Some are in favour of questioning membership, some are in favour of questioning certain bits of the EU such as the euro. It would strengthen those broadly Eurosceptic voices in the short term if we were seen to have left.

**The Chairman:** I think we can summarise the point by saying that it would not quite end with us, in that sense.

**Professor Anand Menon:** No. I have one final point on how this is viewed in other member states. One of the issues for me is what people now refer to as bandwidth, which is the political attention span in the light of what has happened in Paris. There is a very well reported quotation from an EU official at the June Council, who said in effect that we discussed migration in the morning, we discussed the eurozone in the afternoon, and David Cameron provided a commercial break for 10 minutes in the middle. He was basically saying that we have such massive issues on our agenda at the moment that we do not have time to talk about these rather parochial concerns. It seems to me that that has become a rather more serious problem in the wake of what happened in Paris, and getting the time and space for a discussion of our reform agenda will prove more difficult than it did before.

**Professor Simon Hix:** The only thing that I would add is on the European Parliament, which is one of my areas of expertise. The European Parliament comes into play only if an

agreement with the UK requires secondary legislation, which would have to be passed, whether that is reform of the free movement directive, something to do with the competitiveness agenda or TTIP. In that sense, the European Parliament comes into play at that point. There is generally an ongoing discussion in the European Parliament about reform of free movement and what that means, both in the social affairs committee and in the justice and home affairs committee, where there are voices that are sympathetic to what the UK is asking for.

**Dr Sara Hagemann:** I fully agree with what has already been said. It has been stressed a number of times that the UK Government and their representation have had consultations for quite a long time, so what was finally in the letter was no big surprise. As such, the reactions have been okay. That is it. Let us look at what is hitting Europe at the moment: the refugee situation, the economic situation and Paris. I completely agree with what has already been said about the reactions not having been strong right now, but December is a crucial time, of course, and, more than anything, the time pressure that is on the UK to secure something in relation to these negotiation points is an irritant, if you want, for other member states. That is an issue to be very sensitive about.

**The Chairman:** In conclusion, you will already be very aware, witnesses, that in our first report on this subject we indicated the degree of precariousness of the negotiating timetable if it is displaced by immediate activities or, because of some of the political pressures that might centre around migration, it becomes increasingly difficult to get a decision that is congenial to the Government before the end of 2017. I think we can agree that that is an area of continuing concern.

For this evening, all I would like to say is that the whole Committee would like to express its gratitude to you. It has been hugely intellectually challenging. It has also been, in a strange and perhaps rather macabre way, quite enjoyable, because we have had the interaction of the various consequences and cross-currents of your excellent information, and the Committee is very grateful to you.

In concluding in thanking you, I should remind you of the form. First, we will send you a transcript from this evening. Please feel free to correct that. Also, to borrow the language of TTIP, we could perhaps call this a living discussion. We have already picked up the issue about some of the Eurobarometer data that might be useful to the Committee, but if at any stage, either jointly or severally, you feel that there is anything else that it would be helpful to share with us as we pursue these interesting inquiries together, we would be grateful to hear

about them. For tonight, we are most grateful. We will call the public evidence session to a close, and will stay behind for a short deliberative session, if we may.