HOUSE OF COMMONS

# Treasury

## Oral evidence: The UK's Future Economic Relationship with the European Union, HC 483

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Watch the meeting

Members present: Mr Andrew Tyrie (Chair); Mark Garnier; Helen Goodman; Stephen Hammond; George Kerevan; Chris Philp; Wes Streeting

Questions 67-161

### Witnesses

I: Professor Michael Dougan, Professor of European Law, University of Liverpool, Dr Robin Niblett CMG, Director, Chatham House, Sir Emyr Jones Parry GCMG, former UK Permanent Representative to the United Nations and NATO, and Raoul Ruparel, Co-Director, Open Europe

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# Examination of witnesses

Professor Michael Dougan, Professor of European Law, University of Liverpool, Dr Robin Niblett CMG, Director, Chatham House, Sir Emyr Jones Parry GCMG, former UK Permanent Representative to the United Nations and NATO, and Raoul Ruparel, Co-Director, Open Europe

Q67 **Chair:** Thank you very much for coming in. Those watching this hearing may conclude that for the most part it may be describing a series of obstacles that need to be overcome in order to implement Article 50. Parliament will want to implement, I am confident, Article 50 in accordance with the public's clear wishes in the referendum. That is certainly my view. Not to do so would be a breach of trust.

The question, though, which is very much a relevant one for Parliament, is exercise it to what? It seems to me to go ahead with Article 50 and enter the two-year period without having some rough idea of where one's going to end up might be inadvisable—or highly inadvisable, depending on the circumstances.

Next week we will be looking at the opportunities created by Brexit in more detail, and if any of you, as you answer your questions, want to allude to those points as well as flagging up the obstacles that would be extremely helpful. Can I begin with one question perhaps to Professor Dougan just to set the ball rolling? You said in October when you came to see us that EEA members must reflect European Court of Justice judgments—case law—in their domestic court decisions. Could you describe how that process works—how intrusive it is in domestic law and whether it differs fundamentally from, and if so to what extent, the arrangements that currently exist under the Treaty of Rome and its successor treaties?

***Professor Dougan***: There are two issues, to answer your question. The first one is the jurisdiction of the EFTA Court itself. The EEA has its own court—the EFTA Court—which is responsible for the interpretation of the EEA rules. It has various categories of jurisdiction. They are very similar to the categories of jurisdiction that apply under EU law in respect of the European Court of Justice.

Probably the most important one is that it includes the obligation of the EFTA Court to interpret EEA law in exactly the same way as the European Court of Justice interprets EU law in respect of the period prior to 1992. In respect of the period post 1992, the explicit obligation is that the EFTA Court should take due account of developments in the case law of the European Court of Justice, but in practice the EFTA Court has given itself the obligation to align its own case law to the interpretation of the European Court of Justice as well. That is the first issue—the jurisdiction of the EFTA Court and its approach towards the interpretation of the EEA rules.

Q68 **Chair:** Before we go on to the second point, you said "in practice". That sounds like it is as a matter of expediency rather than because it has an obligation.

***Professor Dougan***: It has created an obligation for itself in its own interpretative jurisdiction. It will as far as possible align its own interpretation of EEA rules to the corresponding interpretation of the ECJ of EU rules.

Q69 **Chair:** Could colleagues turn off all electronic devices? I am trying to get back to this question of whether we are securing independence from any single legal authority or whether we find ourselves answerable to another one. Could colleagues please turn off all devices? In particular, Michael Gove said we must establish full legal independence; the phrase "single legal authority" and his dislike of it was a refrain of Boris Johnson's throughout the campaign. I think Gisela Stuart referred to it as well. I will start with Professor Dougan.

***Professor Dougan***: This brings us on to the second issue, which is that we do have a system in the EEA, for example, that seeks to translate EEA obligations into the national legal systems of the EEA states. There is still an obligation for EEA states to respect the priority of EEA rules. It is not quite the same as the principle of supremacy of EU law for EU member states, but it is still an obligation of priority for EEA rules to take preference over conflicting statutory rules within the EEA states.

There is no principle of direct effect of EEA law in the same way there is a principle of direct effect of EU law for its member states, but there are obligations of consistent interpretation. There are principles of member state liability and damages if they infringe individual rights. The system is different under an agreement like the EEA, but the fact is that any international trade agreement creates obligations for its parties, and those obligations have to be respected or enforced in some way. In any advanced form of trade agreement, that will involve some form of independent judicial authority.

Q70 **Chair:** Just to answer my question, how different from the ECJ is it in terms of its intrusiveness? Have one more go and then I will bring in someone else.

***Professor Dougan***: In practice, the scholarship from Norway and Iceland tells us that there is not an enormous amount of difference between the effective EEA law within those member states—

Q71 **Chair:** You are now using the words "enormous amount". I am really trying to probe that like I am trying to probe "in practice". We really need to get to the heart of this. What is the difference?

***Professor Dougan***: The difference comes in a whole series of subtle ways. For example, the obligation of priority for EEA rules only applies to rules that have been implemented in an EEA state, whereas under the EU system the obligation of supremacy for EU rules applies regardless of implementation by the member state. There is a whole series of subtle differences.

**Chair:** That is quite a big one. It gives the member state quite a degree of flexibility.

***Professor Dougan***: In practice, the Norwegian and Icelandic scholarship tells us it does not make an enormous amount of difference.

Q72 **Chair:** But this word "enormous" is extremely important. Does it really make any practical difference?

***Professor Dougan***: In that case, in practice the Norwegians tell us it does not make any real, appreciable difference to the way the system operates.

Q73 **Chair:** Could it for a big state?

***Professor Dougan***: If we decided that we were going to ignore the international obligations that we have undertaken through an agreement like the EEA, it would make an enormous amount of difference, but why would we enter an international agreement if we decided that we were going to ignore our obligations under it?

Q74 **Chair:** In sum, you are saying we would acquire a theoretical capacity to ignore a specific rule but only at the cost of undermining the organisation that we are in. What would then happen in the EEA? Would we then be vulnerable to being thrown out? What would happen?

***Professor Dougan***: There are a range of EEA mechanisms to try to bring a non-complaint EEA state into compliance with its EEA obligations. For example, the EFTA surveillance authority, which is the EEA equivalent of the European Commission, has the power to bring non-complaint states to the EFTA Court and secure judgments against them. The EEA states are able to bring cases against each other before the EFTA Court for breach of their obligations. In some serious cases, the EU can suspend parts of the agreement if it feels the obligations are not being respected.

Q75 **Chair:** I am just trying to get clarity on this. Let's suppose that a country is non-complaint in response to that court judgment. Does that court judgment apply directly in that country's domestic legal system, having signed the treaty, or will the domestic courts continue to uphold domestic parliamentary authority or whatever other sovereign system of authority exists?

***Professor Dougan***: The EEA has not transferred any legislative competence to the EEA institutions. Legislative competence remains with the EEA states. If the EFTA Court delivers a judgment against an EEA state at the suit of the EFTA surveillance authority, that judgment is binding on that state as a matter of international law. It will not take automatic effect within the legal system of that state, but it all depends on how the state itself decides to translate its EEA obligations into national law.

Q76 **Chair:** This surveillance mechanism backed by a court—does that have the capacity to levy fines or impose other sanctions?

***Professor Dougan***: No.

**Chair:** In that sense it is very different from ECJ.

***Professor Dougan***: It is very different from ECJ in the sense that the ECJ's power to introduce sanctions and fines against a non-compliant state was created after the EEA agreement. The EEA provisions are modelled on the EC treaties as they existed around 1992. Subsequent developments, like the Court of Justice's jurisdiction to impose fines on non-compliant EU states, do not apply to the EFTA Court. However, these are binding obligations under international law, and the entire system rests on the idea that the participating states respect their obligations under international law. The levels of compliance of the EEA states with their obligations are very high.

I am not sure a discourse that suggests joining an agreement like the EEA but being fully prepared to somehow not respect the obligations that are undertaken through that international agreement does very much for our credibility as a diplomatic power and as an international negotiator. If you take on these obligations, the firm expectation is that you should respect them, and if you do not want to respect them, you probably should not take them on in the first place.

Q77 **Chair:** Still I feel these questions need to be probed. That is our job. Does anybody want to add anything before I pass the questioning on?

***Sir Emyr Jones Parry***: If I may, Chair, could I just add two points? The first one is it is implicit in what the professor said that the obligation on the EEA state to put in place that legislation stems from the single market—that is what the EEA is all about. The second one is I think I am right in asserting that, if a judgment of the EFTA Court finds against the situation in an EEA state and that were then the subject of judicial understanding within, say, Norway, the Norwegian court would ordinarily accept that there was an international obligation and that that should have been met. I do not think you can get away from that.

Q78 **Chair:** That is a matter for the Norwegian court. The Norwegian court may decide not to do that.

***Sir Emyr Jones Parry***: It may do, but then it raises up the whole question of whether or not Norway is meeting its obligations and whether it wishes to continue to be part of the EEA.

Q79 **Chair:** We have a very high level as a country of compliance with international law and we have been one of the standard bearers for its development since the Second World War. I am not suggesting we should suddenly change all that, but I am just trying to explore what is really meant by ending our subordination to a single legal authority and the need to find full legal independence in substance. We are beginning to get near that. Do you have another point you wanted to make, Sir Emyr?

***Sir Emyr Jones Parry***: I do not.

Q80 **Helen Goodman:** I want to ask you about the preparations in the run-up to these negotiations, and in particular what preparations you think the Cabinet Office's new unit should be doing at the moment. I am going to start with Professor Dougan and explore the legal options, and then come on to some others things.

***Professor Dougan***: Besides the list of the technical issues that will need to be addressed, I have three quick general points. The first thing we need to do is identify the range of issues that need to be dealt with in this withdrawal agreement, remembering that the withdrawal agreement is not the agreement for future trade relations. This is the withdrawal agreement.

The balance-of-competences review exercise that was carried out by the Cabinet Office a few years ago provides a useful starting point to remind everybody of the enormity of this exercise and a useful reference point for most of the major issues we just need to get our heads around very quickly. It is a very technical exercise. That is the first point. We need to understand what the technical issues are in detail.

The second point is that, for each and every one of those transitional technical issues, we need to have a clear idea of what we want to get out of it. That is not pure technical stuff. That will involve important political choices. What do we want the residency rights of EU nationals to be within the UK? What do we want the residency rights of UK nationals to be elsewhere in Europe for now—not in the future but for now?

The third point is we need to bear in mind the withdrawal agreement cannot offer the UK anything that would be incompatible with EU law itself. The EU, through this withdrawal agreement, cannot give us anything that the EU institutions are not competent to offer us. They cannot give us anything that would be incompatible with the EU treaties or the Charter of Fundamental Rights or general principles of EU law. We need to have a very clear understanding ourselves of what is legally possible in this withdrawal agreement and what the limits of EU law are, as well as our own domestic policy preferences.

Q81 **Helen Goodman:** You mean on the other side of the negotiating table the EU member states also face constraints.

***Professor Dougan***: Absolutely.

Q82 **Helen Goodman:** Just exploring where we are at the moment and the assessment work that is to be done in the Cabinet Office, there are, as you say, policy issues and policy choices. There is also the whole issue of collecting together which European laws apply in this country. Some are applied through domestic legislation, which we might or might not wish to repeal down the track, but some apply directly. I wonder if we could just explore for a moment this issue of the legislation that applies directly and how we are going to cope with that. Is there not a risk that a speedy withdrawal could mean that we have no legal cover whatsoever, for example on agriculture. It is the most obvious example, but there are other examples too. Could you just say something about that and how one might handle that issue?

***Professor Dougan***: EU legislation applies in the UK without any form of domestic transposition, either by Act of Parliament or by statutory instrument. If we leave without having made a conscious political choice that that legislation needs to be replaced—whether it is replaced in the sense of pure replication or whether it is replaced in the sense of a new statutory regime that differs from the current norms—the danger is that will simply disappear from our legal system upon the point of withdrawal. We will be left with legal vacuums where suddenly we do not have any regulation of important parts of the economy and society.

This does not just apply to agriculture. It applies to important parts of environmental policy and consumer rights. It applies to quite significant parts of financial services regulation. All across the legal system there are pockets of our law—EU regulations in particular—that will need to be put on to a firm statutory instrument basis. If we do not do that, they will disappear. To be frank, it will wreak havoc with the authority of public bodies to take legally binding decisions and with the legal relations of individuals and businesses. It is a job that really needs to be done.

Q83 **Helen Goodman:** Is that even with the power to give grants?

***Professor Dougan***: I am not sure specifically which grants you might have in mind.

Q84 **Helen Goodman:** I was thinking of the Common Agricultural Policy.

***Professor Dougan***: When we leave, the Common Agricultural Policy will no longer apply to the UK. Virtually the whole of agricultural policy for the country will need to be redesigned in some shape or form.

Q85 **Helen Goodman:** Are you suggesting that, in parallel with the withdrawal process and negotiation—we will come on to when Article 50 is triggered in a moment—we need to be introducing primary domestic legislation on all these big four areas that you have mentioned?

***Professor Dougan***: I would go further. I am suggesting something quite a lot more thorough than that. Also, in fields where there is statutory implementation of EU law and statutory instruments transposing EU law into UK law, we will need to double check all of it. Much of that legislation will simply make cross-references to EU legislation or it might confer decision-making powers upon EU bodies or agencies.

It might well be that the legal basis of some of these statutory instruments is not entirely secure. It is not just about the areas of UK law that derive directly from the EU through directly effective EU regulations; the whole legal system needs to be checked to make sure that we do not inadvertently wreak chaos upon the authority of our public bodies and the security of individual relationships.

Q86 **Helen Goodman:** How many lawyers do you think it will take to do this piece of work?

**Chair:** Just Professor Dougan.

***Professor Dougan***: Just Professor Dougan. It is a gigantic job, and if you get two EU or constitutional lawyers in a room with each other these days, it is one of the first things we start talking about. It is a gigantic job.

Q87 **Helen Goodman:** It sounds to me as if you can sweep aside anything else that people might have wanted to put in Queen's Speeches. We would be under-resourced, both as a legislature and a Government, to tackle this within two or three years.

***Professor Dougan***: My main worry, which I know is widely shared by many of my colleagues in the field constitutional law, is that this is a job that cannot be done by Parliament alone. It is simply too enormous. In the timescale applicable, it is too enormous. The only feasible, logistical way that we can see this being possible is to make an enormous delegation of power to the Executive. You can have parliamentary scrutiny over the Executive actions. Of course you can—you need to. But in terms of doing such a degree of highly detailed technical work, which nevertheless involves important policy choices, it is very difficult for most constitutional lawyers to imagine how this Parliament could do that for itself in the timescales available.

Q88 **Helen Goodman:** Would you describe that delegation of power to the Executive as taking back control and reinforcing parliamentary sovereignty?

***Professor Dougan***: On any measure of ordinary constitutional theory, it would be seen as democratically highly problematic.

Q89 **Helen Goodman:** Can we talk about Article 50—the triggering of Article 50? The idea has been floated that we put the Article 50 trigger into primary legislation. There was a hope among some people for many years that all they had to do was repeal the 1972 Act and with one bound Jack and Jill would be free. That is clearly not going to be how it pans out, but just to deal with this issue of the lack of transparency and the difficulties of just handing everything over to the Executive, including the trigger, could you say how we might put Article 50 into primary legislation and what you think the pros and cons of doing that might be?

***Professor Dougan***: Is this for me again?

**Helen Goodman:** Yes.

**Chair:** Give the others a go.

**Helen Goodman:** The legal stuff is quite important. It is worth exploring these legal questions.

***Professor Dougan***: The day of the constitutional lawyer has come. We are all aware that there is a very important legal debate happening within our own country about whether Article 50 can be triggered purely by Royal Prerogative, about whether Article 50 should be triggered by primary legislation, about whether there is some combination of parliamentary and governmental participation that we need to secure. We are all probably aware that this issue is likely to end up in the superior courts for a judicial determination, which will effectively settle the issue for us.

Q90 **Helen Goodman:** Why is it likely to end up in court? Sorry, I do not understand.

***Professor Dougan***: I have heard that there is a legal action being planned in order to obtain some sort of declaratory clarification of what the correct constitutional process would be from the High Court, which may well then be appealed up through the superior courts.

Q91 **Helen Goodman:** At the moment would that go up through to the European courts?

***Professor Dougan***: No, I doubt it. I very much doubt it. Almost as a matter of good constitutional politics and practice, regardless of what the courts finally tell us the legal obligations are, there are two factors that really speak in favour of strong parliamentary affirmation of the Article 50 process rather than purely governmental affirmation.

The first factor is that this Parliament is the sovereign law-making authority for our country and we are a representative democracy. This was not a legally binding referendum. The referendum result is not binding on this sovereign Parliament. Many people are looking to Parliament to exercise its entirely proper constitutional responsibility to make a political judgment about the most important decision that this country faces for a very long time.

In a way it does not actually matter. Constitutionally it does not matter what this Parliament decides. Do we leave? Do we stay? Do we seek alternative arrangements? Do we join the EEA? Do we have a second referendum? In a way the outcome constitutionally is less important than the fact that this Parliament makes a political judgment about the outcome.

The second factor that speaks very strongly in favour of this Parliament making the decision about Article 50 is the constitutional context that is provided by the European Union Act of 2011. We will all remember, I am sure, that the European Union Act provides for a huge range of situations in which decisions about the relationship between the EU and the UK can only be taken through a national referendum together with an approval through Act of Parliament by this Parliament.

Some of those decisions are quite important: a common European defence, joining the single currency and abandoning border controls. Some of them are incredibly technical and minute. It covers, for example, changing the council voting rules on deciding which military products are exempt from the single market rules. We would need a national referendum and an act of Parliament to approve that change in EU law.

Bizarrely the question of leaving the EU was left out of the European Union Act, so technically there is no obligation to have either a referendum or an Act of Parliament to leave the EU under this particular legislation. However, I think most constitutional observers would regard it as bizarre, if not altogether perverse, if those types of questions require a national referendum combined with an Act of Parliament in order for them to have legal effect, but the most important decision of the lot—leaving the EU—does not require the participation of this Parliament. That would be a very peculiar situation in which to find ourselves constitutionally.

Q92 **Helen Goodman:** Thank you very much for that very full response, Professor Dougan. Do others wish to comment on this set of issues before I move on to some more political questions?

***Raoul Ruparel***: The question arises: what if Parliament did vote against triggering Article 50? That would leave us in quite a grey area between what direct democracy has thrown up in terms of result of the referendum and what Parliament has voted on, and the path from there would be incredibly difficult to chart. The politics of this also have to be kept in mind as well and how that all plays out.

Q93 **Helen Goodman:** Just let me pause you on that. Parliament might say "no" to triggering Article 50 not forever but on the terms and conditions as proposed by the Executive. That would not run into the same problems that you are describing, would it?

***Raoul Ruparel***: It does depend what comes next. Are the terms then we have another renegotiation, and what are the prospects of that renegotiation delivering anything different from the previous Government's renegotiation? Would it be we wait and see where the eurozone is going in the longer term or we wait and see what happens in upcoming elections? There are lots of uncertain questions like: if not now but later, what happens in the interim? I am not sure that would be sufficient.

Q94 **Helen Goodman:** You are surely not suggesting that the Government should bring forward legislation to trigger Article 50 without being able to tell Parliament and the public the terms that it was seeking for withdrawal and for a new relationship, are you?

***Raoul Ruparel***: No. All I am saying is that it has to be clear, if Parliament says "no" to triggering Article 50, what the terms of that are. Just saying "no" without any other explanation or where we go from there would leave a big grey area between the result of the referendum and Parliament's will. I am just saying there needs to be a path forward from that point included. We cannot just say "no" to triggering Article 50 and leave it there. As you are suggesting, there needs to be a path forward, because there would be quite a crisis between that and the result of the referendum.

Q95 **Helen Goodman:** Dr Niblett, do you want to comment?

***Dr Niblett***: I do not mean to take you off more on this, but it strikes me that this period prior to triggering Article 50 is the most critical period for the United Kingdom. A number of the reasons why have been noted, both in your questions and in the answers.

Absolutely central to this must be a political understanding with the other member states that the Article 50 process will run in parallel with a discussion about the future relationship of the UK with the EU. I will be careful next to constitutional lawyers here, but there is this wonderful phrase that "the Union shall negotiate and conclude an agreement … taking account of the framework for its future relationship with the Union". That phrase in there is critical. You have the Commission saying one thing: that these things have to be sequential. You have member states saying, "Maybe we can do these things in parallel".

It would be a remarkable loss of sovereign capacity to negotiate if you were to allow those two things to somehow be separate. There are pressures on timing and how much time one really has to be able to manage this process, because the more you stretch it out, the more uncertainty digs in economically. We may come to those points later. It strikes me that in trying to engage with member states during the Article 50 process, knowing when you go into it that you already have the right for a parallel negotiation, not a sequential negotiation, is essential.

***Sir Emyr Jones Parry***: If I may, Chairman, Professor Dougan has brought out very clearly the constitutional complexity. I just want to follow up what Dr Niblett said. Before the United Kingdom leaves the European Union, there are four things that have to be covered. I just want to stress this. The first is the withdrawal agreement. The second—and I agree very much that we should do it at the same time if we can—is the long-term relationship. Thirdly, there are some 50 or so countries where Britain's trade agreement with them is through the European Union, so we have to think very seriously about by the time we leave what our trading agreements with those countries are to be.

**Chair:** We are going to come on to that.

***Sir Emyr Jones Parry***: I just want to bring out the complexity. The fourth one is that we will need domestic arrangements, notably in the Common Agricultural Policy but not just in that area. There is the whole question of research policy: all those grants that came from the European Union and the funding arrangements that follow; monies which have been promised and re-promised—overbid, shall we say. Clearly there is also the constitutional complexity of devolution and matters that fall within the devolved administrations—how that is going to be covered.

I stress funding, because structural funds and the CAP are different regimes in each of the nations. Structural funds have the benefit that they are needs based. You meet criteria, and unfortunately if you are poor enough, you get the money. That is not the way Barnett works. At some stage how the substitution of EU expenditure by that part of the gross contribution that we are no longer making to the EU budget is disbursed has to be sorted out. That will be both technically and politically difficult.

Q96 **Helen Goodman:** I just want to raise one other issue. We had a rather heated exchange in the House yesterday about the status of EU citizens living in the UK. To what extent might it be possible to hive off some pieces of legislation that are particularly politically urgent from the general withdrawal process? That is one example, but there may be others as well.

***Sir Emyr Jones Parry***: On the politics of EU residents currently in the United Kingdom, and I think of the university that I am chancellor of, there are EU citizens who make a terrific contribution. That their continued presence in the United Kingdom should be brought into question by, in my view, not-thought-out comments by those advocating that somehow they be held hostage in any negotiation is deeply worrying. The immigration genie that has come out of the bottle has made people who have settled in the UK and who are contributing very substantially to the UK question the country in which they find themselves.

Q97 **Helen Goodman:** I understand the human and social issues. I was asking about the legal question as to whether or not we can tackle that independently.

***Sir Emyr Jones Parry***: If we take action against EU residents here, bear in mind how many UK residents there are in other member states. In my experience in Spain, when I was dealing with the issue in terms of the consular responsibility, most of them will find themselves with insufficient funds to come back to the UK, but if they are patriated, the burden on local authorities etc. will be very considerable.

**Chair:** You wanted to say something quickly, Professor Dougan.

***Professor Dougan***: If you would like a quick legal summary of what the situation is likely to be in the field of existing migrants—we are talking not about future migrants but existing migrants—there are a couple of quick points to make. First of all, this will be one of the main subjects for the withdrawal agreement negotiations. It has to be. It is probably the most important and most technically complex part of the withdrawal agreement negotiations.

The treaties make no provision for the protection of acquired rights, despite what we have heard repeatedly in various contexts. This is something that has to be agreed between the two sides. If we do not reach any particular agreement on it—if there were no special provision made to deal with the rights of UK migrants in the rest of the EU and EU migrants in the UK—we will revert to ordinary status of third country nationals under immigration law. For example, UK nationals in the EU would become subject to whatever EU legislation is applicable to them. There are directives on the rights of long-term resident third country nationals. There are regulations on social security co-ordination, which will be of particular importance to retired UK nationals who depend on having their pension co-ordinated in order to meet residency requirements in another country.

They will also become subject to ordinary national immigration rules in those states. Their immigration status will be determined by a combination of UK minimum standards, where they exist, and national immigration standards as well. We should not forget that there are also the obligations under the European Convention on Human Rights. That will, to a degree, qualify some of the immigration competence, both of this country and of other European countries, particularly the right to private and family life and protection against deportation—if you have lived in a country for 40 years and you cannot even speak the language of the country you originally came from, for example.

We are really asking what the withdrawal agreement will add over and above those basic levels of protection under EU, national and ECHR immigration law. It will be reciprocal. That is one of the key points we should bear in mind. It will be reciprocal. For example, if we do end up with immigration reforms in the UK that imply some form of visa requirement or at least a visa waiver requirement for people entering our territory, we can fully expect that the EU will reciprocate and impose either a visa requirement or at least a visa waiver requirement for UK nationals entering their territory. These things will be reciprocal. That is the basic legal position.

If we want to hive off some of these issues in advance, we should bear in mind it will be affecting our future negotiations in the withdrawal agreement, because this will have to be dealt with in that context.

Q98 **Helen Goodman:** If we exited the ECHR, of course the position would be different again.

***Professor Dougan***: It would be very different again.

Q99 **Chair:** On that, it may be technically complex but it does seem to a good number of us that all the ethical and all the economic arguments—

bearing in mind the jobs that many of these people do—point clearly to finding a way of rolling over existing rights. That point was made from both sides of the House a good deal yesterday. It may look like a unilateral move, but if you look at it from the perspective of our current EU partners, for them to do anything other than respect those rights would also look pretty extraordinary. We need a sudden burst of common sense on this issue to take it forward more quickly than perhaps might be accomplished in detailed negotiations.

Can I just clarify one point with Dr Niblett? This brings us back to these constitutional arrangements that we might consider that we have in the UK for withdrawal pointing to the need for a parliamentary decision about the implementation of Article 50 rather than an executive decision. Most of our counterparties in the EU have quite sophisticated constitutional arrangements, with which you will be familiar, most of them supported by bodies of higher law. Do you not think that most of those countries will therefore accept the inadvisability of the UK, or any country, trying to implement this as an executive decision or press Article 50 as an executive decision?

Therefore, will they not respect the fact the Executive must come forward to Parliament with its proposed implementation of Article 50 in order to fulfil obligations derived from the referendum only once it is confident it can get a majority, which will be presumably when it has some idea what we move to, and therefore pre-negotiation with our colleagues is an inevitable, practical necessity deriving from those constitutional arrangements? That is a long question but it is a simple point at its heart. Have you any thoughts on that?

***Dr Niblett***: I am tempted to say yes and stop. You have a huge range of countries there, many of which do have quite elaborate constitutional arrangements but nonetheless where parliaments are often not as vocal or powerful despite those constitutional arrangements as they are in the UK without its constitution. Although Germany is a little sui generis on this, I would say other EU countries and parliaments are going to follow what their executive is suggesting they should do.

We are in a much more febrile political environment, where governments and executives will be concerned about whether more anti-EU parties are going to try to make hay somehow out of the British decision and try to scupper or just make things difficult. Even if the national government felt it had a parliamentary majority in itself to be able to accept the UK taking the approach you just described, they are going to have to be looking over their shoulders right now as to whether other disruptive elements in their governments try to do something about it.

My answer is "yes". As we have already seen in the reactions to Jean-Claude Juncker's "you have got to get on with it or else", there is a pretty robust national government desire to say, "We need to work this out in a grown-up way", and take that more comprehensive approach you were describing. That is the majority view of the key EU governments.

We just have to be very careful that, as time stretches out, how long does it take the UK to get to the point where it does feel it has the confidence. The more time stretches out, we have elections come up etc. The context is maybe not as politically certain as the legal framework implies.

Q100 **Chair:** I have a second question, which you have begun to touch on, that derives from the assumption that you might be sympathetic to the view I expressed in the first, and you said "yes". That is, at the moment the EU countries—most of them—are on a desired timeframe of "get Article 50 under way as soon as possible and, come what may, get the UK settled and out early in 2019". They do not want us in the EU at the time they form a new Commission, go to European Parliament elections and take a whole host of decisions on buttressing the eurozone, which is a major preoccupation of theirs, not to mention the problems with Schengen, which may also require further legal activity at European Council level.

If that is the case, a first challenge lies not with us but with our negotiating counterparties, who have to realise that on the one hand there are these clear constitutional issues that we must respect and that is going to affect the timeframe to an enormous degree. On the other hand, they have their desired timeframe, which is much shorter, and these two are likely to be incompatible. Is that a correct description of the current state of affairs?

***Dr Niblett***: The timeframes are problematic, if not incompatible, for the reasons you have just described. You have the new financial framework as well emerging in that 2019 period, so on top of the reasons you just gave there—European parliamentary elections and new commissioners etc.—there are a lot of reasons why they would like to get this sorted out.

Q101 **Chair:** So, it is Schengen, the new financial framework and the eurozone buttressing, plus the elections.

***Dr Niblett***: They would like to get it done. That being said, we are back to where we sit. The UK has an enormous challenge to get its ducks in a row in time to meet that timeline. In a way we both need each other. There is an element of interdependence here, which is why I do not foresee the Governments wanting this to be a conflictual process. The Commission will be told to be supportive rather than be leading on this. Still, I find it challenging to think how we will get all these things done in that timeframe.

Q102 **Chair:** You are very close to this. Is there not a huge gulf at the moment between the French position and the German position and the position of the recent accession countries of Eastern Europe?

***Dr Niblett***: There are political divisions to do with near-term timing of elections more than a fundamental difference. France, if we can just go off on to this for second, is a little schizophrenic about its attitude to Britain. It wants it in and not.

**Chair:** That is a surprise.

***Dr Niblett***: To be helpful from the point of view of this Committee's discussion, those divergences between those countries will be disciplined by the seriousness and the urgency of the situation.

Q103 **Chair:** Sir Emyr, you have a wealth of experience in this field. Have you anything to add to the evidence that has just come from Dr Niblett?

***Sir Emyr Jones Parry***: I would like to concur with Dr Niblett, but I think we can overstate the degree of sympathy and understanding that we might find. We are going into this negotiation at a very considerable disadvantage. The default option is that there is no agreement and in two years we are out.

Q104 **Chair:** Once we have pressed Article 50, but we have not and they do not want us pressing it at a moment that is inconvenient to them, for example in, shall we say, June or July of next year, when they are holding elections.

***Sir Emyr Jones Parry***: Yes, but for us the main qualification ought to be: "Do not press it until you are sure that you have, as I said, the ducks in a row and you are fairly clear what you want". If we embark on something where it is not clear what it is we are looking for or where the leadership is taking us, and we have not done all the necessary homework, it is a pretty difficult negotiation.

Q105 **Chair:** We need to do the homework and then the question that needs to be asked is: are we going to get a pre-negotiation out of our counterparties?

***Sir Emyr Jones Parry***: Pre-negotiation, given that the Commission will be doing the negotiation—

Q106 **Chair:** Why are you making that assumption? Why is this not done at intergovernmental level? After all, this is the tectonic plates of power operating here. This is countries operating on the basis of their national interest in a pretty raw way.

***Sir Emyr Jones Parry***: Governments without doubt will give the instruction but, as I understand the procedure, the Commission will seek a mandate, and the Commission will do the negotiation and then report back. There will be a decision by enhanced qualified majority in the Council.

Q107 **Chair:** That is why I am talking about pre-negotiation. Everything you have described there is negotiation.

***Sir Emyr Jones Parry***: Pre-negotiation may be too strong a term. Pre-contact and creating an atmosphere where the other member states want to be helpful, understand their interests in being helpful—

Q108 **Chair:** For what it is worth, I think we need to be helpful. They have interests; if we show we respect those interests, we might make some progress. I do not want to let my views get in the way of it. I am just trying to establish whether there is scope for pre-negotiation. Dr Niblett seems to be saying "yes" and you seem to be saying "no".

***Sir Emyr Jones Parry***: I would just not call it pre-negotiation. I would call it a stage four, where one tries to get people on board.

Q109 **Chair:** We are happy to play semantics. Dr Niblett?

***Dr Niblett***: Just very quickly on these points, my motivation for saying what I am saying is not because I think other EU member states would have sympathy for Britain. This is a situation of mutually assured deep damage, if not destruction.

**Chair:** That is the tectonic plates.

***Dr Niblett***: Tectonic plates. I think the member states in the end will very firmly say, "Do this today". I suppose this would qualify as a mixed agreement, again, if I am using my terminology right. They would be very much imposing the mandate on the Commission. This is part of the political discussion we are seeing here. That is why, rather than just good feeling, we need to be trying to get to a point where that word "framework" means something. It would not be pre-negotiations. I totally agree with Emyr Jones Parry that that is more than is possible, but it could be more than just having a conversation to see if we get on with each other.

Q110 **Stephen Hammond:** Chairman, you have taken almost all of my line of questioning, but nonetheless I will see what we can pick out of it. I want to explore further the differences between the nation states and the Commission, but let's start with the growing acceptance in the political establishment and commentariat in this country that, prior to triggering Article 50, it is in the best interest of our country to play it long, to quote the phrase. Do any of you demur from that? I am seeing a lot of shaking heads, so I will take it that you have a unanimous view on that point.

Can we just try hard a little bit on the timeline? Lord Turnbull, who came to speak to us last week and gave evidence, suggested that the timeline itself in terms of when he expected Article 50 to be triggered was certainly not until at the very earliest spring next year but much more likely winter, Christmas 2017. What are your views about when you see Article 50 being triggered?

***Raoul Ruparel***: This comes to the point about the elections next year. There is a good chance that if we trigger it at the start of the year, much of the year is spent waiting on the French and Germans while they are going through their electoral processes. It limits how much discussion and detail can really be got into. As we have already heard, the member states will be setting the broad political agenda, and without the two biggest member states being able or willing to commit to firm positions, it will severely limit the scope of the negotiations.

That is an uncertain trade-off. We do not know how much can really be done in 2017 if we do trigger it at the start. I guess it also depends, coming back to this point— a lot of this depends on the separability issue. Are we negotiating? Are we talking about just the transition arrangement? Are we talking about the FTA or whatever comes next, or both together? You might be able to make more headway on one than the other, but together it would be hard to see much being done when neither France nor Germany are really able to call any significant shots.

Tying it to the domestic political process though, is waiting another year or year and a half realistically feasible post a referendum? That is a big unknown as well. Marrying those two is going to be the challenge.

***Dr Niblett***: The context may not be just a benign one for the negotiation. I would agree with Lord Turnbull. Raoul's analysis of the dynamics are exactly right, but where is the UK economy at that point? If there has been some sort of drop back, will there then be pressure to say we need to get certainty—that wonderful word—whatever certainty is? We have to get that process going earlier towards certainty.

There might be problems in one or two EU governments, such as Italy. We do not know how Prime Minister Renzi is or is not going to survive his own referendum he has coming up about political and constitutional reform later on this year. We need to be ready for the fact that we may be pushed to move faster than would be wise. Therefore in this period now over the summer, into the autumn, in case you do not have the cushion to take the time that I would agree you would like to under normal circumstances, we really have to get our ducks in a row as quickly as possible in case circumstances or events go wrong.

***Professor Dougan***: I have just two quick points. First of all, on this point of the relationship between negotiations and pre-negotiations, the EU 27 have said, "No negotiations until notification", and The Commission has said, "No negotiations on framework agreement until after withdrawal". The word "negotiation" in both of those contexts is being used in a highly legalistic way, and accurately, I suppose, but of course that does not stop us having informal contacts and discussions, and that is exactly what we should be doing with everybody we can.

Q111 **Stephen Hammond:** That is exactly the point the Chairman was taking in his line of questioning, which is a very fruitful line of questioning. Would you agree there are different appetites between different nations, and clearly a different appetite post the heat of battle from the President of the Commission to certain leaders of national states. Is that a fair summary?

***Professor Dougan***: For example, the Commission has said no negotiations until the UK has become a third country and has left the EU. Strictly speaking that is correct, because under the relevant treaty provisions you can only negotiate with a third country—"negotiate" in a technical sense. However, given that Article 50 specifically says that the withdrawal negotiations should be conducted having regard to your potential future relationship with the EU, it is implicit in these provisions that there must be more informal negotiations and more informal discussions.

Q112 **Stephen Hammond:** Thank you. That is very helpful. We can take the legal point there, so let's explore it. In some of their trying to make reassuring noises, Vote Leave talked about extensive preliminary discussions. Gove said in a speech "preliminary informal discussions". What is the sense of the appetite, from you gentlemen, among EU nations for those discussions as opposed to "negotiations" in the strict legal sense?

***Sir Emyr Jones Parry***: Mr Hammond, there would be different reactions in each of them. What is important is that we crack on with it and whatever, Mr Chairman, we call it, that process of contact with individual member states is going to be quite crucial. The sooner we are in a position to have an informed discussion with them to test what they think might be possible, but also to be clear about what we think we might like, the better.

That process has to happen, and the more it is done, the more it softens up the helpful member states and they are more prepared to lean on the Commission, which is by instinct not going to be helpful, and the European Parliament, which does not show very much sign at the moment of being helpful. A very extensive diplomatic onslaught has to take place. Call it whatever you may, Chairman, but it is vital that it take place, because the atmosphere will determine what is politically possible.

Q113 **Stephen Hammond:** Can I press you again on that point? If you take the analysis given a moment ago—and we all know when the elections are happening—that we need to start these discussions as fast as possible and have them, what is the timescale? What appetite do you sense for when those discussions should end? When will they be looking for us to trigger Article 50?

***Sir Emyr Jones Parry***: There are a number of factors there, and one of them is whether the contacts with the member state indicate whether they think it is all achievable in two years or whether they would be prepared to extend, which they can, the period, because then the pressure is off. We could trigger Article 50 earlier, notwithstanding the point about the elections, in the expectation it would take more than two years. If there is a very tight view it is two years, the case for delaying triggering, absent of something serious on the economy, in that case becomes much stronger.

Q114 **Stephen Hammond:** Say if the other EU nations or the EU Commission or whatever wanted us to trigger Article 50 earlier than we wanted to, what practical pressure can they bring on us to do that, both politically and legally?

***Professor Dougan***: First of all we should not assume that the European Commission is going to do the negotiating. The treaty does not say that the European Commission will do the negotiating. It says that the Council will appoint the negotiating team. The Council might appoint national representatives, member states. It is not necessarily the Commission that is going to be leading these negotiations. In fact, it is arguable that it is at such a high level and it is of such fundamental importance that the Commission may well be associated but will not be leading the negotiations, so we should be clear about that.

One of the issues that came up almost immediately after the referendum result among the lawyers was: can we deem the UK to have given notification if they have dragged this process out for too long? Very quickly both the member states and the Commission said, "No; we need an explicit statement from the UK that they are triggering the Article 50 process", but we know in the background that there are legal teams who are saying, "For how long should we maintain that position? This is politics. It is not war".

Q115 **Stephen Hammond:** Can I ask you one other direct legal question? If we triggered Article 50, is there any way we can change our mind and stop the process?

***Professor Dougan***: The assumption is that it will be possible. Article 50 is such a bland piece of text. It outlines a very straightforward scenario. Like most legal provisions, it does not cover every eventuality. You have to read various questions into it. One of the main questions is: can you undo your notification and remain a member state? The answer that most lawyers have given—and I know that, for example, the French government legal service has told the French government the same answer—is "yes", you can withdraw your notification before you leave.

***Raoul Ruparel***: Just on that point, it would have to be in the context of willingness from the other parties as well. You have to have goodwill to withdraw it. Because it is not clear in Article 50, if there was unanimous agreement to force it on the other side, they potentially could, but the understanding is that if you had, say, a new democratically elected government that changed their position, there is a potential to stop it with the goodwill of the other parties.

Q116 **Stephen Hammond:** I think I heard you say in response to one of Helen Goodman's questions earlier that you would prefer to see the negotiation about the withdrawal process and the agreement establishing the future relationship as a parallel track. When Sir Jon Cunliffe gave evidence to this Committee, he stated quite clearly that he felt it would be impossible to achieve that and desirable to have them as separate tracks. I wonder if you could go into more depth as to why you regard it as such a positive to do it as a parallel.

***Sir Emyr Jones Parry***: It is partly because technically it is potentially covered, but more importantly to end up in a position where we have agreed the way out but have no idea about the future seems to me singly bad negotiating all round. In terms of "certainties" that need to exist, it is important to reassure people that as we are withdrawing there will be replacement policies put in place—different undertakings that I hope will suit the service industry and so on.

Q117 **Stephen Hammond:** In terms of Commissioner Malmström's remarks last week, we should see those in the context of the strict legal sense of negotiation as opposed to the possible opening up for discussion inside the two-year period?

***Sir Emyr Jones Parry***: It all comes back to the politics and the relationships we have with the other 27.

***Dr Niblett***: The importance of it being parallel rather than sequential is just as Sir Emyr Jones Parry described. The question that is interesting to me, and I am not a legal expert on this, is whether it would be possible for the European Council and potentially the European Parliament to approve a framework agreement prior to the withdrawal treaty coming into practice. The agreement that was just struck at the heads of government meeting on 19 and 20 February had a fair amount of stuff that would be passed later on, but where the heads of government said, "We stand by the commitments that are made here; we will make sure they are implemented later". These are the kinds of things that need to be explored. I see Michael shaking his head here.

***Professor Dougan***: They are legally very institutionally and procedurally separate. If we wanted to go for the least possible ambitious relationship with the EU imaginable, maybe it could be done fairly quickly, soon after the withdrawal agreement. If we want any type of vaguely more sophisticated relationship with the EU—which we undoubtedly will—that agreement will need to be negotiated through the very specific processes set out in the treaty. It is almost certain to be a mixed agreement, and a mixed agreement needs the individual signature of every member state, as well as the Council and the European Parliament, and it can only enter into force after the national ratification procedures are completed for every member state.

We know from experience that it can take several years for a given country to ratify an international treaty of this nature, so the chances that we will have a withdrawal agreement followed soon after by a framework agreement are very slim indeed.

Having said that, it would be very odd to negotiate our withdrawal agreement without having a very clear idea of what we want that future framework agreement to consist of, partly because the content of the withdrawal agreement will be determined by what we want. If we want to join the EEA, we are going to want to preserve virtually every aspect of our co-operation with the rest of the EU as far as possible. If we do not want to join the EEA, we can afford to see some of that co-operation disappear. One negotiation therefore closely informs the other.

***Raoul Ruparel***: From a political and negotiating standpoint, there is an advantage to the UK in keeping them linked. If you look at the cards and leverage that the UK has in these negotiations, it is particularly in areas such as our EU budget contributions, what we do on immigration, how much free movement we agree to or what we do for citizens that are already here, and also foreign and security policy—being a large military and foreign policy power.

These are areas that would be more located in the transitional withdrawal agreement than the trade agreement. If you negotiate purely on a trade agreement basis, the balance of power, given that the EU is a much larger block, might be more in their favour. Therefore keeping the two linked, given the cards the UK has to play, is to the UK's advantage. Separating them out would therefore not be advisable, if the UK could avoid it.

I also do not think the two are entirely separable. We will obviously deal with issues of immigration, but it has already been made clear by the EU that issues over the free movement of goods and services are linked to the free movement of people. The idea that these are two entirely separable issues is also questionable.

Q118 **Stephen Hammond:** A week before the referendum, in their document *A framework for taking back control and establishing a new UK-EU deal after 23 June*, Leave said that the centrepiece of the plan was to reform the European Communities Act of 1972 by 2020. Is that possible?

***Professor Dougan***: This comes back to the question that Helen asked before: "Is leaving the EU simply a matter of repealing the European Communities Act 1972?" Anybody who believes that is so naïve and so lacking in any understanding of what EU membership involves, and what leaving the EU involves, that it is just not a credible position.

Q119 **Stephen Hammond:** Should the answer I take from that, Professor Dougan, be, "Yes, of course we could do it by 2020, but that would not only be in our worst interests but not solve any of the challenges that face us?

***Professor Dougan***: If we would like to throw our own country into a state of disorder and uncertainty, and alienate virtually every one of our closest friends and allies, we could do that.

**Chair:** We got a clear steer there.

**Stephen Hammond:** I did, thank you.

Q120 **Wes Streeting:** It would surprise you to know that there are people in this building who think we should do exactly that and they seem to be calling the shots at the moment.

I want to pick up on the final point that Professor Dougan talked about, which was the likelihood of any agreement on our future economic relationship with the European Union being a mixed agreement, thereby requiring the competencies of both the European Union and individual member states and parliaments to be invoked.

Effectively you are saying that there will be 28 opportunities across national parliaments and the European Parliament, or national governments and the European Parliament, to scupper any deal once we have reached an agreement around the Council table.

**Chair:** It will only be 27.

**Wes Streeting:** I am counting 27 member states, plus the European Parliament.

**Chair:** I see. You are right.

***Raoul Ruparel***: That might include regional parliaments as well, so it may be over 30.

***Professor Dougan***: If we are talking about membership of the EEA, it also means that we have to first join EFTA, so the Swiss need to agree; and we then need the consent of the three EEA states: Norway, Iceland and Liechtenstein. We are already up to 31 or 32 vetoes if we decide to go down the EEA route.

***Dr Niblett***: On this point, yes, technically anyone could veto. However, the experience of most agreements—not intergovernmental treaties—of this sort is that, by the time you get there, people generally are going to approve it.

You can never say never, but it is not that you have ambushes waiting in 28, 30 or 35 situations here. This is why I raised the point earlier that, if you can get a heads of government notional agreement on something, yes, it would need to be ratified by 27 governments, 28 parliaments, etc., but the Parliament might be the most risky part of all of that.

If the heads of Government say, "This is the deal we think is best for all of us"—it has to be best for all of us—and the UK has driven the wrong kind of deal, yes, you will not get that. I do not want to come away giving this impression that all 28 are roadblocks.

***Professor Dougan***: No, but the power of the veto operates at the stage of negotiation. It is not that you reach a final agreement and then people randomly veto it. The power of the veto is that, if you go in asking for a deal and people do not like what you are offering, they will just say, "We will never agree to this at all". Maybe a better way to put it is that we need the agreement of 30-odd countries if we want to join the EEA, or 27, plus the European Parliament, if we want to have a simple agreement with the EU.

Q121 **Wes Streeting:** You have neatly steered into the politics of what is about to happen.

We cannot escape the fact that immigration and free movement was a central issue in the referendum campaign and arguably the decisive factor that led to a majority of voters opting to leave. Is it conceivable that we would get any agreement whereby we could retain access to the single market, or the sort of relationship we would want with the European Union, and still take countries like Bulgaria, Romania and Poland with us on free movement—let alone other historic member states that have a principled commitment to free movement? It is not going to happen, is it?

***Sir Emyr Jones Parry***: It is most unlikely. There is not a model out there at the moment that would answer your question. It does not exist. Of course, in the case of Norway free movement is accepted; it is a major contributor to the budget. The fisheries are re-negotiated each year, and it has to accept without any possibility of disputing whatever new legislation is passed in the single market.

That is the background we come to. It is interesting looking back at the renegotiation the Prime Minister went through where he was trying to get progress on this. The one strong argument was, "We need this so that the United Kingdom can remain within". The next negotiation will be, "We want access", but without the card "give it to us so that we can remain within because we are on our way out".

I therefore come back to the point that the leverage that will be possible will be very slight. An awful lot of the politics will have to be got right for the atmosphere of the negotiation. The Professor set out the legal position. The one qualification I would make is that ingenuity, in both the framework of agreements and timing, may get one round some of them. On the point that you cannot negotiate an agreement unless you are outside, you pre-negotiate everything and you bring the second agreement into being one minute after you have left. They are way through that, but they all require ingenuity, a huge amount of work, and the goodwill on all sides.

The mixed agreement point is totally valid, but one might be able to separate out the agreements so that part has to go through that, but the other part can be passed by the institutions of the EU.

***Professor Dougan***: I do not disagree with any of that at all. It is worth remembering that the EU 27, in the declaration that they issued after the European Council meeting last week, very clearly said access to the single market presupposes respect for all four of the fundamental freedoms included in the free movement of persons. We should remember that this is a core part of the EEA, for example, and is also one of the main bones of contention with EU relations with Switzerland.

Switzerland's legal relationship with the EU is nowhere near as sophisticated as the EEA. It is still a strong bilateral relationship, but it is nowhere near as sophisticated or close in terms of trade and economy as the EEA. When Switzerland had its referendum a few years ago and they decided to vote on imposing immigration restrictions that would also effect EU immigration restrictions, it caused a real crisis in EU-Swiss relations, potentially leading to a complete suspension of many parts of the bilateral relationship between the EU and Switzerland.

We can be fairly certain that the EU will dig its heels in here; it already said it last week. Free movement is a core part of full access to the single market, or even privileged access.

Q122 **Wes Streeting:** I will come back to the issue of goodwill and where we might get to with our partners across the European Union. I am quite surprised not by your answers but by your answers in the context that, writing in the *Times* on 25 April, Michael Gove, who now aspires to the highest office, said, "The UK holds all the cards in its negotiations with the EU". That is not what I have heard this morning.

***Sir Emyr Jones Parry***: I do not think Mr Gove has done sufficient international negotiations to be able to comment. So many comments have been made; I have to say this frankly to this Committee. Politicians have brought politics into such disrepute through the way that both sides have conducted this debate. There were so many inaccuracies and comments either based on ignorance, a failure to understand, or, at the other end, close to mendacity.

Q123 **Chair:** Did you take a look at the Treasury Select Committee report on this subject?

***Sir Emyr Jones Parry***: I always rely on you, Mr Chairman.

Q124 **Chair:** Did you take a look at the report? Did you find it addressed this?

***Sir Emyr Jones Parry***: My comment is made at the main items that have been put out, because they are so attractive: "I want my country back. I want control of my country". What does it mean? It does not stand two seconds of scrutiny; but it never got the scrutiny. It is so appealing to the public.

Q125 **Wes Streeting:** There are worrying consequences, because people have voted for a prospectus that now cannot be delivered, and that is going to do enormous damage. We will come back to the issue of the economics of the debate and the negotiations.

We have dismissed the nonsense from Michael Gove, but more substantially how important is the balance and volume of trade between the UK and the rest of the EU in determining the likelihood of an agreement being reached? There are of course lots of people who refer to the trade deficit and argue that that does give us a stronger negotiating arm. How strong is that arm in reality?

***Dr Niblett***: I do not want to refight the battle of the campaign. I shared my views on this and fully stand by them, but we are in a different context. Quickly, on movement of labour, this is not just the same stick that each side was beating the other with prior to and after the referendum. The UK is out, and if the UK is out, depending on what deal you end up with, you could end up with quite a bit of movement of labour not coming to the UK and potentially going to other EU countries that have large popular movements that are not going to be very happy about that diversion.

At the same time, if those other countries do choose to open up the services markets at some point, they might not be able to come from Romania and Bulgaria to the UK services market, where they have been coming to. They might decide to go to some other service markets. You will also have a situation where Romania has lost close to 10% of its population—I do not have the exact statistic. In the brain drain that has been going on over the last 15 to 20 years from these countries, they were most obsessed with unequal treatment. That was an important issue. Therefore, if the UK is not pushing for movement of labour, you may find that member states themselves start to talk about movement of labour.

On the four freedoms, what four freedoms? There are two or maybe three at the most. There is no freedom of services. Every time an EU member says, "What happened to those four freedoms? Britain is letting the side down". "Well, when are you going to open up your services market?" We therefore need to be careful not to just keep going on with the debate as it was before.

If I jump to trade, and I will let others speak on that, we are in a weaker position from that standpoint, not just because all of the statistics, which you know well, of proportions of GDP and trade as total exports, which heavily favour the bloc of the EU over the UK as a single country, but because striking the deals—the sunny uplands, I am afraid—of Britain outside, which is the alternative, is going to be very tough to do in a constructive way.

The UK would have more leverage if it could say, "Look, we do not need you. We can go outside". However, if you look at where most emerging markets are at the moment in terms of the transition they are making from developing to middle-income country, those transitions are not going well. The areas where they tend to be least interested in opening up their markets are the areas where we are most competitive, such as services. The leverage part is a very hard one to push.

***Raoul Ruparel***: I agree with much of what was said there. Taking the trade deficit point, firstly, to the extent that it might apply, it only applies to goods, so that needs to be separated out. People often talk about it in general terms, but we have a very large surplus in services. Therefore, if it does apply at all, it would apply to goods. On the goods side there is at least more precedent for getting reasonable access, in terms of removal of tariffs; it obviously goes beyond that in terms of access to the single market. However, the number of free-trade agreements that do provide opening of the goods sectors is more comprehensive, so there is more evidence on that side.

As for how much actual advantage will come in in the negotiations, we are a useful source of demand for a slow-growing eurozone bloc, so maybe that has some use. However, I would not overplay it. As I said, certainly on services we run a very large surplus, and that is a key source of our exports. The dynamics in that sector will be very different and the precedents in terms of access, as discussed, are not there when you are outside of the single market, so it is a different negotiation.

Q126 **Wes Streeting:** Professor Dougan, could you give us a bit of insight into how the preservation of the European Union itself begins to play into this, because there are two factors in the minds of the neighbours we are departing, are there not? There is the economic self-interest but also the political self-preservation of the European Union. It is clearly not in the interest of the European Union to make exit easy, because other countries may follow suit. How will that play into what we are about to encounter?

***Professor Dougan***: The background point that we should not lose sight of here is that we are not starting off from a position of wanting to bargain our way into some closed markets, where anything we get is an advantage. We are starting from a position in which we are full members of the single market and anything will be a backwards step for us. This is not about gaining an advantage; this is about minimising the disruption and disadvantage, and that is a really important point to bear in mind.

Secondly, I absolutely agree with Raoul. For goods, the single market functions very effectively. It is not just about tariffs, by any stretch of the imagination. The non-tariff barriers are the much more important part. However, our main economic interest is in services. Although the single market in services is more complex, there is a single market in services and it serves the British economy incredibly well.

One of the main problems in international trade outside of the context of the single market is that access to markets and services tend to be the last thing on anybody's list because they are so difficult, controversial and complicated. Unless we negotiate an agreement that is equivalent to the EEA, we will see a massive disruption to the regulatory environment in which a very important part of our economy operates.

The third point, on immigration, is that it is much more complicated than that the UK has problems with immigration and we want to sort something out. Every other member state will be looking at us and thinking, "EU immigration has done an enormous amount of good for your economy. The more that you want to restrict it, the more economic damage you are imposing upon yourself and the more you are stopping the brain drain, which does affect the economic performance of countries like Poland and Romania".

There are other complicating factors in immigration. A lot of people will be surprised to learn that most of the immigration in this country is not from the EU and the situation is much more difficult, and complicated, than they assume.

On the final point, on the preservation of the EU, it is of course a factor. There will be the hawks and doves, and the hawks will say, "We must make a lesson out of this. We cannot have a situation where a member state can effectively blackmail the rest of the union into getting major concessions that would not normally be available, and we cave in because we do not want to see the union itself collapse". It is very interesting to see that the European Council 27 statement has initiated a dialogue towards EU internal reform regardless of what happens with the UK. I am sure that one of the main issues on the list of EU internal reforms will be, "What do we do about issues around free movement, benefits and welfare provision?"

The EU will not stand still while we are getting our act together.

Q127 **Wes Streeting:** This has been really interesting. Aside from one or two of our own political leaders making very short-sighted and foolish remarks about immediately triggering Article 50, we have understandably come under immense pressure from EU member states who do not want the lingering uncertainty for the eurozone and wider European Union; they want us to get on with it. They do not have the luxury of determining when we fire the starting gun.

I know the answer to the first bit, but what probability do you ascribe to an agreement not being reached within two years of an Article 50 notification, and what will be the appetite for member states to give us an extension if we are not quite there; or will they simply dump us on a hard exit?

Finally and linked to that, we have seen some really strong reactions from European leaders in response to our decision. Manfred Weber, leader of the EPP—I cannot imagine why he has an axe to grind—said, "The time for appeasement is over". There is similarly striking language used by other European leaders within the European Parliament but also across the European Union. Will we see a return of goodwill? How far does that sentiment of appeasement with the British characterise the attitude of member states? Are we effectively about to embark on negotiations with a group of countries that are really angry with us and not prepared to budge very much?

***Sir Emyr Jones Parry***: When things settle, there will be a strong wish on both sides to come to agreements on trade. There are too many essential interests involved on both sides. What is unassailable is that free trade and the single market are two different concepts. The single market is much more valuable. It has been worth billions of pounds over the years. When one of the major figures in this debate described it as "just a phrase", it exposed the shallowness of the argument. It is very important.

Over time, we can be certain that it will become more difficult for the UK to export goods, including agricultural goods, into the 27 if there is no access to the single market. Trade will continue, but it will be diminished compared with what it might have been.

When you put the question, you said "an agreement". My hope would be that we would get several agreements, because we need to cover the future relationship. If we are not going to be solving the future relationship in an agreement within that period—if things have gone sadly awry—there is either the default option that there is no agreement and we are out or the possibility something is quickly put together to cover funds, movement of people, the migrants already here. However, the willingness to extend takes you straight back to the argument: "How have we related to the other member states? Have we demonstrated what we want—if the goodwill has been established—and in particular that it is in their interests that we should reach an accommodation?

Too many of our arguments have been self-centred. If we can put them as a common interest in doing things, we are more likely to get an extension.

**Chair:** There is great interest from colleagues in what all of you are saying. This is fascinating evidence. We are running a bit over time, but I do have three more colleagues who would like to come in.

Q128 **Chris Philp:** Welcome to the Treasury Committee. Thank you for your time this morning. I would like to specifically talk about how, or whether, we might enter into an arrangement based partly or entirely on the EEA, and I would like to start by trying to elucidate some of the implications of that. Perhaps Professor Dougan would be a good place to start.

Professor Dougan, the assumption seems to have been made that membership of the EEA implies no restrictions to freedom of movement. Does that correspond to your understanding, particularly in light of Article 112 of the EEA agreement?

***Professor Dougan***: We should place free movement in the context of what the EEA covers and what it does not cover. The EEA is a very far-reaching agreement. It covers all of the core treaty provisions and secondary legislation on the free movement of goods, persons, services and establishment. It covers competition law on state aids and public procurement. It also covers consumer protection, company law, environmental law and employment law. It covers various forms of co-operation, research and technological development, education and training, and so on.

Since the adoption of the EEA, over 7,000 pieces of EU law have been incorporated into the EEA agreement on top of the basic treaty provisions. It includes the working time directive and the free movement of citizenship directive. Many of the things that have been so controversial in a lot of the debate preceding the referendum are part of the EEA, just like they are part of EU law.

It does not cover things like the Common Agricultural Policy. There are no payments to farmers in Norway, for example. It does not cover foreign policy or the euro, but it is a very far-reaching agreement.

When it comes to free movement of persons in particular, there is a funny legal situation with the EEA. I mentioned it before. The EEA provisions are based on the EU treaty as it stood in 1992. The EU treaty provisions on the free movement persons have evolved since 1992; we now have the free movement of citizens as well as the free movement of workers.

Crucially, however, directive 2004/38, which governs the free movement of all EU citizens, is part of the EEA agreement. There are one or two adaptations to that directive under the principles of free movement within the EEA, but the main exception applies to Liechtenstein. Liechtenstein has quite significant restrictions on the free movement of European nationals into Liechtenstein. It is not surprising given the nature, size and territorial aspects of Liechtenstein as a country.

I have heard the suggestion that Article 112 of the EEA agreement could provide the basis for somehow exempting the UK from its obligations if we join the EEA, as regards free movement. I will give my honest opinion about this.

**Chris Philp:** Or at least modifying them—not exempting them but modifying them.

***Professor Dougan***: Sure. To be honest, entering into international negotiations with 30-odd countries for an agreement, when it is absolutely clear as day that full free movement of persons is an integral part of that agreement and must be respected in full, and then securing the national agreements and ratifications of 30-odd countries, and then trying to rely on a provision that is intended for emergency use in exceptional situations relating to very specific criteria so as to fully—but even partially—exempt ourselves from those types of obligations, would do nothing for our international credibility, would do nothing for this country on the international stage. Article 112 is an emergency safeguard provision for highly specific situations. It comes with obligations as well as opportunities. The idea that we would use it to somehow exempt ourselves from the normal regime of free movement of persons, wholly or partially, that applies under the EEA is, to be cruel, an armchair lawyer's argument.

Q129 **Chris Philp:** To be clear, the free movement provisions in the EEA relates to the free movement of citizens, not just to the free movement of workers.

***Professor Dougan***: The provisions in the EEA agreement itself relate to the free movement of workers, establishment and services. The EEA Joint Committee which is the body which absorbs European EU legislation into the EEA and makes it binding upon the EEA states, has absorbed the Citizenship Directive 2004/38 into the EEA.

There are certain grey areas that lawyers like me spend time playing around with. For example, there are certain rights that derive from the treaty provisions in the EU on citizenship that are not contained in the Citizenship Directive. They come directly from the EU treaty provisions on citizenship rather than from the directive on citizenship. It is not clear to anybody that those particular rights are part of the EEA obligations of the EEA states. To be honest ,they are very marginal. They only affect small numbers of people in very unusual situations. It is a very limited practical interest. In principle, Directive 2004/38 is binding on the EEA states as it is binding for the EU member states. We should not forget that Norway, as a result of that directive, has a number of EU migrants per capita that is higher than most of the EU member states, including the UK.

***Raoul Ruparel***: I am not sure if it is 112 or a following article that also allows, if this safeguarding measure is adopted, the rest of the EEA or EU to take retaliatory and rebalancing measures. If we did decide to activate it the possibility of reduction in access or other responses is also possible. It is more, in my understanding, to trigger a negotiation to try to find some agreement rather than something that can unilaterally stop free movement without any response. There would definitely be a retaliation.

Q130 **Chris Philp:** Professor Dougan, you listed a bit earlier the various things that are covered by the EEA. Can I just clarify as a point of fact whether or not the financial services passport used by many City firms would persist under EEA arrangements?

***Professor Dougan***: I tried to do as much preparation for this Committee as I could. I am afraid I could not get through all 7,000 of the EU instruments that are part of the EEA. The financial services bit is part of the 7,000 which I could not check. I had a look at certain instruments on consumer law, on employment law and on environment law, but I did not get around to financial services. That is a question I would have to double check in more detail.

I do know that the EEA states have had a problem with some of the recent developments in financial services regulation by the EU, particularly the reliance on EU agencies such as the Banking Agency, as a form of decision-making within the Single Market. The EEA states continue to have political problems with that type of agencification, which is the ugly word that we use these days. There are certainly issues around not just financial services, but also medicines regulation for example, where the EU is using novel forms of decision-making that the EEA states have a problem with.

We should remember that the decision to incorporate EU legislation into the EEA is essentially a political decision. It is reached through agreement between the EEA states and the EU. The EEA states can object. In the vast majority of situations, they simply accept the EU legislation and it is faxed over to their national parliaments to be rubber stamped into their national law. Remember that Norway frequently refers to itself as a fax democracy. They get the faxes from Brussels, they transpose them into national legislation, they have had no say in it whatsoever and it just becomes part of their national law.

There are occasional political problems where the EEA states will say, “We do not accept this piece of EU legislation”. Quite similar to what Raoul says, the EU then has the power to suspend that part of the EEA and close off that part of the Single Market to the EEA states. In practice, the system works incredibly smoothly and that power has never been resorted to.

***Raoul Ruparel***: My understanding of the financial services passport is that it is applicable under the EEA, provided the relevant regulations are implemented.

Q131 **Chris Philp:** The point Professor Dougan was making there about decision-making comes onto my next point. You have alluded to the fact that EEA member states have very limited influence over new regulations. I would be interested in hearing the panel’s opinion on whether, were we to have an EEA-type arrangement, there is a risk the UK might suffer some form of discrimination. I am thinking particularly of the City of London and I am thinking particularly about financial services and things like euro clearing, for instance. I would be interested I hearing your thoughts on the risks that particularly London may suffer as a result of this loss of influence or loss of control. I am happy for anybody on the panel to pick that up.

***Dr Niblett***: Being at the table on regulation and establishing regulatory rules is the absolute essence of international economic engagement today. It is not tariffs, as Michael and others were saying earlier. Somebody had the cute phrase that if you are not at the table then you tend to be on the menu. That is something that, certainly in terms of financial services when those regulations are being developed, is likely to be the case.

On the euro clearing issue, clearly it would make the legal context more difficult. In other words, the case that—I am sure Michael and others know better than I do—was blocked when the ECB tried to take euro clearing inside the Eurozone. That kind of issue could be brought up again and the UK would not be in as strong a position to be able to head it off at the pass as it was the previous time. There are dynamics to financial markets where it may be the case where, even if such a law were passed, clearing might not fully transpose itself outside. You could still be a little bit offshore in terms of your ability to clear foreign currencies, but would probably limit the size of the market.

The more important part to me is when you are out of an environment of setting the rules. I lived in America for quite a long time. It is very interesting how companies act. Companies tended to base their plant where they thought they would have most political influence. It was not always putting your plant or factories in the most sensible places, but in a place where you could influence a legislator who could then influence legislation. If the UK is not at the table setting the laws, and the laws are critical for your access to the market, I can see quite a few companies thinking that those foreign investments, as important, big and dynamic a market as the UK is, would apply some greater political rationalisation to where you then deploy those investments. That is one dynamic which could play as well into financial services.

***Raoul Ruparel***: On the financial services point in particular, as I said, you would continue to have a passport if you do implement the regulations. Clearing is an interesting one. If the clearing houses were still seen to be part of the Single Market and adopted the regulations then clearing should be able to continue. The assumption in the EEA is that it would be able to continue, but there is also a possibility that if we are outside, direct legislation could be passed to try to move euro clearing inside which we would not be able to stop or influence. That pertains more broadly to the point that for the most part you want to be at the table where the rules are being set. On financial services regulation, they will be set by countries that are very different in that sector to our own. Germany, France, Italy and Spain have very different financial services needs and sectors than the UK does. Not being at the table for that particular area would be, in the longer run, potentially very costly.

In terms of the basic impact of clearing if we did lose it, it is uncertain how much would actually move. It is based on more than just the ability to clear euros. It is based on the fact that over-the-counter derivatives contracts are written in or based on English law. That is also a big reason why London has become a hub for that kind of trading. Given that regulation is pushing more and more for trades and contracts to be run through clearing houses there will be a pressure to locate trading and clearing in a single place due to efficiencies and economies of scale. Whether that would continue to be London is uncertain.

There is a question about enforcement as well. How is this enforced? How do you actively stop people clearing euros? In the EEA, that could be linked to access to the market more broadly. If we did not implement that legislation, as we have already discussed, they could cut off our broader access. There is a question about how in practice it could be enforced.

***Professor Dougan***: On the specific question about the Eurozone clearing house dispute, which the UK won when it went to the European Court of Justice, that was a question about the constitutional competence of the relevant EU institutions to adopt the measures that it did. The UK won on a constitutional point. We could still do that as members of the EEA.

We would be losing three things in the field of trade, particularly in financial services, as members of the EEA compared to members of the EU. First, of course, is our seat at the table to actually negotiate and agree the regulations. Once the political decision is taken to approve EU legislation as part of the EEA—and that is the only thing they do—the EU negotiates and the EEA states have very marginal influence over that. We are giving up our influence.

Secondly, we should not forget that we are giving up the deal that was struck by the Prime Minister back in the European Council in February. By far the most important part of that deal was a legally binding set of principles to govern relations between the Single Market and eurozone. It was very valuable and very important. The people who rubbished that deal should frankly be ashamed of themselves. This was probably the most important strategic win that the UK has made for many years in Europe. Many of us did not believe the Prime Minister would get it and he did. It is an incredibly important thing that we are now losing.

Thirdly, we are losing global influence. Remember that many of these financial services standards and other types of service standards are being negotiated through global bodies to try to reach global standards and the EU is one of the major players in those global negotiations. Through the EU we were one of the major players in those global negotiations. We are giving away three levels of influence: our influence within the EU, through the important deal which has now been lost, and an important part of our global influence as well. That is quite a significant set of losses, actually.

Q132 **Chris Philp:** Thank you. My final question relates to any potential financial or fiscal savings that may derive if we were to change our membership to EEA from full EU. Some people have claimed in the course of the recent referendum campaign that we could save £350 million a week. It is a claim that this Committee described, if I recall correctly, as highly misleading. Were we to have an EEA-type arrangement, do panel members have any opinion as to whether and if so how much any fiscal saving might be?

***Professor Dougan***: We can compare what the Norwegians pay, which is roughly the same as what we pay, to have the obligations without the influence. The EEA grants were organised in a very different way from the EU budget. Norway and the EEA other states effectively pay for social development programmes in Eastern Europe. That is what most of the money goes on. As a proportion, their fee of membership to the Single Market per capita is not any different from what we pay but they do not have the influence. They do not have the seat at the table. They do receive funding back in part through things like the research programmes because they participate in the research programmes, for example, but they do not get agricultural payments and so on.

***Dr Niblett***: Most of the discussion as I am perceiving it at the moment is over membership to the EU or EEA. I have to say, my personal opinion is the UK probably will not go for the EEA option.

**Chair:** We are coming on to that.

***Dr Niblett***: All right, I will be quiet. I just wanted to make sure we are going there.

Q133 **Mark Garnier:** Many of my questions are about membership outside the EEA. I just got the sense from listening to the panel that you are pretty stunned by the implications of coming out of the EU. You said, Professor Dougan, paraphrasing, that there is absolutely nothing we can gain whatsoever and that we only lose by coming out. I am curious, as an opening question, do any of you get any sense that the Leave campaign had the slightest idea of the mayhem they were unleashing?

***Professor Dougan***: I will say quite honestly what my assessment is. Many of the leading figures in the Leave campaign are driven primarily by an ideological fixation. Like most ideologues, they only see the evidence that they want to see. They only hear the things that they want to hear. I am afraid many of them have probably convinced themselves that the EU does a lot of things it does not do, that the UK suffers a lot of wrongs that it does not actually suffer.

Q134 **Chair:** We have had a referendum and we are going to respect the result.

**Helen Goodman:** No, not necessarily.

**Mark Garnier:** Chairman, there is a very important reasons for this. Part of the debate about who the next Prime Minister is going to be rests very importantly on whether they are a leaver or and inner.

**Chair:** We are not here to serve as a—

**Mark Garnier:** That information is very important for the simple reason that if we have somebody who is trying to lead the negotiations based on myths and misunderstandings and self-delusion that is something—

**Chair:** I am not going to allow the Conservative leadership campaign to get in the way of the evidence.

***Professor Dougan***: I was not referring specially to any individual. I was making a general observation.

**Chair:** By all means make general observations and by all means make particular ones outside this hearing, but I do not think we can take that very far.

**Mark Garnier:** Let's swing back to something less controversial.

***Dr Niblett*****:** To answer the question of whether there are things that could be gained, one of my takeaways from the result of the referendum and the arguments made by those who strongly and passionately argued that the UK should leave is there is a lack of a sense of agency amongst some Members of Parliament and British citizens who feel that being in the EU somehow prevents them from having the agency to make change. We can say on this panel and lay it out, "Here is what you control: pensions, education, healthcare" and all of those things, but somehow that lack of agency that comes from quite discrete areas but is embodied by the EU makes it incredibly difficult for the UK to do things that it should be doing. Migration is an important issue.

The result is a result. One of the issues, at least, was a sense of a loss of control over immigration from the EU. I totally take the points that more are coming from outside the EU than from inside the EU. We know all these points about the particular mix of immigration. If you say what could be done differently outside—which is where the EEA question will come in in a minute in your point—is whether that is an issue that politically has to be dealt with in the UK. If the EU is not ready to deal with it and now is perhaps going to deal with it post-hoc as it sees Britain walk out the door that will be very frustrating and annoying because I share the basic analysis, but is an issue that is different.

We will come later on to the issue of trade. My personal belief is that some of the biggest trade agreements for the UK lay inside the EU and we will now find it harder to take advantage of them, whether there may be a little one could gain on the outside. The trade-off is negative.

**Chair:** We are going to take a look at that next week. In the meantime we are going to get into this question of outside the EEA.

Q135 **Mark Garnier:** It might be helpful to go back to an unbelievably simple question. What does access to the Single Market mean if you are outside the EEA? Can you expand on what that is and what the options are and what it means?

***Professor Dougan***: The phrases "market access" and "free trade agreements" are being bandied about quite a lot and we need to get a better grip on what the Single Market actually means as by far the most sophisticated trade agreement on Earth, with no real comparison. From the Single Market downwards you basically have types of trade relationships that might deal with tariffs, some regulatory cooperation, or even provide for a degree of voluntary harmonisation of standards so as to minimise regulatory disruptions between territories.

Q136 **Mark Garnier:** This might for example mean that UK insurers, being outside the Single Market, might have to adopt Solvency II in order to sell into the Single Market.

***Professor Dougan***: It might well be that we have to reach lots of new bilateral agreements with the EU and other countries in order to try to preserve the levels of market access that we have enjoyed so far. The Single Market is a very clear and defined entity. It is based on an incredibly sophisticated set of legal, administrative and judicial arrangements which seek to overcome many of the types of disruptions to cross-border trade that other types of agreements could only ever dream of tackling. What you get from the Single Market downwards, outside the Single Market, are simply types of ways to overcome certain tariff barriers, certain regulatory barriers and certain forms of cooperation. Do any of them compare to the Single Market? No. That is true of the WTO, the Swiss relationship and so on.

Q137 **Mark Garnier:** When you are trying to get access to the Single Market there would be penalties, which could be non-tariff barriers. For example, in the case of financial services it could be tariff barriers where you default to WTO tariffs. Whatever happens, you would have to either comply or pay. Is that a very simplistic way of looking at it?

***Sir Emyr Jones Parry***: We have had a free trade area since 1973.

**Mark Garnier:** Which is the EEA?

***Sir Emyr Jones Parry***: No, just as part of the European Economic Community, the Common Market. In the mid-80s Lord Caulfield presented a White Paper on the Single Market with the intention to implement it by 1992. It is still not quite there, but the economic gain is very simple. It is an assumption that if you reach the regulatory standards in one country, you can sell it in any other country. Non-tariff barriers should not exist and they were the impediments to trade, especially in services. There might not be a complete internal market in services, but there are a series of directives that permit the access, effectively.

I will go back to 1979. I shared a room with a gentleman who for two years had one very simple objective, led by David Hannay, to ensure that there was a directive to permit insurance to be sold freely within the EU. It was a major objective delivered. You can apply it to banks, transport and all those things. They are covered. Switzerland is not in the EEA but has more than 120 bilateral agreements which effectively give access to the equivalent of the Single Market. It took nine years to negotiate the first bundle, and a further two years to negotiate the second. I remember in the presidency of 1998 leading the negotiations with the Swiss at the time. The Commission was difficult on almost every point.

Q138 **Mark Garnier:** And that is outside the EEA

***Sir Emyr Jones Parry***: This is outside the EEA because they voted against membership of the EEA. They took part in the negotiations but the referendum did not agree. The reality is that Switzerland is vulnerable. Because of the referendum referred to earlier its cooperation in a number of areas, such as research and education will come to an end in the coming spring. The mood within the EU is very clear. You signed up to it and it is important you keep to it. That is one option. It would take a long time to negotiate and would be very detailed in lots of areas.

Q139 **Mark Garnier:** Just on a very important point, Article 50 is triggered, the two years would be our exit. Subsequently getting a Swiss-type deal would happen after that so you would have a period of uncertainty.

***Sir Emyr Jones Parry***: One's hope would be we could do the process of negotiation of the future relationship at the same time.

**Mark Garnier:** That is by no means guaranteed.

***Sir Emyr Jones Parry***: That is by no means guaranteed. How long this would take would be determined by the complexity of what you are asking for. There is an assumption that outside you could negotiate all these things and people are desperate for agreements and we could do them so well. The reality is that 25 years ago we had in the then Department of Trade and Industry a group of specialists in trade policy. We had the same in thing in the Ministry of Agriculture.

As far as today is concerned, I doubt we have a handful of people in Whitehall who understand trade policy. The trade policy is immensely complicated, technically and politically. There are different interests of industries. Some would say, "Liberalise that but not this because I want protection". It is exceedingly difficult. There was a free trade agreement between the United States and Australia that concluded 10 years ago. I noticed that the one thing it excluded was sugar. Why was sugar not covered? Actually, because it was a Republican administration, sugar was crucial to Florida and Florida put so much pressure on, so that was exempted. That is the nature of trade policy. We are going to have to do this to replace 50 existing arrangements that we have, quite apart from whether we join the EEA.

Q140 **Mark Garnier:** Am I right in thinking you have to do the European one first because everything else follows that? I do not want to paint the worst-case scenario because it is probably a bit unfair, but, say, it could take two years to get out. Even if we start now it could be another five years if we end up like Switzerland before we have an agreement. We could obviously be having informal talks before that but it is only at that point that we start making trade deals with the rest of the world?

**Chair:** We are getting a feel for how bad it is, but what we really need as evidence now is what our best course of action should be as a country. That is what we are looking for in evidence this afternoon.

***Sir Emyr Jones Parry***: The Commission has already said that we should not negotiate trade agreements with third countries until we have left the EU.

**Mark Garnier:** So we cannot—

***Sir Emyr Jones Parry***: I think that is wrong. We would have to start this contact. Certainly we could not conclude them until we had left. I suspect some of the third countries might well say, "We want to see the colour of your money with the EU before we jump into bed with you because we are having our own negotiations with the EU".

Q141 **Chair:** On the other hand it might prove an opportunity for them in those negotiations. These are things that we are going to look at next week.

***Sir Emyr Jones Parry***: It may do. One of the arguments of the EU is that the weight of 500 million plus people and the economy are able to actually apply in trade negotiations. Good old Blighty on its own will not have as much weight.

**Mark Garnier:** To a certain extent as a part of that is to do with the FDI that comes into the UK by way of access to that Single Market.

***Raoul Ruparel*:** I want to go back to the original question about access, and to the distinction of goods in different sectors. The goods sector means reducing tariffs and also complying with rules of origin, which essentially says you have to prove that that good or that product was substantially made in your own country and you do not just import from elsewhere and export into the Single Market. It also means complying with product standards and possibly accumulation rules which makes similar points to the rules of origin. That to me is what getting access to the goods market significantly means. Getting access to the services market, as we have discussed—I agree with Dr Niblett's interpretation—it is not very complete. While there are directives they are not well enforced.

In practical terms, there are lots of protected professions across Europe, such as lawyers. If you look at how accountancy tends to work the big four do operate across the EU. They do not tend to passport around instead tending to have subsidiaries around parts of the EU so it is more separated. Insurance is much more globally diversified. To the extent that it does export to the EU, they do tend to have subsidiaries partly for risk reasons as well as practical reasons on the ground. An area where it does work well in services is financial services, but even there it is separated out. If you look at how it works for fund managers, a lot of small- and medium-sized managers feel the passport works less well for them. There are lots of non-tariff barriers in terms of legal and tax obstacles when it comes to marketing their funds in other countries. If you look at banking, retail banking tends to be almost wholly domestic. Investment banking tends to be more cross-border but done based more on skills and expertise. We are looking more where the passport is used which is in wholesale finance and capital markets.

The Single Market is a huge thing and it covers a number of areas but to say it works the same in all areas is just not the practical case. Legally yes, it might be a single entity but there are huge deviations in how it works in different sectors. When you are looking at it from outside and are trying to come in that makes it very relevant because you can see which areas which areas you may want to align with and which you may not.

Q142 **Mark Garnier:** Funnily enough, my question is going to be about any concessions we would have to make of free movement in terms of getting access to the Single Market. Presumably, as you have discussed, in terms of a wide range of things, this would be part of but a number of different things which we would have to have some sort of concession on.

If we were not to have some concession on that, presumably we would lose elsewhere.

***Dr Niblett***: Alain Juppé, the candidate for French president, made the point very clearly the other day that we can maybe do a deal on free movement of labour. Of course, there would have to be compromises in another space. I was speaking to a senior French individual over the weekend who made the same point. We want to be constructive; we want to be practical. Of course, you cannot have everything so if you want to have restrictions on movement of labour we may need to look on the finance side. It is a take-your-pick. As Michael said earlier on, you are fully in at the moment. If you want to go out there will have to be some trade-offs and some compromises.

I just wonder whether the timing you were talking about, Mr Garnier, is the way it needs to be. I defer somewhat to my colleagues here, but I am thinking we are where we are. At the moment, most of those regulations and standards are ones that we helped design or have certainly accepted and have incorporated. If, at the end of a two-year Article 50 process, it were possible to do some sort of creative diplomacy, as Emyr Jones Parry was describing where there could be a flip over quickly to a deal, it would be a deal where Britain said, "We accept everything regulatorily because we helped design it so it is not a problem in any case. We are comfortable with this". You then fight or negotiate. If it is a non-EEA context you have to set up what you might cutely call a CTIP, a cross-channel trade investment partnership, a regulatory context in which you say, "We are starting from the same place. We are mutually equivalent. It is useful for you to get into us and us into you". We do not want to write new rules for ourselves. We would like to be able to keep being as convergent as possible with the EU. You have much less leverage—point taken—but, again, we are where we are.

You would end up having a constant review of the regulatory context and constant negotiation. It is not the regulations of today that we have to worry about. It is the regulations tomorrow, when the digital services market is created—under whose standards? When electric cars are developed, under whose standards? It is staying at that table that is critical.

Q143 **Mark Garnier:** Can we stay at that table with a CTIP?

***Dr Niblett***: In the EEA you absorb. Although you are definitely going to lose some things, but in the EEA you might focus on particular sectors where the UK has some leverage. You might have to just take legislation and regulation in some areas. In others you perhaps have a bigger say at the table, such as for financial services, energy and digital, and you really focus your efforts in those areas, with dispute-settlement mechanisms, I have to admit, otherwise the rules do not exist.

Q144 **Mark Garnier:** Why would they want to listen to us on financial services? At the end of the day that is presumably a prize they could win from us.

***Dr Niblett***: Some want to prise it away from the UK but some do not. It would probably end up being an atomised financial market rather than London losing to Frankfurt.

***Professor Dougan***: It only takes one or two to want to prise it away and they can start to prise it away from London. We just need to be realistic. If the Americans and the Chinese exercise only a limited influence on the evolution of EU law relating to the Single Market we should not be kidding ourselves that we are going to exercise greater influence on the evolution of EU law relating to the Single Market. We need to be realistic. We can and should do our best. We have got to look after the national interest.

***Dr Niblett***: They have to deal with the US Congress, which has a completely different negotiating approach often to the Executive. The internal dynamics in the US or China make it difficult for them to do those deals. A UK that is, as you said, about to lose what it has constructed over 40 years, not a country that is trying to get what it does not have, has a very different negotiating approach. We would have to compromise and we would compromise way more than the US or China or anyone else would do. We are trying not to lose; they are trying to gain so the dynamics here are very different.

***Sir Emyr Jones Parry***: What there is not, Mr Garnier, is a ready-made option to meet all our objectives.

**Mark Garnier:** So there is not a ready-made option.

***Sir Emyr Jones Parry***: There is not. We have discounted Switzerland. There is the EEA with its problems. The WTO alone—

Q145 **Chair:** Rather than you giving us all the negatives all morning, we are really after what you think the preferred route should be.

***Sir Emyr Jones Parry***: I think a Commonwealth arrangement is an illusion. What can we do? We have to first identify what our real interests are and what we want. When we have done that we need to see how that fits into any of these arrangements and what price we would be prepared to pay for what we want. Only when you have done that and come up with a sui generis model for the UK.

Q146 **Mark Garnier:** What you are potentially suggesting is that there will be some parts of the UK economy that we might be prepared to sacrifice in order to benefit other parts which are more important to us.

***Sir Emyr Jones Parry***: I am not saying that. Judgments will have to be made about real interests, the importance of the Single Market, and whether we were talking just about services. That is the argument about Article 50. Until you have done that I do not see how you can jump in.

Q147 **Chair:** What is your view?

***Sir Emyr Jones Parry***: When you have done your homework you then try to devise—

Q148 **Chair:** What is your view about that homework? What is it?

***Sir Emyr Jones Parry***: We have to go for as much access to the Single Market as is possible consistent with not paying too high a price for it.

**Chair:** Okay, that is where we began the hearing a couple of hours ago. We are trying to put some flesh on that.

***Sir Emyr Jones Parry***: If the whole of Whitehall and the political class has not done its homework do not expect us now to give you a ready-made answer.

**Chair:** You are supposed to be a bit more alert than the political class to this stuff. After all you have been telling us all along how half-asleep we are.

***Professor Dougan***: Part of the difficulty why people like us struggle to articulate what comes next is because our position as a country has effectively been hobbled by distorted debates about immigration and about sovereignty. That means that we cannot just identify our national interest and say we want global influence and global leadership and economic prosperity, because a large part of what we would naturally want to do as a sensible, pragmatic country has been distorted and hobbled by these myths around immigration and sovereignty.

**Chair:** We have got that message pretty loud and clear.

***Raoul Ruparel***: The assumption that breaking up the City as a financial services centre is always to the benefit of the rest of the EU is right to an extent. However, they also have to realise that they have access to a global capital market which comes with huge pools of liquidity, advantages for sovereign and corporate borrowing and a huge number of things beyond that. Breaking that up into a series of much smaller regional financial centres, while on the surface may seem beneficial to them, it will also have costs in terms of reducing access to this huge capital market. I just want to challenge that assumption.

Q149 **Chair:** Just on one point you raised earlier about how people need to be realistic about what constitutes the incomplete access to services that we really have, are you able to put a percentage on that? If one were to take the total proportion of EU services trade, what proportion of it at the moment is covered by what one would call the internal market?

***Raoul Ruparel***: It is something we are looking at now. In terms of where the passport works best, banking, funds, insurance and broadcasting, are the four areas where it is viewed to work best. These are not calculations I have done myself but ones that I have heard, but those cover around 50% of our services exports.

Q150 **Chair:** So you are saying that from the point of view of the British potential market for services it is about half complete, and from the continental European perspective, therefore, presumably somewhat slightly less, because our financial services sector is disproportionately large.

***Raoul Ruparel***: Yes, I would have to look at the calculations but those are the basic areas where the passport is seen to work most effectively.

**Chair:** So somewhere between a third and half perhaps might be a useful calculation.

***Dr Niblett***: In the last study, by Mario Monti, he calculated roughly 30%.

**Chair:** That is the 30% figure—

***Dr Niblett***: We may have better benefit. To answer your question, where I am concluding the UK will probably end up, although I am not recommending it, is in a very elaborate FTA. It would be a cross-channel trade investment partnership. You will have to have a tariffs component, which is relatively low in any case but may have to be negotiated, and then you will build off the regulatory equivalents that exist now and try not to lose it over time. It is incredibly difficult. It is not my favourite option, but I do not think the EEA is not going to be politically feasible for this country. It is not for me to say, but that is my guess.

**George Kerevan:** It has been a fascinating seminar.

**Chair:** It has been extraordinary.

Q151 **George Kerevan:** Following on from the notion that we might have some complicated, separate, autonomous, sui generis deal, can the panel see any situation in which a part of the UK—Scotland, Northern Ireland—might have some separate arrangement that preserves as much as possible its current membership of the EU, or is that a wild hypothesis?

***Raoul Ruparel***: Do you mean as an independent state?

Q152 **George Kerevan:** I am not going that far. Is it possible that a jurisdiction within the current United Kingdom could preserve more of its current relationships with the EU and the Single Market?

***Raoul Ruparel***: My understanding is that that would not be possible if it is still a constituent part of the United Kingdom. Maybe Professor Dougan can speak to the legality of that. More broadly, the politics of a specific region getting preferential access seems very unlikely given the regional tensions elsewhere, notably in Spain. It would need the agreement of all member states and that would not be forthcoming from Spain in particular.

***Sir Emyr Jones Parry***: I can think of only one example where a sub-state has a relationship with the European Union, and that is Greenland, in terms of negotiations to take Greenland out of the EU but still part of the Kingdom of Denmark. Otherwise, I know none. There would be political objections, as you just said, from Spain in particular but also others. Seven or eight countries in the EU have not recognised Kosovo, simply because it is part of the break-up of Serbia and those same member states are very reluctant.

Q153 **George Kerevan:** I accept that. We are arguing the reverse of where we were in the Scottish referendum in 2014. We are arguing that Scotland wants to stay within the EU. Let's pursue the Greenland example. You do have an example there. Greenland did move out of the EU, but special treaty relationships were signed. The EU still provides funding to the Greenland budget. There is still a relationship of a kind that would parallel the structure. Given that you have that example, how difficult would it therefore be to construct similar relationships with Scotland and Northern Ireland?

***Sir Emyr Jones Parry***: The difference is that Denmark has remained in the EU.

***Professor Dougan***: That is the difference. The outcome of this referendum is throwing up all sorts of legal and constitutional questions to which we are very quickly trying to find answers. It is this type of novel question that we have not had time to find the principles to help answer. My answer would be that if, for example, the UK were to remain a member of the EU but England and Wales were effectively to become a Greenland, that would be the proper parallel of the situation of Denmark and Greenland. That is just not feasible. That is so improbable and impractical that we should discount it. What we are talking about really is Scottish independence and anything short of that sounds implausible. As I say, these are new territories for all of us, and lots of people are trying to find what the principles might be. There are no really clear answers.

Q154 **George Kerevan:** Pressing you further, there are situations in some of the EU programmes, like Horizon 2020, where non-EU states participate in the programme. What about going down that route? Is there a possibility that Scotland or Northern Ireland participate as sub-sections of the UK in those programmes or the UK itself?

***Professor Dougan***: The participation of non-EU countries in EU research programmes is pretty complicated. It depends on the part of the programme you are talking about. However, the general position is that there are a small number of countries that are entitled to full participation, including access to funding. They tend to be the EEA states, candidates for EU accession plus one or two others, like Israel, where there is a strong bilateral agreement. Otherwise, if you are not one of those very closely associated countries, your participation is more limited, in particular with regard to your access to funding. The EU does not hand out its funds to non-member states on the basis that "you can pay for your own research". They tend to give their funding to developing countries to help support their research capacity. The chances of being able to negotiate access to EU research funding, for example, other than through the EEA or a very close bilateral relationship, will be very limited indeed.

***Sir Emyr Jones Parry***: I am not sure about the research, because I think Switzerland and a number of other countries partake in research programmes without having that close relationship. However, I do not do the jump to say it could go elsewhere to bigger programmes. I think I am right also in saying that treaties where they provide for external agreements by the EU are always with other states and countries. There is no provision for with parts of states, in my view.

Q155 **George Kerevan:** In that circumstance, if Scotland remained within the UK, it would be for the UK to try to develop some of those participatory agreements with the EU.

***Professor Dougan***: It might partly be a question about the parts of the devolved administration in Scotland. Again, this is new territory for most of us. If Scotland, within the UK, has external relations competencies, there is no reason why it should not be able to enter into international agreements with other organisations or countries. I do not know enough about the devolved powers of Scotland to know whether that is the case or not. If it is true—if Scotland does have the capacity to reach international agreements—there is no reason why it cannot reach international agreements, including with other international organisations.

Q156 **George Kerevan:** That would be one route, with Scotland and Northern Ireland still within the UK. If the devolved administrations were given authority by this parliament to negotiate international agreements in certain specified areas, the route would be open to negotiate specifically with the EU.

***Sir Emyr Jones Parry***: Currently, at least some of the devolved administrations do not have that power on the external side. To the extent Scotland has it, it is very limited. There is another potential route in, which is for the British Government to negotiate an agreement between the United Kingdom and the EU, whatever the sector is, on the basis that participation will be decided by the UK Government and will favour a particular nation state within the UK. You could do that.

Q157 **George Kerevan:** On the question of citizenship of the EU, the original position was that citizenship was conferred by dint of the member state and by being citizen of the member state. There has been some movement on that. For instance, if you are a resident of the overseas territories of some of the member states that are with the EU, such as the Falkland Islands, you still have European citizenship. Again, could we foresee a situation in international law where some subsets of citizens within the present UK state could retain their European citizenship?

***Professor Dougan***: The position here is set out in the EU treaty, and if you wanted to change that position, you would need to change the EU treaty. Citizenship of the EU is a purely derived status. It contains certain benefits and certain rights but it is not a citizenship like the citizenship of a country. You are a European citizen as long as you have the nationality of a member state. You might lose that status individually; if you are stripped individually of your nationality of a member state, you would thereby lose your EU citizenship. However, if a member state withdraws and is no longer a member state of the European Union, its nationals will lose their European citizenship. A lot of people are trying to rely on human rights arguments and so on to try to claim that that is not the case. I think that is wishful thinking. To try to change that situation would require quite a significant change to the EU treaties themselves, and I cannot see that happening, at least in the near future.

Q158 **George Kerevan:** Do you think there is sufficient wriggle room for it to be a challenge at the European Court of Justice?

***Professor Dougan***: I think it is wishful thinking. I can understand that people do not want to lose their European citizenship if they feel that it gives them rights, benefits or identity that they do not want to lose against their will, but I do think it is wishful thinking.

Q159 **Chair:** You have not had a fair crack of the whip this morning—now afternoon—Mr Ruparel. We are going to look next week at the long-term benefits or opportunities that might open up to reap benefits, particularly from trade negotiations off our own back, without relying on the EU. That apart, are there other issues that you might want to add now that you have not had an opportunity to chip in? If so, do so?

***Raoul Ruparel***: Do you mean in terms of the potentially benefits outside?

**Chair:** Yes, or more broadly.

***Raoul Ruparel***: There is the issue, which this Committee discussed at length before the referendum, of regulation and deregulation, where Open Europe's work was mentioned, and that is obviously an area to delve into in more detail with regard to what specific scope there might be for deregulation. That applies very closely to what the different model of our relationship with the EU is. There are potential gains, though, as I think the Committee has already established, not as large as many people assume or like to think. That is an issue for more exploration.

Q160 **Chair:** That is because most of this regulation will be replicated back in domestic law, usually for good economic or political reasons.

***Raoul Ruparel***: I think so. Certainly, as we have hinted at, the starting point is likely to be "keep everything, and then decide over time what to remove". The scope for that removal, if we are a member of the EEA, will be significantly limited. Most of the regulations, particularly the ones relating to the single market, will have to stay in place. Even if we are outside, if you do want to gain access, it will mean in many cases having equivalent or similar regulation to the EU. That is a question, and the areas where we will gain more control may be areas like social employment law and environmental law, where it is politically fraught in terms of the potential deregulation and whether that is the path we want to go on.

Q161 **Chair:** We have managed during what is now this afternoon narrowly to avoid spending our time looking at all of the issues that were being debated only a few weeks ago on a decision that has now been taken. At least clear guidance has now been given to Parliament by the British people in the referendum. We have managed also, even more narrowly, to avoid getting ourselves entangled in discussions that might be relevant for the election of a new Conservative leader and Prime Minister, which is taking place in the very next committee room as we speak.

Thank you very much for coming in to give evidence. We have had a fascinating session and this is at the early stages of trying to explore what it is that we should most effectively in the national interest now move towards. If you have further thoughts or when you have further thoughts, please make sure that you keep us informed. Thank you very much for coming in to give evidence.