



Select Committee on the European Union

Uncorrected oral evidence: Brexit: parliamentary scrutiny

Monday 12 September 2016

4.10 pm

Watch the meeting

Members present: Lord Boswell of Aynho (The Chairman); Baroness Armstrong of Hill Top; Baroness Brown of Cambridge; Baroness Browning; Baroness Falkner of Margravine; Lord Green of Hurstpierpoint; Lord Jay of Ewelme; Baroness Kennedy of The Shaws; Earl of Kinnoull; Lord Liddle; Baroness Prashar; Lord Selkirk of Douglas; Baroness Suttie; Lord Teverson; Lord Trees; Lord Whitty; Baroness Wilcox

Evidence Session No. 2

Heard in Public

Questions 12 - 26

Witness

I: Rt Hon David Davis MP, Secretary of State for Exiting the EU

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Examination of witness

Rt Hon David Davis MP

Q12 **The Chairman:** Good morning, Secretary of State.

David Davis: Good morning, my Lord; I have always wanted to call you that.

Baroness Kennedy of The Shaws: And we can call you Secretary of State.

David Davis: I am just about over the shock.

The Chairman: That is off the record, but never mind.

David Davis: No, it is not off the record.

The Chairman: Okay. We will put it on the record.

David Davis: As I mentioned in the House, the best congratulations I had were, "Many congratulations. I now believe in the resurrection".

The Chairman: On that suitably lofty note, we formally welcome the Secretary of State for Exiting the European Union, David Davis. I am never quite sure what interests have to be declared. We are former colleagues and have enjoyed that process. We have occasionally been sparring partners.

You have a huge job, Secretary of State. That makes us all the more appreciative of your time in coming here. You will be very familiar with the rules of engagement of these Committees. We may have a slightly different style at this end of the Palace, but the objective is the same—to get at the truth. As I tend to say to nervous witnesses, which I do not anticipate you to be, remember that it is not a court of law. We are in the process of trying to find out something.

In starting off, I would like to stress two things. One is that immediately—you will have sensed the same in your own department—we are interested in getting the process right, in hearing how the process is going and how we can relate to that. Secondly, we take a fairly strong view—I use some text of your own on this—that a properly conducted parliamentary interest in this will be beneficial, or not unhelpful, to the Government in their considerable task. If we can kick off with that as a general or shared objective, I suggest that we start by referring to our report in July on parliamentary scrutiny of Brexit, which we know to be the first in what will be a rather long process. We concluded that Parliament's role in the forthcoming negotiations would be critical to their success. In what ways do you think that Parliament can help to make a success of the Brexit process?



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David Davis: Thank you, my Lord. A proper declaration would be that we were both members of the Whips' Office at the time of the passage of the Maastricht Bill through the Commons, which has relevance.

Turning to the process, I have read your report. As you know, my view on parliamentary accountability is very firm. It is a good in its own right and does not need justification by our saying that it will make this or that process better. The simple fact of parliamentary accountability is a good thing. Because of my stance, I want to engage with and consult Parliament as widely as possible, consistent with doing the job of delivering the national interest in the negotiation. That is the sort of balancing act I have to deal with.

I have already met a number of parliamentarians. In our negotiation process, I intend to do both formal and informal things. I will talk about the formalities in a second. We are in the process of gathering evidence. As you will be aware, there has been a bit of criticism of the Government that we have not said much yet. It will take some months to analyse many of the industrial and commercial effects of various options, and to do the analysis on the negotiating balance—where our allies might and might not be. We will take some time—the process has already started—on the legalities of the exercise. There are tripwires of several sorts. That is where we start.

As regards the parliamentary contribution, I expect a number of Committees to have a view on what we do and on particular interests, whether justice and home affairs, industrial effects or social effects. We expect to see reports on those. Lord Bridges has written to all the Committee Chairs in the Lords asking them to tap into relevant expertise, but that does not preclude us—Ministers—from appearing before Committees like yours to give formal evidence. I understand that discussions are going on through the usual channels about setting aside time to discuss relevant areas. That is in the Lords alone.

There is one thing that I should pick up, however, and it is an area where we might differ. In paragraph 20 of your report, you say that it is important that we strike the right balance between transparency and accountability. That is exactly right. Clearly, there is a need to ensure that Parliament can be informed, without giving away our negotiating position. I am sure that later in this conversation we will go into that in more detail. At least one member of the Committee will remember that in the days when I was Europe Minister I had to tussle quite a lot to keep our negotiating position on the Amsterdam treaty open to Parliament but not so open that it jeopardised it. You will remember that that was the treaty that concluded our exemption from the Schengen treaty, so it was very important in those terms.

Obviously, we will continue to make regular Statements after European Councils, summits and other fixed events. You pointed out how parliamentary procedure can be flexible, and we will engage with you on that, but I have to caution you that I may not be able to tell you



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everything, even in private hearings. You mention that in your report as well. You cite the ISC example. You may remember, my Lord, that I was the Minister who was the midwife for the ISC.

The Chairman: Yes, I do.

David Davis: It has had a difficult 20 years to establish where it is. Even today, I do not think it persuades everybody in both Houses that it provides the level of accountability that it should, because, of course, its reports are redacted by the Prime Minister. There are weaknesses in that.

As regards accountability and openness, I will be as open as I can. More accurately, the Government will be as open as they can. That will be a very important part of the process. It will also be an incredibly intensive part of the process. If you think about what is going to happen over the next couple of years, apart from the debates, reports by Select Committees and hearings like this, there is bound to be primary legislation. It is an unavoidable fact that, as we leave the European Union, there will be implications—extensive implications—for domestic law. That, too, will provide a forum and a format.

That is my opening summary. I have probably opened up about a dozen different lines of inquiry. From my point of view, the aim at the end of the day is to be as accountable as possible, consistent with delivering the national interest, of the best negotiated outcome we can get. I hope that was not too extensive.

The Chairman: No, it was a helpful statement. We are all in the business of understanding that this is a balancing act, in the best sense of the term. There have been times—we will not dilate on them—when perhaps HMG has been too tight and we have not heard enough to remediate things or to help with the process. We take it as an index of your good will that we will avoid that, without necessarily saying that the full bag of red lines has to be conceded on day one.

There is a small technical point I would like to reflect on before I ask my other question. It concerns access to expertise. This has somewhat preoccupied me because, modestly in this position, I find myself sitting as a matter of convention on the Cross Benches, which are rather heavily populated by persons like ex-Cabinet Secretaries and ex-professional heads of the Foreign and Commonwealth Office, of whom we have one as a member of our Committee. They are people with very long experience and expertise in what we have all conceded are highly technical fields. Can I have the assurance that you are seeking means of tapping into their expertise, wherever possible, and, in particular, that if they are worried about something, somebody will listen to them?

David Davis: Absolutely. My entertainments this week include this Committee today, the Commons Foreign Affairs Select Committee tomorrow and a meeting with the Cross-Bench Peers on Wednesday. We have started down the route already. At least one Member of this



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Committee, if not two, have had meetings put back, but that is under way. I pay great attention to my elders and betters.

The Chairman: Thank you for that. They would be modest, but I am thinking of the gentleman whose book on how we negotiated into the CAP I have on my shelves. He is still around, thank goodness, although not in this House. He is the kind of person you might be able to ask about how you extricate yourself.

To come to the more general issue, as you have already indicated, there is a legislative end point to some of this, whatever form that will take, particularly in relation to the approval of treaties. As you know, under the terms of the Constitutional Reform and Governance Act 2010, Parliament's role in respect of treaties is codified and is limited to approving ratification. As you have indicated, Brexit will have a profound impact on almost every aspect of our national life—domestic legislation and so forth. Do you think that that in itself means that Parliament must have an enhanced role in influencing the shape of the negotiations and achieving the best outcome, presumably leading to some treaty that we will then have to consider on its merits? If I may cut to the quick, just looking at that ex post the negotiations will not be as good as having seen the process of development that leads to a satisfactory negotiation.

David Davis: I do not think it will be a blind process from beginning to end. I would be astonished if it were.

The Chairman: A black box.

David Davis: Yes. It will not be a black box out of which a treaty drops at the end. Indeed, in many ways, the treaty will be the last piece.

Let me highlight it. First, there will be a whole series of negotiating rounds, out of which will come communiqués, prime ministerial Statements and your summoning me back here to talk about this again. A great deal of detail will come out of that. I guess that it will start at the point of triggering Article 50. At that point, we will have some clear public negotiating guidelines. There will be subtleties we will not talk about, but that will be where it starts.

I would be astonished if there were not public debates about the rights and wrongs of various elements of the strategy that we pursue. As I said, the legislation will have an effect. The legislation will reflect what the treaty will do at the end. Off the top of my head, if you have a change in one element of immigration law or even in something like patent law, those things will start to reflect themselves quite quickly. Deciding what legislative strategy to follow is a complicated problem alone, before we get to the substantive matters. No, it will not be a black box at the end.

I am quite sure that we will follow the rules under CRAG precisely. Do you mind if I call it CRAG? I can never remember all the words. Frankly,



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that will be just the end game. In my view, that will not be the substantive element.

The Chairman: As you have mentioned the end game, I will bring in Lord Whitty, who takes a certain interest in the sequencing.

Q13 **Lord Whitty:** Potentially, you have started to answer my question. We have a period between now and triggering Article 50 in which we can have one sort of relationship. You will then be in negotiations in two dimensions, as I understand it. One will be mainly to do with the withdrawal treaty. One will end with a new trade treaty with our former partners. In those negotiations, certain legislative things will arise. Even at the end of that, we have to look at our own legislation and how far we need to change as a matter of policy or as a consequence of the treaties. That is a whole lot of different styles of operation of the Government. Do you see through that sequence different styles of engagement with Parliament and, in particular, in the move from before Article 50 is triggered to after Article 50 is triggered?

David Davis: To some extent. Before Article 50 is triggered, there will be a frustrating time, because we will not say an awful lot. We will say a bit; we will lay out guidelines but, as the Prime Minister said, we will not give a running commentary on it, because that would undermine our initial negotiating stance from the beginning.

Afterwards, I expect it to be a more open process. I may be wrong, but if I were on those Committees—as you know, I chaired a modest Committee in the past—I would be looking to make my own contributions. It is the point we started with: whether a Committee has a view on immigration policy, justice and home affairs or whatever. This covers nearly the entire bandwidth of government, so I would expect that to happen.

We—the Government—will not be in command of it all, because Parliament itself will take its views forward, in a variety of ways. I am infamous for other things in my past, including, for example, work on the prisoner votes episode. That gives you an idea of the sorts of things that may well happen. I do not command any of those. Does that answer your question?

Lord Whitty: Yes, I think it does, for now. One issue that arises is whether it is possible to be franker at various stages than it is at the stage when you are coming to the crunch point in all these processes.

David Davis: One of the areas in your report I was unsure of was a sort of elision between accountability after the event and supervision in advance of it. I can entirely see accountability after the event—that is very clear—and not very long after the event either; I am not talking about a year later. In advance, I do not think that it is possible for parliamentarians to micromanage the process. That would not give us an optimum outcome for the country. Much of the confidentiality I was



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talking about will be time related. We can tell you something late, but we cannot tell you in advance.

The Chairman: You can probably tell us more when you have tabled it than when it is in preparation.

David Davis: Of course.

The Chairman: At a later stage—I do not want to press you now—we want to consider the modalities of how that will go. We will look at scrutiny resolutions and so forth. That is helpful. I have two more supplementaries, from Baroness Armstrong and Lord Green.

Baroness Armstrong of Hill Top: Secretary of State, you have been very interesting about the sequencing. I am not asking you to tell us this today, but how far do you want to get in setting out the negotiating strategy—for example, what you are looking for on access to the single market—before you trigger Article 50? If you are going to be fairly clear about what you are looking for, I think Parliament will want more involvement than if you are going to be very broad. That is our problem about the sequencing and the level of involvement. If things are going to be decided in the negotiating strategy and Parliament has not had involvement in that, it may be very difficult.

David Davis: It is a terrible thing to say to you, but we have not decided that yet. Some of that very question will be dictated by how different some of the outcomes are. We have had a letter from at least one member of the Committee already talking about one set of possible outcomes on the trade strategy. The letter makes very good points, but there are counterbalancing points. If it is like that, it might be more open than if one policy stands out. The other thing is that this is a negotiation. Where we go in at the beginning is not necessarily where we will end up.

Baroness Armstrong of Hill Top: I accept that, but if where you end up does not bear any relationship to where you start, you are in deep trouble.

David Davis: That would be a bit of a problem. I might not be in this job for that long, in that case.

The Chairman: We will meet that when we come to it. I ask Lord Green to comment now.

Lord Green of Hurstpierpoint: I want to pick up the question of the formulation of negotiating strategy before the triggering of Article 50. There is, of course, a question, which Hilary asked just now, about how much detail goes into the negotiating strategy before you get to triggering Article 50. I take the point that you have to have some freedom for manoeuvre on that. Nevertheless, the question arises as to how you test out ideas in the development of your initial negotiating strategy. Is it a question of simply listening to a whole series of representations of interests from various stakeholders—different sectors



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of the economy and society—or is it what the Government would more normally do, which is to embark on processes of consultation to get advice that can be mulled over in order to form the negotiating strategy? I accept that it is not easy. I am not trying to score any kind of point. I am interested in knowing how one will get to a representation of different ideas that can then be weighed as you come to a decision on what the strategy is.

David Davis: I am not sure whether or not you call it consultation. Pretty much every department of government is tasked by my department to go out and talk to its stakeholders about, first, what the risks are, secondly, what the opportunities are, and, thirdly, what policies mitigate the risks and maximise the opportunities. That is true of virtually all departments. Nearly all departments have one or other category, or both—risks, opportunities or both. At that point, which is not yet, we will do some quite quantitative assessment of what we think the advantages and disadvantages are.

I got ribbed by the Scot nats in the Commons last week for being rhetorical when I said, “This is a national instruction—a national mandate—and we are going to interpret it in the national interest”, but I meant precisely that. We need to take an empirical approach. The purpose is not to damage the national interest or the economic interest—just the reverse. That is the mathematical approach we will take.

Lord Green of Hurstpierpoint: I think I am the one who wrote you the letter, unless anybody else did.

David Davis: You are. You wrote to me about customs union.

Lord Green of Hurstpierpoint: I am not asking you to comment on those things.

David Davis: I hope to talk about it directly, because it is complex, to say the least.

The Chairman: We will take two more questions on this particular line and then go on to Lord Teverson. The point that I want to add is not wholly a flippant one. One or two Members of the Committee—although not me—are quite experienced in war-gaming things, which I have seen on the television, for example. If you wanted to conduct any of those kinds of scenario-planning exercises, I am sure they would be delighted to volunteer, given notice.

David Davis: I may take you up on that.

The Chairman: We are in the business of being helpful. I will take questions from Baroness Browning and Baroness Falkner. We will then move to a slightly different area.

Baroness Browning: Secretary of State, you have made it very clear—I can certainly understand why—that you do not want to give a running



commentary while you are getting the strategy together and doing your preparation, up to the point at which you trigger Article 50. You have also said that you will not necessarily share a lot of detail with Committees of this House. What thought have you given to how you will handle how secure the information is with the people you are negotiating with, once you trigger Article 50 and start those detailed negotiations? It seems to me that the nightmare scenario is that you enter in good faith into very detailed negotiations—possibly, of course, with more than one party, so you have a lot of different interests in the negotiation—and things that you would eventually have shared with the House are spread across newspapers or even publicly debated in other countries. You may find yourself on the back foot, constantly firefighting—for want of a better word—a lot of leaks. Have you thought about the handling of that? If that sort of scenario evolved, Parliament could very quickly come to the view that it was not being kept in the loop.

David Davis: I can see that. We have not gone into detail on that, because, to be frank, in discussions that we have had so far—not very widely—people have been very good about respecting confidences. If that were to happen once, it might change our strategy. The area we have looked at, which may be of particular interest to the Committee Chairman, is the extent to which the Commission notifies the European Parliament, for example, and when that is confidential and when it is not. We have not grounded it all yet, but that is one area where we might be more open than otherwise, because we would not want either House of Parliament to be disadvantaged with respect to the European Parliament.

The Chairman: We are about to come on to that area.

David Davis: Absolutely. You are probably better informed on it than I am. It is an area I had originally not been aware of but which is itself circumscribed by confidentiality requirements. You are right. We depend to a large extent on the trust of our allies. They are still our allies, even though we are negotiating with them. In the past, it has generally been pretty well respected. In English law, as Baroness Kennedy will know, even the courts respect intergovernmental and international traffic as protected, so there is a great deal for them to lose by doing that. I will watch out for it. I take it as good advice.

Baroness Falkner of Margravine: I have to declare two interests. First, a member of my household is affected by acquired rights, because he is an EU citizen only. The second interest is that I co-own a property in the eurozone.

Having declared those interests, Secretary of State, I wonder whether I can take you back to the questions on sequencing. I tried to come in then, but it is an important enough point to put to you now. Between January 2013, when the Prime Minister, in his famous Bloomberg speech, announced that he would seek a referendum on Britain's relationship with the EU, and February 2016, when he finally concluded his negotiations, there was a period of three years and a month. In that period, Parliament



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and the European partners did not know what the areas he was seeking to negotiate were until mid-2015. We then got to a situation where we saw the results of the negotiation in February, and the referendum was in June. In my view, it was a very good renegotiation—certainly on financial services, the area in which I am particularly interested. However, as Chairs of the various Select Committees, we scrambled to work out what the deal was and to advise the British public, under our scrutiny function, what we thought of it.

Although you were on the other side of that debate, do you accept that potentially three months, with Easter in the middle, was inadequate time, and that the fact that we spent over three years on a negotiation and then gave Parliament and the British people such a limited window is possibly why we are in the uncharted territory where we find ourselves now? Will you take some lessons from that? I can direct you to one or two. Although it is a negotiation and everyone accepts the importance of keeping your powder dry in a negotiation, unless and until you can prepare for what you think you want, people will not be able to assess whether what you want is what they want—on the other side—or, indeed, find other ways of getting to where you want. It is not just a matter of “A says this and B says that”; it is a longer-term conversation, and it has not been done very well, according to the record we have just looked back on.

David Davis: I really cannot comment on the record beforehand. Today of all days, when the erstwhile Prime Minister is standing down, I will not do so. I think that he was a pretty good Prime Minister, to tell you the truth. I am not going to criticise him today.

Baroness Falkner of Margravine: I was commenting only on the process. I was not commenting on the individual.

David Davis: You can guess how it would be written.

Baroness Falkner of Margravine: I am not playing the man. I am playing the ball.

David Davis: Yes. In those terms, I will not comment on it. In terms of our approach, I imagine that it will be something over two years, because that is intrinsic to the trigger. As I have already said, I will seek to be as open as is possible. Bear in mind that, unlike that negotiation, which was relatively narrow, this one will be as broad as the entire governmental front. Even were I to decide that I was going to behave like Rasputin and keep it all entirely secret, I would fail. It would not be possible, partly because of some of the comments that Lady Browning made; other Governments would do it. In the Government’s own interest, it is a better idea to be more open than is perhaps traditional, but always subject to the overriding point that we cannot pre-empt the negotiation. Other than that, that is where I am.

The Chairman: We will now take up a strand you have already touched on, which is about parity of treatment vis-à-vis the European institutions.



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There is no one better than Lord Teverson, as a former MEP, to pursue that line of questioning.

- Q14 **Lord Teverson:** Indeed. Perhaps I could follow up on that. The comment about not giving a running commentary is fair enough and we all understand why we do not want that, but, as we know from politics and public life, if you do not run the commentary, someone else does.

David Davis: It started over the summer.

Lord Teverson: Exactly. Where there is not fact, there is supposition, through to make-believe.

David Davis: Exactly.

Lord Teverson: There is a real issue for the public, for Parliament and for the Government, if they are to be successful in their negotiation. Interinstitutional agreements in Europe are very powerful things. We are not so used to them over here. As you know, in 2010 there was a framework agreement between the Commission and the European Parliament, which states, "Parliament shall be immediately and fully informed at all stages of the negotiation and conclusion of international agreements, including the definition of negotiating directives". As I understand it, the European Parliament is expecting that process to take place as part of these negotiations.

Are the Government and you, as Secretary of State, going to get ahead of the process, or are we all going to have to get on to the European Parliament website every Monday morning to find out what is really going on, or even to bring over and talk to our British MEP colleagues who are helpful and positive, hopefully, rather than anything else? It is a serious challenge. This Parliament would not want to be treated as a second-class citizen in comparison with the European Parliament.

David Davis: Neither do I want to treat Parliament in that way. It will be a little bit of matching and meeting sometimes. That is what it will be; it will be between the two. There is no interest whatsoever for the Government in leaving the text to be issued by somebody else—none whatsoever. We will certainly match and, hopefully, improve on what the European Parliament sees.

At given times, that will be tactical, I am afraid. I do not want to be boring about it, but this is likely to be the most complicated negotiation of modern times. It may be the most complicated negotiation of all times. By comparison, Schleswig-Holstein is an O-level question. We will not always be entirely free agents, but we will be as open as we can be.

The Chairman: Do you want to come back on that, Robin?

Lord Teverson: I think we had a strong statement that we would not be behind the European Parliament.



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David Davis: That is what I was saying.

Lord Teverson: I am very happy with that response, Chairman.

Baroness Suttie: Secretary of State, could you tell us what your understanding is of the role of Guy Verhofstadt in this process?

David Davis: I am not entirely sure. Roll back for a second. A little bit depends on which final process we end up with, for a start. On the presumption that it is the most efficient process from our point of view, we have to get a majority vote out of the European Parliament. Therefore, we have to do what we can to persuade him that our deal is good for everybody.

Let me say as an aside that, over the summer, I watched both the British and the European press invent history between Michel Barnier and me that I do not remember. He is a perfectly nice man. He has a bit of a reputation in the City of London, but that is all right. He is a tough arguer and a classically French negotiator. There is nothing wrong with any of those things. At the end of the day, much of this will be down less to personality than to calculation of interests. Those interests are not all simple interests. There is national interest, obviously. We hope very much that people understand the national interest of trade negotiations, justice negotiations and so on. That will be much more important than the individuals concerned. I do not take too much notice of some of the comments that have been made in the British press. Does that answer your question?

Baroness Suttie: Yes, thank you.

The Chairman: Secretary of State, may I inject a note of inevitable flippancy into the proceedings? Some years ago, I discussed a particular event related to human rights with one of Her Majesty's ambassadors. I think I have the order right. Her line was, "It is too early to say. We have not formulated". Then a senior member of a previous Administration came along and said, "It has all been decided. It is too late". Those things took place simultaneously. Somewhere along the way is the mantra, "We will not give a running commentary", or, "We will not give away our hand".

Taking it out of the musical comedy level, can you at least do your best—if only for the good reputation of the conduct of this process—to see that that kind of stratagem is not applied? We all understand that there will be moments when confidentiality has to be respected, and I concede you that now; but if we can try to do it in as straight and open a way as possible, with the idea of sequencing that has come out, it will be helpful to us all. Do you accept that sort of approach?

David Davis: Timing will be important. There will be times when we can tell you things that we could not tell you the month before.

The Chairman: Yes, of course.



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David Davis: Anybody who has been involved in negotiations—a number of people on this Committee have been very involved in negotiations—will know that perfectly well. When it comes to it, I suspect they will understand it.

Lord Liddle: If in the present circumstances I was acting as an adviser to the Prime Minister, which I once did, I would be saying to him—

David Davis: It is her, actually.

Lord Liddle: Sorry—to her. Apologies for that. I would say, “You have to make up your mind about certain fundamental things. If you want access to the single market, are you prepared to put yourselves in a position where you accept rules in certain sectors that you do not have much say over? Yes or no? Are the Government prepared to accept that?” If we are interested in research, which we think is a good thing and beneficial to Britain, are we prepared to make budget contributions of any type to common European programmes? That is a question of principle. It is not something that depends on our partners; it is about what we are prepared to do.

On free movement of labour, we say that we need more control. We may need more control, but does that mean that we are aiming to cut EU migration to 100,000, as opposed to 300,000, or that we want dramatically to reduce unskilled migration, as opposed to skilled migration? Surely the Cabinet has to come up with the policy on those questions and say to Parliament what its position is before it enters into any kind of discussion with Brussels, or do you not see it that way?

David Davis: Yes. The Cabinet will have to come to that conclusion. That is the sort of debate internally I was talking to Lord Green about earlier. Disclosure will start at the point of the triggering, but it will go on from there—in what sequence, I cannot tell you at this stage.

The Chairman: We are getting through this particular area, which is central. We now go to Lord Selkirk.

Q15 **Lord Selkirk of Douglas:** Secretary of State, might you feel able to appear relatively regularly before our Committee? I know that it is a very difficult question, because we do not know exactly how the negotiations will play out. What would you consider reasonable?

David Davis: I have not calculated the diary requirements at the moment. My answer is, within reason, yes. There will be claims on me from the Foreign Affairs Select Committee in the Commons, which I have mentioned. We may have our own Brexit Select Committee, in itself. One of the outcomes of the sheer complexity of this is that it will be quite onerous in time terms. I may crave your indulgence from time to time because of that.

Just think about it. We have a whole series of economic exercises and a whole series of diplomatic exercises. We have at least 30 interlocutors—



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27 countries, the Commission, the Council and the Parliament. We have the legal analysis to complete. One or two of you around the table are lawyers. I have to tell you that we have been given 180-degree opposite opinions on some things. People will be familiar with that. There is a whole series of things of that nature. Once it really gets under way, I suspect that the pace of life will be quite hard. Within that consideration, I will do absolutely what I can to appear before you. To be frank with you, appearing before Lords Select Committees is a pleasure. The tenor is good, and it is useful. Actually, I quite like appearing in front of Select Committees full stop, but Lords ones are always enormously courteous.

The Chairman: It could get worse. Who knows?

Lord Selkirk of Douglas: I have a very quick supplementary. First, thank you for the response that you have just given, Secretary of State. What do you see as the main impediments to Parliament playing an active scrutinising role during the negotiations?

David Davis: I do not see that there is much impediment to its scrutinising and holding accountable. It comes to the distinction as to whether Parliament—or Members or groups in Parliament—try to micromanage it. That will be impossible. It just will not work. By comparison, it would not have worked when we were negotiating one of the relatively simple treaties, on which Lord Jay, I and others were involved, so it certainly will not work with this. On accountability, the thing is simple. It is about timing and confidentiality. I do not think that will be a problem.

The Chairman: We will close this area of process and come to some more specific questions. My final point on it is that perhaps you will need to bear in mind the question of ex ante and ex post. We had lively exchanges with David Lidington, when he was Minister for Europe, and persuaded him—in very different circumstances, I concede—to do some pre-Council sessions with us, which he had previously not done, rather than simply reporting post-Council. Obviously, it interacts with arrangements for Ministers to report to the House and make Statements on a regular basis, and for the usual channels to arrange debates on a regular basis. No doubt that is something that you will be considering. I suppose that it is self-evident to everyone that it may be a little difficult before what happens has happened. If it has happened, we would like to know about it as soon as possible. Is that reasonable?

David Davis: Yes, absolutely.

The Chairman: Fine. On that note, we will pass to the second line of questioning, with Baroness Falkner.

Q16 **Baroness Falkner of Margravine:** Secretary of State, you are familiar with the scrutiny reserve resolution, the latest iteration of which was agreed in March 2010 and which prevents Ministers of the Crown from giving agreement to European institutions in relation to any document



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that we hold under scrutiny here unless there is an agreement that we provide a waiver. What is your view on having that sort of refreshed, new scrutiny resolution, which we are considering, to deal with this slightly different situation, where it is not necessarily documents—although it could be—but information and conversations that you are having with negotiating partners?

David Davis: I am not sure that it is applicable in this circumstance. At one of your previous hearings—it may have been your last one—at least one of your witnesses called into question whether we could complete what we are trying to do inside two years. I think we can, but the simple truth is that we will have to be nimble, fast and responsive. I worry about anything that ties our shoelaces together in those terms. I am not sure that it is the appropriate mechanism. I would like to see it in writing to give a proper response, but that is my instinct, initially at least, for the reasons we have talked about before—confidentiality and speed of response. I assume that it will be a dynamic negotiation, the nature of which may well change in the course of a couple of years. We will have to be smart in how we respond to it, and I do not want to slow us down.

Baroness Falkner of Margravine: Have you been contemplating this? Has this conversation happened between you, your officials and the House of Commons?

David Davis: No. I read your report and the evidence from your last hearing.

The Chairman: There is also an issue of what one might call the multi-tier nature of the negotiations. One understands that the central element is a discussion at European Council level, but the details will be remitted to the Commission. There will be expert working groups and so forth. It will be a matter of being able to report on what is rather a piece of three-dimensional chess.

David Davis: Exactly. It is not only that. The European Union loves to make linkages. You might want to freeze one of my rooks, which is important to the checkmate over here. It may not be obvious to the Committee what is going on, particularly if I am being good at my job with respect to the negotiation itself. That is part of it. That is why I worry about it. If the Committee writes to us, we will have a look at it, but my instinct at the moment is that it is not really appropriate.

The Chairman: We will give further consideration to that issue. You have put out a reasonable challenge to us.

Q17 **Baroness Kennedy of The Shaws:** Secretary of State, you have spoken about your desire to build national consensus around the position that is developed. I want to know how you think you will do that. I am particularly interested—we all are—in how Parliament will be engaged in that process. Although the victory in the referendum was with Brexit, of course, 48% of those who voted did not vote for it, so winning consensus



will be an uphill—

David Davis: The referendum did not exactly build consensus, that is for sure.

Baroness Kennedy of The Shaws: That is right; it did not. It was somewhat divisive. We all have mailbags reflecting that.

David Davis: I agree. That said, and we have to be very wary of believing polls, as we all know, what has been interesting to me is that, although it was a narrow result in one sense, something like 70% of the population want us to get on with it and do it. That means more than half of those who voted remain, if the poll is right. To develop consensus, one of the things we need to do is to address people's worries and legitimate concerns, whether they be about Northern Ireland and the very serious issues there or about elements of the City or industry—the automotive business and so on, with their linkages.

Baroness Kennedy of The Shaws: Or law enforcement.

David Davis: Absolutely. We need actively to engage with each of those round-table groups. That is why I hesitated about using the word "consultation" with Lord Green. It is a bit more than consultation. It is a two-way process, in which I hope that one of the outcomes will be that many of the movers and shakers in those stakeholder groups will start to think that we are taking it seriously, that we mean it and that we want to do what is possible. First, there is that aspect to it. It has started, by the way. I slightly teased the Labour Party by telling it that my very first meeting was with the TUC general secretary.

Baroness Kennedy of The Shaws: That is a useful thing to do.

David Davis: There was a point to that. I wanted the TUC and the trade union movement to understand that this Tory Minister took their interests seriously.

Baroness Kennedy of The Shaws: One concern that people and the general public may have is that articles have been run recently suggesting that this will be a feast for lobbyists—that professional lobbying outfits will access you and your colleagues and use their best endeavours to pursue their own interests. That always makes the public feel that they are not part of that and that they do not get purchase in the way the corporate world does by using lobbying outfits to get access to you and your ear. Other people's concerns will not be addressed in that way.

David Davis: The least effective approach to me so far has been by a lobbyist—I will not tell you who—because they self-evidently had an axe to grind. We will endeavour to address that, including in regional terms. You will have noticed, for example, that one of the things that the Prime Minister did was to visit the devolved Administrations—the first of them before she had even had a reshuffle. In fact, it was in the middle of the



reshuffle. My first visit was to Northern Ireland, followed by southern Ireland.

Of course, they are two-way things. They are about finding out, but they are also about telegraphing that they matter, and they do. That is part of it. After I finish here, I am going to a dinner with a modest-sized gathering of very senior scientists. Why? Because I want to hear what their concerns are and to let them know that we are engaging on them. You will have seen that during the summer the Chancellor made an announcement about guaranteeing and underwriting funding. That is because we could see straightaway that people were fretting—

Baroness Kennedy of The Shaws: Universities are absolutely fretting.

David Davis: Exactly. We have done some things on that already. I saw Universities UK last week, to that end. The department calls it engagement. I hate processy words, but it is a very big programme for me and my Ministers. Ministers in other departments are doing the same. They are all pretty engaged on it. This recurrence to Whitehall is after a gap of 20 years. Frankly, I have been impressed by the extent to which all departments of Whitehall have taken the engagement process very seriously.

The Chairman: There is always an interesting analogy with wartime conditions. When there is a crisis, Whitehall seems to work better, because people are focused.

Can I follow up with one supplementary point to Helena's question? It is on the question of political parties. I do not want you to go off into a lecture about the current political situation, but given that the kind of settlement that will be negotiated is presumably one the country will want to live with for a considerable amount of time—likely to be over the coming and going of future Governments—will you also want to involve, as far as is practically possible, parliamentary colleagues in other parties or across parties, as we are on this Committee?

David Davis: Yes, of course. As I said, I will be speaking to the Cross-Benchers—of no party, I guess—on Wednesday. I will be joining my brilliant Parliamentary Secretary, Lord Bridges. There is a political reality, which is that in both Houses of Parliament there is a remainder majority—although I hate using such words. If we are to make this work, we have to persuade most of them that this is a worthwhile exercise and that the national interest is that they get engaged in it and we do the best job possible. The answer is yes. For me, political party is almost irrelevant in this context.

Lord Green of Hurstpierpoint: Building on Helena's question, Secretary of State, you have created a very good impression among us of the way in which you are positively engaging with various groupings, whether they be the TUC or various sectors of industry.



David Davis: The fishermen, the farmers—whatever.

Lord Green of Hurstpierpoint: I am concerned to be assured that one group you are listening to is foreign investors, particularly in sectors where their investment is important and strategically significant. The automotive industry is the most obvious example; financial services are another, but automotive above all. The Japanese, who do not put their heads above the parapet very often, produced a very detailed 15-page summary of the issues that worry them. Can you assure the Committee that this is a set of views you will listen to very carefully as you go about the process of formulating the negotiating strategy?

David Davis: Yes. To take the Japanese, you are right; they do not often come out into the open on these things. I will certainly be seeing the Japanese ambassador. It will be after the party conference; it will not be immediate. We will also talk to Japanese firms to that end, to see whether the view there is an issue. The automotive industry is clearly important. It is a highly integrated industry across Europe, with, of course, integrated ownership. From my point of view, that has some advantages when negotiating leverage across borders. The answer is yes, absolutely.

This may sound like a weird thing to say, but I am going to try to make the consultation half of the engagement process as scientific as I can. I will go to businessmen and say, for example, “Can you please quantify this for me? It is very difficult to do, but can you quantify the effect of a non-tariff barrier versus a tariff barrier? Which of these matters?” Everybody will say that their issue matters most. I need to get some size and some numbers on it. That is something I am sure you will understand better than most.

Q18 The Chairman: Can you say a little more about the role that you see parliamentary Committees collectively—not just this Committee—playing in promoting dialogue with stakeholders? As you know, we will be doing some specialist reports on areas of interest to us and obviously we will share them with you. There is a related, though slightly separate, issue of what is sometimes called parliamentary diplomacy—you travel and meet people who may have a certain perspective. Could we have some kind of clearing-house in your department—not a large one; you have plenty to do—where at least people who have concerns and/or information or perspectives can feed them into the process and somebody will take note of them, on their merits?

David Davis: I had not thought about it in parliamentary terms. That is interesting. As you can imagine, because this is the sexiest area of politics at the moment, everybody writes to us. At the moment, my department is actually quite tiny.

The Chairman: I know that.



David Davis: It has quadrupled in one month, basically. It is eight weeks, but everybody around this table knows what Whitehall and Brussels are like in August. It has quadrupled in a month, in effect. It will probably double in size again, but it will still be very small by the standards of Whitehall. Once we get to that sort of size, we will be looking to outsiders. I have a lot of very bright young civil servants. They do not have that much grey hair yet. I may have to find that outside. We are not that big. Subject to that, we will help where we can. Certainly, if this Committee comes to us, we will help. Within the limits of our capacity, we will help the others, too.

Q19 **Baroness Armstrong of Hill Top:** Everybody today has talked about the public. I come from a bit further north of where you were born. When I talked to folk over the summer, they had very different ideas of what the vote was about and what their expectations are. Politicians are not very well thought of—any of us. This is a really critical issue when it comes to confidence in a vote. How will you ensure that the views people have, which are different in different parts of the country, are fed back in? Are you going to have major exercises run not by politicians but by other people, who can talk with people about what they want? Is there any thought about how you will effectively engage what is a very divided electorate?

David Davis: There has been a lot of thought about how we engage, but not, I think, in the terms that you have described. It is quite interesting. In truth, I am not quite sure how we would do that. I can see how I can engage with trade unions—

Baroness Armstrong of Hill Top: I can talk to you about that.

David Davis: By all means. Write to me or come to see me about it. I spent the early parts of the night of the 23rd—or 24th, as I guess it was by then—watching the north-east change the colour of the country. Indeed, that Monday I had been speaking in the north-east, to a very enthusiastic audience. In that case, yes, come and talk to me about it.

Again, we may have a capacity issue, but as I said in the Commons, to a very large extent, this vote was by the British industrial working class—for various reasons—outside the metropolitan south-east. It is very important to understand exactly what they want out of it. I made some points about, for example, protection of employment law, which I think is quite important. So yes, can we talk?

Baroness Prashar: Secretary of State, you mentioned that, quite rightly, you are taking a scientific approach to this, but it is a very complex, comprehensive exercise and it has a number of objectives—managing expectations. Ultimately, once you have done all the consultation, it is decision-making time and you need to analyse the information before you. In attempting to make it as scientific as you possibly can, do you really have the capacity within your department or elsewhere to weigh up what you have and what you think is the right way



forward? People will say different things to you, so weighing up what is the national interest and what is the right chunk of information will be the most difficult part.

David Davis: Yes. The answer is, "Not yet, but we will have". As I said, we are literally creating this from scratch. There were about 45 people in the various bits of the Cabinet Office—the EGIS group and so on—at the beginning. We are building like Topsy. That is partly why I made the point about grey hair. It was not supposed to be an ageist point. It was supposed to be about people understanding individual sectors—the City, for example, where a lot of the public argument has been slightly naive. The City is an ecosystem, not an industry. There is a balancing of what is important there, and what is lethal, if you remove it. Similarly, the automotive industry will be quite difficult to assess, because some of the analyses are almost about chain effects, if that means anything to you. We will get there, but we are not there yet.

The Chairman: You will use outside help, when that is appropriate.

David Davis: Yes, absolutely. My department was attacked this week for spending whatever it was—£30,000—on lawyers. Actually, it turned out to be the salary of our internal lawyers. We had not spent anything outside, but we will.

Baroness Kennedy of The Shaws: Purely inside lawyers.

David Davis: Exactly. That is what we are doing.

The Chairman: We go on to Lord Trees.

Q20 **Lord Trees:** Good afternoon, Secretary of State. You have already spoken about the colossal task of the negotiation ahead that you and colleagues and the Government are facing. One might argue that on the other side—in the EU—it may be even more colossal, because they have to take into account 27 member states. Having said that, of course, we now have devolved Administrations. Particularly in view of the fact that there were some striking differences in the voting patterns in the four parts of the United Kingdom, what mechanisms do you anticipate there being, or will you put in place, to seek and to take into account the concerns of the devolved Administrations? Secondly, if they have real problems, what mechanisms might you put in place to try to resolve those?

David Davis: At the moment, there is a very intensive official-to-official connection going on. Very shortly, we will put in place—I will notify you as soon as it is done, Chairman, but I cannot do so until then—a liaison at ministerial level, which will be designed to maintain a link and a sight of the issues that affect them.

It will not be restricted to that. We will be looking directly. Let us take Scotland. We will talk directly to the Scotch Whisky Association, Scottish fishermen, Scottish finance personnel and so on. We will do the same for



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each of the groups. When I was in Northern Ireland last week, one of the groups that I saw was the Secretary of State's new business advisory group. I wanted to get straight to not quite the ground floor; the chamber of commerce was there, small businesses were there, and so on, so we jumped past the official group. That is all under way.

It is true to say that the Prime Minister, who, at the end of the day, runs this process, not me, is extremely seized of that and wants to make it work. We do not want it to be used by anybody as a way of damaging the union.

The Chairman: In earlier inquiries we have done, we have noticed a certain divergence of approach—perhaps understandable—between official-to-official or Government-to-Government talks with the devolved Administrations and dealing with the opinions of the devolved Parliaments, from which there is perhaps a greater degree of distancing. Can we take it that collectively, as it were, the kinds of acknowledgement that you have made of the role of Parliament transfer to the role of the devolved Parliaments, with all their diversity, in handling the issues?

David Davis: Up to a point, yes, but it is up to a point. This is a reserved power, at the end of the day. We have made it very plain that, although we want to deal with the issues that address each of the devolved Administrations or the populations in the nations, our and Parliament's responsibility is paramount. There will be no veto for anybody other than government and Parliament. This is an instruction that we have been given, effectively, and we have to carry it out. We cannot let anybody else veto it.

Baroness Suttie: Have you taken a decision on whether or not to second officials from the Scottish Administration?

David Davis: No, not yet. Because we have not put in place our organisation at ministerial level, it is a bit early to do that.

Baroness Suttie: Is it actively under consideration?

David Davis: I had not thought about it up to this point, but it is now.

The Chairman: From my experience in Europe, it should be, in my view.

David Davis: Yes, I can see that.

The Chairman: The next question is from Baroness Wilcox.

Baroness Wilcox: This is light relief.

David Davis: I thought I had provided that already.

Q21 **Baroness Wilcox:** Secretary of State, it is wonderful to see you here. I have never seen so much energy coming off somebody—certainly not off MPs—as I have seen coming off you in the last hour. It is wonderful to live in exciting times. I would like to know whether or not you have had



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discussions with the Administrations of the Crown dependencies, as well as, in particular, Gibraltar.

David Davis: Not yet. They are on the list. That one has been thought of.

Baroness Wilcox: They are on the list.

David Davis: Yes. As Lord Jay will know, this has been a difficult point with the Spaniards for a long time. Lord Chairman, you will remember my nicknames in the days of old. I was Monsieur Non and Herr Nyet—all those things—but because there are ladies in the room, I cannot tell you what the Spaniards called me, and it was mostly over Gibraltar. It is a difficult area, but we will be very cognisant of it. They are on the list to see. I was going to say that one of my junior Ministers had been, but he has not yet.

Baroness Wilcox: From what I have seen and gathered thus far, it seems that it will be two years before we really get going, hand in our notice and move on. There are so many people knocking at your door and so many areas that wish to talk to you that you will have to have some other form of letting people talk to one another, if they cannot talk to you. I wonder whether you are already starting to plan such things.

David Davis: That is interesting, because it ties in with what Baroness Armstrong said earlier about engaging. The truth is that we have been focusing on the various groups we call stakeholders, because they tend to have organised opinions. That is because that is easy to marshal, whereas what you are talking about, and what I think Baroness Armstrong was talking about, is not so easy to marshal and to crystallise. The answer is that I have not really thought that through properly. It is something that I will take away from this meeting and consider. You see, you have helped me already.

The Chairman: As you are clearly in listening mode, which is helpful, can I at least entertain the concept, without necessarily thinking that it will work, that in some areas it may be quite sensible to get the interested parties together under some independent mediation or guidance that does not involve Government to Government at all? I have found many times in environmental head-to-heads that you can get a perfectly good accommodation at local level when there is still megaphone diplomacy going on at the centre. I am not asking you necessarily to give a commitment to that, but could you at least consider it?

David Davis: I will think about it.

The Chairman: Thank you. We will go on to some of the nuts and bolts of the negotiation.

Q22 **Lord Whitty:** Could we go back to Whitehall? You sounded fairly bullish, Secretary of State, about the degree to which the departments were all



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co-operating and the staffing that you are building up at this early stage in your own department. Some of us have had experience, both as civil servants and as Ministers, of new departments being created in Whitehall. Normally it takes them two or three years to get over it. There have been some slightly worrying media stories about tensions at both the political and the Whitehall end.

David Davis: I have yet to organise the pyjama party at Chevening.

Lord Whitty: No comment.

David Davis: I thought that was what you were referring to.

Lord Whitty: You can have a very nice weekend at Chevening—all three of you.

Your department is supporting the Prime Minister in the negotiations; that is clear. That covers all negotiations. You are covering the withdrawal side and the trade with the EU side, but Liam Fox's department will somehow in parallel be covering relationships with other—

David Davis: Other parts of the world. That is exactly right.

Lord Whitty: That will depend a bit on how we come out of the EU, what our arrangements with the EU are and what arrangements we have within the WTO subsequent to that.

David Davis: Indeed it will.

Lord Whitty: The need for cohesion is important. More widely than that, clearly you have the Cabinet Office, the Treasury and the Foreign Office, which, if rumour is correct, may be slightly peeved at what I think you called the biggest game in town moving away from their purview. Is there a new structure to keep it all together, both for Whitehall and for Ministers?

David Davis: Yes. There is a Cabinet Committee, chaired by the Prime Minister. The three dramatis personae you listed, among a number of other Ministers—all the senior Cabinet Ministers, really—are on that. That is the primary driver.

You are right, in a sense. My department is stepping on absolutely everybody's toes, which is why I am pleasantly surprised that it has been taken very well. The reason is that we have decided not to replicate in my department the immigration policy department from the Home Office or the CAP department from Defra. Frankly, none of the credit for that goes to me; it goes mostly to Olly Robbins, my Permanent Secretary. We have bright people from those departments who do the diplomacy, the co-ordination and all the rest of it. That has minimised the pressure on the foot of my department. That is how it is working.



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It is early days, but that co-ordination is working well. The Cabinet Secretary himself is seized of this. He came to see me on my very first day in the job. Everybody in Whitehall recognises that this is an enormous and important project. Without being too oleaginous to the ex-Permanent Secretary here, I happen to think that all our civil servants are very patriotic people and want the right outcome. That is the biggest driver, to be honest.

The Chairman: On that specific, presumably you may want to take advice from those with experience of government—not necessarily as ex-civil servants—who might be able to steer you through some of the pitfalls of the difficult process of trying to do things yourself and in parallel with other departments.

David Davis: Indeed. I have already had Robin Butler in to see me, for example. He is on one of your subsidiary committees, is he not?

Baroness Falkner of Margravine: Yes, Financial Affairs.

David Davis: Lord Jay is coming to see me at some point. We were due to meet last week, but things overwhelmed me. Yes, absolutely.

The Chairman: On that note, Lord Jay might like to ask the question that he had in his mind.

Lord Jay of Ewelme: Thank you, Lord Chairman. Civil servants like a challenge, and they have certainly got one.

David Davis: Absolutely. That is what he said about me when I joined the Foreign Office.

Q23 **Lord Jay of Ewelme:** I had seen you as a Whip before that, so I knew what to expect.

Could I ask you to step for a moment beyond the invocation of Article 50 and into the negotiations themselves? This is not at all about substance. I just wondered how far your thinking had gone about the process and structure of the negotiations themselves, when they start. Who is likely to be involved at ministerial level? Who will be involved at official level? What will be the role of UKRep? Do you envisage there being different baskets of negotiations—I think you mentioned baskets of negotiations earlier—for different subjects? What kind of negotiation, with whom, should we be expecting?

David Davis: UKRep will be fundamental, as it has to be in this. Essentially, we have taken temporary responsibility for UKRep, the old EUD and so on. In fact, my Minister of State, David Jones, is doing the General Affairs Council, in order to keep that link together. I expect that, just as always happens with standard negotiations in the European Union, the departments will pick up their piece of it, via their UKRep representation. That is the expectation there. At ministerial level, I expect much the same, but it is really down to the Prime Minister. We



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have not really had time to talk that through in any detail. Nobody will go to Brussels until she has been to the European Council in October. From then on, we think that the cascade will start.

As regards the approach, I noticed that in your previous hearing—indeed, in your previous report—you thought that the legalities allowed us to run in parallel the termination agreement and the post-termination agreement. I rather agree with that. It looks sensible to me. By the way, my German is not good enough to tell the difference between the German version of Article 50 and the English version, but the English version is good enough for us on that.

That is really the structure. We have not thought a great deal beyond that. To be frank, some of the structure of negotiations is driven by the power of your aims—which ones are most predominant and which are your best negotiating cards. Why am I telling you this? You know full well that that will determine the structure.

Lord Jay of Ewelme: Do you have a sense of whether the EU—the other side—is working out now what sorts of structures it will have and what the roles of Barnier and Tusk will be, or is it all a bit murky?

David Davis: “Murky” is perhaps a cruel word. It seems not wholly decided; let us put it that way. It looks to me that there is a tug of war going on. To be honest, as I said earlier, I do not think the personalities will matter quite as much as the newspapers would have us believe. At the end of the day, the Commission will have to be the servant of the Council when they go towards the end game. The Council has to lay down the negotiating remit anyway. I do not think that they are there either. That is why—I have seen it written up, and I think it is right—it is almost as valuable to the EU as it is to us to take a little time before we trigger Article 50.

Q24 **Lord Teverson:** We have talked mainly about things that we want to achieve and do. One of the key areas of any activity, whether it is business or government, is contingency planning. One of the things that is absolutely clear about Article 50 is that two years after the P45 is sent to Europe we have no guarantee that there will be membership. I want to concentrate on the legislative side and the legislative vacuum. My own Committee deals largely with environment, which is an area where there is a huge amount of European legislation. Is your department also looking after all those contingency areas, particularly of legislative vacuum, when the break takes place, which could be two years after we have given notice?

David Davis: I mentioned before the legislative programme that will have to be created. Again, it is still work in progress. We have to think through the best way not to leave a hole. In my tiny department, there is one section—the one that cost the legal fees—that is thinking about exactly that. There are various difficulties with it; whether we end up with a Bill with huge Henry VIII components to it, which we are obviously



trying to avoid, or the issue of whether the Bill—or Bills—has to match what happens in the negotiations and so on. We talked about war-gaming earlier. We are mentally war-gaming that exercise at the moment. Again, that is somewhere we have to be at by the end.

Frankly, the shape of the deal that we are doing has an impact as well. We have just seen the Canadian treaty land in the mixed procedure, with all that goes with that. We have to work that out, too. It is not obvious. It is one of those bits of European law that are as much about politics as they are about law.

Lord Teverson: Extending that, are there any other areas of major contingency we need to be aware of, apart from the legislative vacuum, or is that the main one?

David Davis: That is probably the biggest known unknown; put it that way. Do not get me wrong. It is not by any means an unmanageable one. It is a choice of different slightly awkward options. That is all.

The Chairman: At this point, I remind colleagues that, of course, we continue as members of the EU until we leave, and the EU is making proposals and legislating on things in real time, as we speak. The essential part of this, and the locus between our Committee and traditionally, the Foreign and Commonwealth Office, was in relation to the co-ordination of the scrutiny process—submission of explanatory memoranda and the relevant documents. Generally, that has worked pretty smoothly latterly.

I understand that responsibility for co-ordinating the scrutiny process has now moved to your department. Indeed, my next job will be to go back and do my weekly sift, on the basis of the documents and EMs referred to. Can you confirm and honour the commitment made by David Lidington, when he was Minister for Europe, that Her Majesty's Government will continue to observe their current scrutiny obligations to Parliament, and in full, until such time as the UK leaves the EU?

David Davis: Yes. I am not familiar with the undertaking. If David gave you the undertaking, I will uphold it.

The Chairman: Thank you. That is quite sufficient. In return, we would be more than happy to bring our expertise to bear to encourage and advise officials who may be less familiar with the process. I think that something is going on at official level. I am happy to come and talk to officials. Again, it should not be a zero-sum game. There should be an element of mutuality in the process, if it works well.

Q25 **Earl of Kinnoull:** Secretary of State, over the last 20 minutes or so, we have touched a couple of times on the level of resource that you have in your department. Of course, during the summer break, there were quite a lot of articles that were highly critical of the level of resource and whether it was available. The first element of what I want to ask is for



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you to comment on that.

The second thing, which you have touched on already, is that you are busy building a department and I wondered to what extent you felt confident that you had done a skills audit, so that you knew what you were trying to build, and whether you could give an assessment of how far along the building process you had got. Finally, I wondered whether you would venture a guess as to roughly when your department might be practically complete.

David Davis: To be honest, I did not read many of the newspapers, beyond the headlines, so I do not have much idea of what they said. This is an ab initio department, to all intents and purposes, apart from a tiny core.

You asked whether I had done a skills audit. No, it is not quite like that. That is what I might have done in my old days, when I was running a big business, with a block I was looking at. This is more about finding the people to match to individual tasks. We are probably about halfway there. We have had a formidably fast start. Some of the second phase may be a little more difficult. The first phase was creating a structure and getting lots of very bright people, but the next bit may be very specific. That being said, we have had overtures from a number of organisations—I am not talking about PR; I am talking about law firms and so on—which have said that they are willing to second people to us and so on. That may well accelerate it, but I do not know yet.

Earl of Kinnoull: I have a tiny additional question. If it is not called skills, is there any area where you think, “Gosh, actually there is a bit of a shortage of people who understand that particular thing. I am going to find it very difficult to fill those posts”?

David Davis: Not really, so far, because most of what we have been doing so far has leant heavily on the other departments. When we come to the stage that I mentioned to Lord Green—doing the quantification, the analysis and so on—it may be a bit more difficult, unless I rest heavily on the Treasury. That is a step along. So far, I do not think so. I am not aware of it, certainly.

The Chairman: In general terms, your relations with the Treasury on resources matters—although, I am sure, professionally correct—are reasonably constructive.

David Davis: Oh yes.

The Chairman: Fine. That is helpful. Secretary of State, we are going to round this off with something that switches hats from the general to the particular. It is the bit of the inquiries that my Committee and Sub-Committee complex are conducting that this Committee, as the central Committee, has taken aboard, because it involves substantial constitutional issues. It is the question of the future of the island of Ireland and the relationships both with the UK and cross-border. If we



may, we will conclude with one or two questions on that. I think that your early visit to that island was appreciated. We shall be going there shortly and reporting separately on it before too long. I ask Baroness Browning to lead on this.

Q26 Baroness Browning: Secretary of State, you have already said that you have visited both Belfast and Dublin. How much are you able to share with this Committee today about the nature of the discussions that you had? I know that you have flagged up that the border issue is one of the more difficult ones. The Committee has already received written submissions on that—in particular, one from Professor Derrick Wyatt, in which he says, “It is possible that the present ‘soft border’ arrangements will be undermined by Brexit”. Would you like to say a few words about how you are going to make sure that that does not happen and that any disturbance to the relationships is absolutely minimised?

David Davis: Let us deal with Northern Ireland first, but it overlaps with the Dublin visit as well. There are two or three issues. There is nervousness about the peace process because of the prior involvement of the EU in it. It was not a particularly well-specified nervousness; it was just a nervousness. It was not specified down to a particular thing. There is the border, and there is the common travel area. There were other technical problems—for example, things like the Irish energy market—but they are at a more detailed level than I think we are talking about today.

Both the Northern Ireland Executive and the Irish Government are of a single mind that they want to see the open border maintained. Nobody wants to go back to the hard border at all. In a way, that is the biggest symbolic thing relating to the peace process. The optics would be poor, and it would not feed the feeling of viability of Northern Ireland. From that point of view, both sides are the same. So are we—the UK as a whole. We want to see maintenance of the common travel area. We see absolutely no reason why not. It has been around since 1923, it is not EU dependent, and the interlinking of British and Irish societies is extensive. I probably have my numbers wrong, but I think that there are something like 600,000 Irish passport holders in the UK. When I was at the British Irish Chamber of Commerce—a very jolly occasion—they told me that there were 60,000 Irish company directors in the UK. I thanked them for the loan. The interlinking is incredibly important.

I do not see that the common travel area should be under threat. I may have missed something, but I do not see why we cannot maintain it. I think that both the issue of the common travel area and immigration control and the issue of goods across the border are resolvable, by a variety of technical and technological means. With an open border, there will always be a bit of frictional loss; let me put it that way.

The Chairman: There always has been.

David Davis: Exactly—you have beaten me to the punch. There is a fair amount of low-level alcohol traffic across the Norway-Sweden border, for



example, and so on. Heaven forbid that that should happen in Northern Ireland, but I suspect that we may have to put up with a loss of revenue somewhere. I do not see any of those problems as incapable of resolution. Of course, it is very important to Ireland that it maintains as much of a trading link with us as it can. It is one of our biggest export markets, and we are its biggest export market, I think. We can deal with all those issues.

We will have differences. I had the most pleasant reception I have ever had on a foreign trip in Dublin last week, and I have had some pretty pleasant receptions over the years. It was very good. There was a difference of view on borders, as you might expect. It related not to their border but to what they thought about the free movement of people policy. I have rambled a bit, but that is basically it. They were two very good visits. We are of one mind as to how we want to resolve the problems. There will be quite a lot of official-level technological and other exchange between the Northern Ireland Office and the Irish Government, and maybe the Home Office and the Irish Government as well.

Baroness Browning: Do you read anything into the reluctance on the part of Northern Ireland to form a committee with the Republic?

David Davis: Not really. I am not sufficiently skilled in the finesse of such things to comment on that. When dealing with all the devolved Administrations, I do not always understand all the sensitivities, so I am very careful about how I handle them. "Know your ignorance" is a good motif.

The Chairman: It is usually the beginning of wisdom on these issues.

On the machinery, can we have your assurance that the right kinds of structures are in place—maybe yet to be evolved—with the Irish Government, the Northern Ireland Executive and HMG on these issues, in the context of the negotiations? We have talked rather about the cultural aspects, but there will be an immediate job to be done in seeing how those are carried through in the negotiations, bearing in mind—just for the record, I think the ambassador acknowledged it last week—that the Irish Government will have a seat on the other side of the negotiations as well.

David Davis: Of course. When I went to Dublin, I met Charles Flanagan, the Minister for Foreign Affairs, and the Justice Minister and Deputy Prime Minister—I cannot pronounce the Irish term—and the Taoiseach, as well as the Europe Minister. I met them all variously—the Taoiseach over dinner, at great length, and the others beforehand. I left in one of those circumstances where I felt that, if I wanted to right now, I could pick up the phone to Charlie Flanagan.

On the machinery, I am not sure of the answer quite yet. If we need more formal machinery, I am sure that we will be able to create it.



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The Chairman: Do colleagues—either Baroness Brown, who expressed an interest earlier, or Baroness Wilcox—want to come back on this?

Baroness Browning: Could I ask one final question? It relates to a comment in Professor Wyatt's paper to us. In your discussions—I realise that they are very early and preliminary—was there any hint on the part of the people you spoke to in Dublin of any pressure or consideration for Ireland ever to join Schengen?

David Davis: No, it was not raised at that stage. I am just casting my mind back, because I can remember pretty much the whole conversation, despite the fact that it was in Dublin. No, it did not come up, but it is the sort of thing that we will discuss. In the event that we seek some sort of light-touch immigration policy—as we will—we will have to talk that through, but at this stage it was not raised with me.

Lord Teverson: I have a very short point. Yes, there has been an open border for ever—there were some difficulties over the Troubles—but both countries have been in EFTA or in the European Union. This is the first time that we are not. If we are not in the same customs union, are we saying that we will solve the border issue through technology? It is a genuine question. Is that what the Government are saying? In every other aspect, one would say that there just has to be a border there.

David Davis: First, as I relayed to you earlier, the common travel area predates all of that; it goes back to the 1920s. It is incredibly important in this joint approach. We have been in the same customs unions, but, before those, we were not in the same customs union. You need to look at the border. It is a very complicated, wrinkly-shaped border. You can drive in and out three or four times without realising it, I suspect.

Lord Teverson: I have.

David Davis: There we are. We are determined to solve it. I do not have a technical solution today, but the intimations I have had are that it is soluble. It is certainly a very high priority.

The Chairman: I have a final question, Secretary of State. You referred to the large number of Irish nationals living and working in the United Kingdom, remembering, in particular, the position in Northern Ireland, where people may have dual passports and so forth, although that is a separate issue. Do you envisage that there will continue to be a special status for Irish nationals in the UK? Do you think that you can secure that?

David Davis: Yes. The CTA is a central part of that. It is exactly that. On a lighter note, I should tell the Committee that, at some point in the diplomatic exchanges, I was telling the Foreign Minister about some of my Irish lineage. He immediately assumed that I was applying for an Irish passport.

The Chairman: We will leave it at that point. I have already ruled that



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possession of an Irish granny is not required to be a declarable interest in relation to our inquiry, but we know that it is an important part of it. I am grateful for your sensitivity.

Across the piece, it would be fair to say that, in Whitehall-speak, your job is challenging. You have shown welcome signs of zeal—it has been commented on by my colleagues—ebullience and readiness to meet the challenges. We will, as ever, want to look at the small print. For greater accuracy, we will, of course, send you a transcript, so we can look at that. It would be very churlish not to end with a note of appreciation for your readiness to attend and to answer questions, with a degree of panache, for nearly two hours. In conclusion and in thanking you, perhaps I can summarise by saying, in the words of “Casablanca”, that this may be the beginning of a beautiful friendship. Thank you very much.

David Davis: Thank you, my Lord.