

Committee on Exiting the European Union

Oral evidence: The UK's negotiating objectives for our withdrawal from the EU, HC 815

Wednesday 16 November 2016

Ordered by the House of Commons to be published on 16 November 2016.

[Watch the meeting](#)

Members present: Rt Hon Hilary Benn (Chair); Rt Hon Alistair Burt; Rt Hon Mr Alistair Carmichael; Joanna Cherry QC; Mark Durkan; Jonathan Edwards; Rt Hon Michael Gove; Peter Grant; Andrea Jenkyns; Jeremy Lefroy; Rt Hon Mr Peter Lilley; Karl McCartney; Rt Hon Mr Pat McFadden; Craig MacKinlay; Seema Malhotra; Dominic Raab; Emma Reynolds; Rt Hon Stephen Timms; Rt Hon Mr John Whittingdale; Sammy Wilson.

Questions 1-64

Witnesses

Professor Catherine Barnard, Professor of European Union Law, University of Cambridge, **Sir Simon Fraser**, former Permanent Secretary, Foreign and Commonwealth Office, and **Dr Hannah White**, Director of Research, Institute for Government.

Examination of Witnesses

Witnesses: Professor Catherine Barnard, Sir Simon Fraser and Dr Hannah White.

Q1 Chair: Good morning. First of all, can I welcome everyone to this first public session of the new Committee on Exiting the European Union? Whatever views were taken during the course of the referendum, there is general agreement that the task that we now face as a country is going to be a particularly complex and important challenge. A lot rests on the successful outcome.

I welcome our witnesses today: Professor Catherine Barnard, who is professor of European Union law at the University of Cambridge; Sir Simon Fraser, the former Permanent Secretary of the Foreign and Commonwealth Office; and Dr Hannah White, Director of Research at the Institute for Government. Thank you very much for agreeing to come and give evidence today.

I would like to kick off with the state of our preparedness for the negotiations that will begin after the end of March. Yesterday we read what one external consultant thinks about the Government's state of preparedness, and the Institute for Government has talked, as I understand it, to quite a lot of people involved and has made some pretty trenchant observations. It has talked about existential threats to Government Departments because of the challenge that they have, and about the process externally appearing to some people as somewhat chaotic and dysfunctional. I wanted to begin by asking you, Dr White, how you think it is going, and in particular whether you think the civil servants involved in this process have the political direction and the resources they need in order to undertake the task.

Dr White: Thank you for inviting me here today to give evidence. I am actually very pleased to be here this morning, because it gives me an opportunity to highlight something that some of you may be familiar with, which is an element of misreporting by *The Times* this morning. We have not actually said that there is any existential threat to any Government Department. We were reporting that as having been said to us.

What we said in our blog yesterday, which has been picked up this morning by the *Times*, is that we did not recognise the numbers. We do not know anything about the provenance of this memo; there has been a lot of speculation about that online. Having been out and about in Whitehall in the past weeks and months, talking to lots of people in lots of different Departments and also talking to people outside Government who have been trying to get their voices heard within Government, we do recognise some of the pressures that are reflected in that memo that are being experienced by Whitehall.

You look at certain Departments that will be very affected by the fact of the UK leaving the EU—Departments like Defra, which is already



HOUSE OF COMMONS

embarking on a programme of substantial cuts. It is looking at a programme of cuts of 25% in the next five years. Much of its business is going to be affected by Brexit and it is already under pressure to deliver business as usual. What we have said is that we think that the Government need to be really clear—and hopefully we will see this in the autumn statement next week—about where its priorities lie. The civil service can absolutely deliver Brexit. We are clear that there may well be a very good plan at the centre for how Whitehall should deliver that plan, but that plan is not clear externally. The Civil service cannot do everything. It is 19% smaller now than it was in 2010. It has all of the manifesto commitments from the Government when they came into power. It has some new things that the Prime Minister has said she wants to do. It is dealing with these cuts and Brexit is an additional burden.

Sir Simon Fraser: I broadly agree with that analysis. I do not think the memo was a particularly impressive document. It was overwritten and exaggerated. However, setting that aside, as I understand it, the process that it describes for how the Government are going about forming policy and putting together a strategy for negotiation is broadly accurate. In other words, the different Departments are being asked, in their areas of expertise, to think about the priorities and to put forward a plan to the centre of Government. My understanding is that the centre of Government will then look at that and bring it together into an overall approach towards the negotiation not only of article 50, but of the further negotiations that will be required on our future relationship.

To be clear, my understanding is that it is indeed proving to be a considerable challenge in Whitehall to do this. The Government are still in information-gathering mode and are not yet at the point of integrating that into a central plan. I assume that that will have to happen before the triggering of article 50 next year. I agree that this is a huge additional burden and load for the civil service. This is an extraordinarily complex range of activity across a wide range of domestic and international policies. It will definitely impose a great burden on the civil service. It needs to be done in a co-ordinated way, both at the political level and at the civil service leadership level, if it is going to succeed.

Professor Barnard: I would only add to that that we still have the Rolls-Royce of civil services. Once they are set on the course of delivering Brexit, they will do so. The challenges are vast. Even if the 500 figure of the areas that are being looked at is an exaggeration, the reality is that this is a gargantuan exercise. It is a vast and complex exercise. Part of the problem is that in order to answer any question, you need to know what the shape of the future relationship might look like. Answers in terms of economic costings, for example, will depend very much on whether we are going into some form of EEA plus or minus type arrangement, or whether we are going into just the WTO. The answers are very different, and that is a particular impediment for the



HOUSE OF COMMONS

civil service in trying to work out how they are going to advise Ministers on the costs of the different options.

Q2 Andrea Jenkyns: When we visited the Department last week, I personally was left with the impression that they are going to be pulling on resources of other Departments, but also that they are willing to invest whatever is needed to get the job done. Did you not feel that from where you are standing?

Sir Simon Fraser: Do you mean DExEU?

Q3 Andrea Jenkyns: Yes.

Sir Simon Fraser: My understating of the role of DExEU—and my colleagues will have views on this—is that is essentially a co-ordinating function. This is a newly formed Department, which is still in the process of forming, in fact, as not all of the appointments have been made yet. I understand that the ambition is to have about 400 people in it. By Whitehall standards, that is a small operation. It is essentially a co-ordinating function and an expanded central secretariat to manage the process of policy formation across Whitehall, integration and, I presume, the conduct of negotiation.

If that is the model, as I understand it, then clearly it is going to have to draw on the deep expertise that lies in other Departments across Whitehall. Frankly, I do not see an alternative model that you could possibly have, given the constraints on resources and the magnitude of the task. On the question as to whether they are sufficiently resourced, I am not sure exactly where it stands. A lot of very able people have been brought into this function. It is still a work in progress. Until they have access to information from other Departments, the true function of DExEU is not really beginning, in my view, or not really gathering pace.

Dr White: As Professor Barnard was saying, actually what you can see with DExEU is that it is a remarkable achievement to go from no department to a Department of around 400 people, at the moment, in four months. As Sir Simon has said, it is drawing in really great talent from across the civil service. There seems to be a lot of confidence within the Department that they have a good plan for how to make this work. We have heard less confidence from other Departments in Whitehall, partly because the process at the centre has been held quite close. That is for political reasons, obviously, as well as anything else.

What we have been arguing is that this is absolutely a task that is possible for Whitehall to deliver very successfully. That is what all of our analysis is designed to comment on: how this task can best be delivered successfully. In terms of resourcing, the actual amounts of money involved in doing this are not necessarily very large, in comparison to the economic effects and opportunities that will possibly flow from Brexit. We need to look at these things with a sense of proportion, but we also need to think carefully about how this task can best be delivered.



HOUSE OF COMMONS

Q4 **Andrea Jenkyns:** I would just like to ask a supplementary question, which I will pass over to Professor Barnard. When I was in the Department last week, one of my able colleagues very rightly pointed out that at the moment they are drawing on resources within Departments in the civil service, and my colleague pointed out, "Do you not think we should be looking at resources outside of the civil service, and to industry as well?" I would be interested to know your views, starting with Professor Barnard.

Professor Barnard: As a lawyer, I am not in a position to comment on drawing on resources from industry.

Andrea Jenkyns: Yes, but, in your opinion, do you think we need to look at other stakeholders beyond the civil service?

Professor Barnard: Certainly there are a lot of stakeholders doing a lot of work. In my own field, the Bar Council is doing a lot of work and the Law Society is doing work, so there is supplementary evidence-gathering going on at sectoral level as well, which no doubt the Government will draw upon, because there is some very high-quality work being done. The only other thing I would add to what has been said by my colleagues is whether sufficient attention has been paid to the resources for UKRep, UK representation in Brussels. Not only are they going to have to deliver on Brexit, but of course in between times we are still members of the European Union, so they are doing their day-to-day work as well. That might be an area of consideration.

Q5 **Andrea Jenkyns:** Sir Simon and Dr White, do you have anything to add?

Sir Simon Fraser: I have two quick points. One of the issues, talking about this model and when you talk about engagement and reaching out to stakeholders, is that people in business, for example, are finding that they have to talk to a variety of different people in Government and they do not yet feel that they are getting co-ordinated, united positions because of this process that is going on. That is one of the complexities that somehow has to be brought together over time. Your other point was about drawing on people and staffing resources outside of the civil service.

Andrea Jenkyns: Especially in policy areas.

Sir Simon Fraser: It is perfectly legitimate to look at this. There has been a debate, and we will probably get on to the trade negotiation issue at some point because there has been a debate about that. It is a sensible thing to do in the exceptional circumstances that we face, to draw on resources where we can. However, you have to be very clear what the loyalties of those people are and what their relevant professional experience is to working in Government, as opposed to working in a private sector organisation, for example. As a former civil servant, I have to say that there is potentially an issue about fairness of remuneration for civil servants who are professional lifetime civil servants



HOUSE OF COMMONS

if other people are brought in on remuneration packages that are completely out of proportion. We will have to look at those issues, because they could affect morale as well.

Dr White: I would just add that many of the core skills that will be required in the civil service to deliver a successful exit already sit within the civil service, such as the policy-making skills. However, there are lots of other things that Government wants to do at the same time. The question will be whether there are enough people, per se, to do everything. There are certainly people outside who may have useful skills to bring, but there are also issues, as Sir Simon highlighted, with using those.

Q6 Seema Malhotra: I want to direct my question initially to Sir Simon, but also to invite the panel to come in. We have had a number of points made about resourcing, in terms of numbers required and whether or not we are able to meet that. I want to ask a few questions about relevant and necessary skills that might be missing at the moment. In particular, I want to start by asking about trade negotiation skills. We heard from Oliver Letwin that we do not have professional trade negotiators; the European Commission, on the other hand, has been very highly experienced in this for us over the last 40 years. DExEU is a smaller Department and liaises with other Departments, but we have not had those skills in any Department.

With regards to the leaked Deloitte memo this week as well, whether it is 500 Brexit-related projects being worked on, or whether or not there are 30,000 extra civil servants required, Deloitte is reputable and experienced.

We have heard from you, Sir Simon, that the number of staff in UKRep will also need to be boosted. I am very keen to understand, if we do need more civil servants, what the scale of that in reality might be. If we start with the issue of trade negotiators, where do you think those skills will need to come from, and how quickly? How will we be able to scale up to the challenge ahead?

Sir Simon Fraser: There are related questions. There is a question about the sheer volume of resource, in terms of numbers of people to address the tasks that we are now facing. As you rightly say, there is then the question of having the people with the relevant skills to make sure that the job is done effectively. There are some clear areas. You have mentioned trade negotiation; because we have not actually exercised that function in national Government over the last eight years, when we have been in the European Union, clearly those skills are not present in the numbers of people that we need within the civil service. That is just one very obvious example. There are other cases, not only in the policy function of the civil service, but in wider aspects of the public and civil service where we may need more people, or people with different skills. For example, if we leave the customs unions, we may need more people to monitor the movement of goods. We may need



HOUSE OF COMMONS

more people on the borders as well. I do not know the answer at the moment, but there are a range of ways in which we may need to reinforce. Some of those jobs are probably more highly skilled and more specialised than others.

On the trade one, it is quite difficult in the short term to build up that cadre of skilled people very rapidly. Probably, the number of people working in the British civil service who have direct, hands-on trade negotiations experience is in the twenties, thirties or forties. I do not know, but it is that sort of number. If you look at DG Trade in the European Commission, it has 600 members of staff. They are not all trade negotiators; some of them are in support functions, but there are hundreds of people conducting trade negotiation. If you look across other national Governments, most notably at the Japanese, they have very many trade negotiators. I think it is almost thousands, though I do not know the precise figure.

Clearly that needs to be up-scaled. We do have time to do that, because we are not actually in a position to negotiate trade agreements independently while we are a member of the European Union. The task for the Department for International Trade at the moment is to build up that expertise, drawing on resources within Government and outside as appropriate, in order to be able to do the negotiations when the time comes.

On the broader question with regards to the numbers of civil servants, it comes back to the earlier point. The civil service is smaller now than it has been at any time since the Second World War, as a result of the efficiencies that have been driven through, very successfully, in recent years. I do not know what the number is. I would not want to comment on the figure of 30,000. It seems to me in some areas we will need more people to conduct the negotiation. A more interesting long-term question is, when we have achieved Brexit, what will that mean in terms of the end state number of civil servants we have? It is my view that it is likely to be the case that we will need more civil servants, rather than fewer, as a consequence of leaving the European Union.

Q7 Seema Malhotra: Could I slightly challenge you on the point about having time to scale up? I understand that there will obviously be an increase as the work changes over the course of the next few years. However, we surely need some extra capacity now, in terms of trade negotiators, to understand how we are going to leave the EU, to negotiate potentially with the EU, and to make sure that we are in early discussions with other countries, even if that is informally, actually asking the right questions and developing the right groundwork. Do you think that in the short term we may need to be hiring those skills from abroad, obviously at potentially very great cost? Where do you think we will be able to accelerate having those skills, because building them up here in the short term is probably quite a challenge?



Sir Simon Fraser: It depends what the timetable for negotiations is going to be, to some extent. First of all, if you are talking about trade negotiators, the vast bulk of that is going to be required if we are going to be negotiating a number of trade negotiations around the world with different countries, because you have to have teams who can do those negotiations. We need to discuss the initial phase that we are going into of the article 50 negotiation, and then the other negotiation that will accompany or follow that, whatever the sequencing is, about the framework for the future relationship with the EU. I am not sure that you will need a very large team, certainly in the early phases, to do that.

If we trigger article 50 in March, there will be a phase in which the European Union side forms its own position in response, and then that negotiation will begin. The scope of article 50, as narrowly defined, at the early stages would not take us into these sorts of issues around the future trade relationship, the customs union and so forth. That would follow on. If we are careful about it and we manage the sequencing, we can manage those pressures. I absolutely agree that nevertheless we will need to continue to draw on expertise and make sure that those people in Government who have European Union expertise and trade expertise are in the right place, leading this work for us.

Q8 **Seema Malhotra:** Before I ask Dr White, I wanted to pick up on the issue of legal skills. This is a complex area that we are going to enter, in terms of complexity of British law and EU law. Professor Barnard, do we have the capacity and the skills to rise to the challenge from the legal profession?

Professor Barnard: Yes, obviously there are some absolutely excellent lawyers working in the Government Legal Service. As you rightly say, the legal complexity is vast and operates at a number of levels. You have the complexity of negotiating the article 50 withdrawal agreement—the divorce. Even more complicated will be what goes into the transitional arrangements, which seem to me to be inevitable as part of any divorce package. That is even before you start looking at negotiating any future agreements going forward.

In addition, you have the domestic level. We already know from Theresa May's conference speech that all EU rules will be incorporated into domestic law. That sounds straightforward but is potentially quite complicated. Most directives are already part of UK law, but then what about regulations? By that I mean regulations with a capital "R", that very distinct European legal form. Think about the Social Security Regulation, one of the most complex and one of the most important ones. That is a regulation that delivers, amongst other things, the right to export your pension to another country. That is also the provision that gives emergency health care while you are in another country, or slightly longer-term health care. That is all in an EU regulation. What is going to happen to those sorts of rules that have a transnational impact, which are going to be given effect to in domestic law? You then have the added



complication at the domestic level of following what Vote Leave advocated, which is to then sift through all of that legislation, working out what will be kept because it is good, what needs to be amended because it is thought not to be so good, and what will be repealed. Putting it in those terms makes it sound straightforward, but it is a bit like a piece of knitting; when you start tweaking at one bit, a whole other area gets unravelled.

A further problem is that a lot of EU legislation is of course pegged on the fact that there are EU institutions or agencies that are giving effect to it. Therefore, we need to also think about actually setting up our own equivalents of those EU agencies or at least adapting existing bodies, like the FCA, to be able to deliver on those functions. These are really big legal issues. People say that this is good news for lawyers, but it does mean that there is a lot of work ahead for very able lawyers to deliver all of this.

Q9 Seema Malhotra: Dr White, we have just heard the transitional arrangement described as “inevitable”. There has not been political agreement on whether or not there should be a transitional arrangement. Could you say if you agree that there needs to be a transitional arrangement, and whether or not you have seen a slow-down in other areas of work in Departments, by virtue of the fact that hundreds of civil servants are now moving to DExEU? That is inevitably going to have an impact on the Government’s delivery of its other programmes of work.

Dr White: I will just make a very quick point on the trade negotiation point before I get there. It is very important to understand that when we are in the course of negotiating trade deals with other countries, we will be likely to be operating a similar model, with the current co-ordination function at the centre, and then a lot of the expertise that will be needed to develop those trade deals will sit in Departments. We have that policy expertise in Departments, but we will need, for example, people in Defra advising a small team of negotiators on what the different implications are of different possible outcomes for the negotiation. We have that expertise sitting there. The important thing is how that will be co-ordinated into the centre.

Some of these comments about needing hundreds and hundreds of trade negotiators rather fudge the issue of what a trade negotiator is in that context. Actually, quite a lot of the expertise and the skills will be in Departments and people not actually in the room. You actually need relatively few people in the room doing the negotiation, as long as you have got the expertise underpinning it.

In terms of a transitional agreement—some people call it an interim agreement—this is something that lots of people have been talking about. It is certainly true that there are aspects of things that the EU currently does that, when we leave the EU, we will need to do for ourselves. We will need to think about how those will be done on the day after we leave. If you look at something like, for example, our immigration system, the



HOUSE OF COMMONS

Government have made clear that this was a big issue in the referendum and they want one of the outcomes of our leaving the EU to be that this country gains control over immigration. Because that is going to be the subject of negotiations with the EU, we may not know until relatively late in the negotiation process what the outcome of that is going to be. It is not going to be possible for the Home Office to suddenly come up with a brand new immigration system overnight.

It would only be absolutely prudent for lots of Government Departments to be thinking, in terms of contingencies, what things need to be set up the day after we leave, which might not be the long-term, ultimate system, but will be some sort of interim provision, so that everyone knows what is happening, if you see what I mean, on the day after we leave. It is those sorts of things that were done by the EU and will not be done by the EU, or are changed by the fact that we are no longer a member of the EU, that we absolutely have to think about.

Dr White: In terms of whether there has been a slow-down in other Departments, as Sir Simon said, DExEU is very small in comparison to other Departments, at around 400 people. It is not clear to what extent the people who have come into DExEU have been backfilled by other departments. It is clear that there is a lot of work going on in Whitehall on delivering an exit from the EU, and it is inevitable that that means that currently there are other things that are not progressing as fast as they might have been.

Q10 **Mr Lilley:** Is there any historical memory in the civil service of the resources and organisation required prior to 1972, when we negotiated entry? This was roughly in a similar period of time of about two years. It involved changing our whole tax system, with the introduction of VAT, and changing our whole finance system for agriculture, and changing our whole tariff system and a whole range of other things. Did it require thousands of extra civil servants being taken on temporarily? I understand that the actual structure of the DExEU unit mirrors the Cabinet Office structure that applied then, but in terms of resources, was there a great need then?

Sir Simon Fraser: I am not personally aware of what the structuring was. It is an interesting question. You refer to thousands of additional civil servants. That was not a figure that we used; it was a figure in the memo. It is undeniable that this is a very complex set of issues and additional tasks for the civil service and Ministers to manage, as well as civil servants. It is reasonable to say that additional resources will be required. It is a very fair question to look back at what the precedent was on accession, but of course things have changed since then. The acquis is much greater, the range of policies involved in the European Union membership is wider than it was before, and the number of countries we will be negotiating with is much larger, so I do not think it is a direct comparison, but it is certainly potentially a useful indicator.

Q11 **Jonathan Edwards:** There are a few power structures within the



HOUSE OF COMMONS

European Union: you have the Council, the Commission and the Parliament. How are responsibilities likely to be divided up, once article 50 is triggered? Do you think there will be a lead negotiator? Will it be the Council or the Commission?

Sir Simon Fraser: It is true that on the European Union side, this is a complex situation. There are three institutions, as you have rightly identified. Of course there are also the individual member states, who through their representation in the Council will want to make sure that they are closely involved in this process. It partly depends, of course, on what the scope of an individual negotiation, or part of a negotiation, is. If you take article 50, assuming that it is dealing with issues such as our financial obligations within the European Union, the institutional questions that arise from our departure, issues concerning the status of UK or EU nationals, and issues on the establishment of appropriate arrangements between Northern Ireland and Ireland, the lead in that negotiation will be taken by the Commission. The Commission is the organisation that has the most resource, has the greatest breadth of expertise and under the treaties has a competence in a wide range of these areas. I would expect that in most of those areas, the Commission would lead. The taskforce is in the process of being established under Michel Barnier, the former French commissioner. They are now drawing on not a very large taskforce, but a taskforce that reaches into different parts of the Commission.

However, it is clear also that the Council Secretariat, representing the Council member states, intends to be involved in those negotiations. President Tusk has appointed his own lead negotiator, Didier Seeuws, a Belgian diplomat, to lead the Commission's involvement. It is also clear that the European Parliament, while not actually in the negotiation, will want to follow the negotiation and have a close view on it. It will be structured in that way. It is difficult to know with precision at the moment, because the agenda has not yet been set. The discussion of the process has not yet been taken forward.

Professor Barnard: I would just like to add, if I may, that we have underestimated so far the importance and involvement of the European Parliament. It is flexing its muscles, and of course under article 50 it must give its consent to any deal, and not sufficient attention has been paid to its role. What is reported on this side is that it seems very much to be an inter-governmental negotiation, and that misunderstands both what article 50 prescribes and also the way the European Union works.

Dr White: The minor point I would add is that article 50 sets out that the Council should give guidelines to the Commission before it sets its mandate, which is different from a normal international negotiation, where the Commission would come up with its mandate and take that to the Council for agreement. That is a slight indication that the Council members may have a little bit more direct involvement.

Q12 **Jonathan Edwards:** Considering what you know about European



politics, do you think there will be a unified line between those three power structures, or will the Commission take a harder line than the Council? If there are disputes, how will they be resolved, bearing in mind that the Parliament has a veto?

Sir Simon Fraser: What happens in these cases is the Commission will be given a negotiating mandate and will lead that negotiation, but will report back to the member states in Council formations as they go along. It will be an iterative process. Of course there will be issues that arise where there are blockages, or where different member states take a different view of something. Some member states are going to have very particular interests. When it comes to a discussion on Gibraltar, you can imagine that at least one member state is going to have a particular interest. These things will have to be worked through. That is what happens in negotiations in the EU for that. It does underline the complexity of managing the process.

Q13 **Jonathan Edwards:** Is it doable within two years, bearing in mind that complexity, especially if it is trying to do the new relationship as well as the exit?

Sir Simon Fraser: As I have said, we do not yet know what the agenda of the article 50 negotiation is. There is not a proposal on the British side about what we want to cover in that negotiation. There is not a reciprocal proposal on the EU side. We do not know. Setting that aside, my rule-of-thumb view is that a negotiation to manage the arrangements around leaving the European Union under article 50 should probably be achievable within a timeframe of something around two years. I do not believe that a negotiation that has to happen in parallel, in some way, to establish all of the aspects of the future relationship could be achieved within that same timeframe. This takes us back to this question about the potential requirement for interim arrangements, unless we are prepared just to move, for example, to a WTO-based relationship with the European Union, which some people are. However, most people think that is probably economically disadvantageous.

Q14 **Michael Gove:** There is a tendency, is there not, for all of us sometimes to look at a problem and to think that the skills that we have are perhaps the best answer to that problem? There is a tendency, if one is a very gifted senior civil servant, to say, "What this problem needs is more civil servants." If one is a superb European Union lawyer they will say, "What this problem needs is more lawyers." Can we apply Occam's razor? Can we simplify? If I were determined simply to leave the European Union, to trigger article 50 and to conclude the bare minimum required to leave, what would article 50 actually require me to agree? For the purposes of this question, I am not worried about transitional arrangements. I am prepared to take the economic hit or secure the economic benefits of not having a transitional arrangement and being outside the single market and outside the customs union. I simply want the divorce on the quickest possible terms. What do I need in that quickie divorce?



Professor Barnard: In a quickie divorce, there are certain key areas where we have got commitments that go beyond 2019, of which research fund expenditure is a good example. The other major area from my field is migration issues, so the issue of the situation of EU nationals currently living and working in the UK, and UK nationals living and working in other member states, particularly in respect of healthcare entitlements and the application of the Social Security Regulation.

If I could just pause very briefly—I am sure my colleagues will add other things to the list of items, on the quickie divorce—on dealing with the situation of EU nationals currently living in the UK, there is no quick-fix solution, because we have no record of how many EU nationals are living in the UK. Various options have been mooted, and there has been quite a lot of agreement that those who have been living here for a long time should be given a right to stay. However, there are a lot of problems on how to actually prove an individual has been living here for a long time. If you are an academic, you will have contracts. You can have a paper trail to show that you have got that. However, if you are a seasonal worker working in a farm in Lincolnshire, some of those farmers are not so good on the paper work. Particularly if you are here for a few months, you go away and come back or you have got other jobs—for example, you might go and work in France for a little bit and then go back to Poland—it is very difficult to prove. The trouble is that this is highly resource-intensive. If you do a case-by-case analysis of up to 3 million people who are here, the resource implications are vast.

Going to your point about a quickie divorce, the quickie divorce would say, “Everyone who was here on 23 June, or is here on 31 March 2019, should have the right to stay, irrespective of the paperwork.” However, there are huge practical problems. The simple answer that people come back with is, “Why do we not look at national insurance numbers, NINo?” and they say, “We know that there are lots of people with national insurance numbers, and that will show that they have the right to stay.” That does not always help, because often people get a NINo just for a very short period of work. It does not start clocking up the five years—if it is a five-year rule that you decide to apply—so that does not help. There is another group who are vulnerable too, who might not have a NINo, and those are the EEA spouses of British nationals.

Q15 **Michael Gove:** How many people do you think fall within this grey area that you are talking about? If I decided—or, more to the point, the Government decided—in this paradigm, “We will let everyone stay”, how many people are in the grey area of not having contracts, being seasonal workers or being at the margins? Are we talking about hundreds of thousands of people?

Professor Barnard: I would guess so. The trouble is that we have no documentation, because as you know, we have no record of people coming into the country because we have the right of free movement at the moment. There is no record; we do not know. Of course, these



HOUSE OF COMMONS

seasonal workers will have contracts of employment. It is just that they might not have it documented, and that is the problem.

Q16 **Michael Gove:** It would be perfectly possible just to say, "We are perfectly happy to allow these people to stay."

Professor Barnard: Absolutely. Of course, that is for you to make the political call on that. What some people have been talking about is that for people who have been here five years, who would have permanent residence status under EU law, that is converted indefinitely to remain. However, the problem with going down that route is you need to fill out a form, which is long. You need to pay, as of March, £1,875—nearly £1,900. Each claim then needs to be processed. If you are looking for a quickie divorce, that is quite a laborious way of keeping the relationship going.

Q17 **Michael Gove:** That is precisely my concern: that there is always a tendency to over-complicate what can be a simplified process. If we simply say we are going to let people stay, then we do not need to go through that bureaucracy.

Professor Barnard: And you would give a lot of reassurance to an awful lot of people.

Sir Simon Fraser: In terms of a simple approach to article 50, I agree that the areas that need to be covered are financial—sorting our financial involvement in the European Union, our involvement in ongoing EU programmes and the pensions issues around civil servants in the European Union. In addition, there are institutional matters, such as the presence of the European Medicines Agency in London and what is going to be done with that; there are treaty bases for those to be negotiated. There is the status issues that we have talked about around immigration and, as I have also mentioned, some specific issues, notably the issue of Ireland and Northern Ireland. We have to clarify those things.

To boil down the Article 50 agenda, it is in those sorts of areas. That is the exit negotiation. You do have to agree that with the other side; you have to negotiate it. That is what it would be. If you agree that and you leave and then you start a negotiation on your future relationship, you are of course starting from a different starting point from the one that you would have if you conducted the negotiations in parallel. That is a political choice, of course; I agree.

Q18 **Michael Gove:** Do you think it is possible to say, "We have boiled down the core things that we need in article 50"? There are questions, which are not easy but relatively straightforward, such as about the future of the European Medicines Agency.

Sir Simon Fraser: There may be more than I have identified.

Q19 **Michael Gove:** Those are examples, but you can boil it down and say, "Okay, there is a certain amount of money that we still have to pay to



HOUSE OF COMMONS

finish off our commitments.” That is one set of things. The other set of things, which can be negotiated in parallel, is simply to say, “At the moment we have tariff-free access and you have tariff-free access to our markets. Let us just carry on with that. There is no need to negotiate. There is no need to have a trade negotiation. It is already fine.” In other words, is it not the case that there are aspects of the deal that many seek to over-complicate, but which could be, if there were goodwill on the European side, concluded relatively quickly?

Sir Simon Fraser: There is a risk of confusing issues, because some of those issues are about setting the terms for our departure. Others are about the nature of the future relationship. When you get into that point on tariffs, for example, then people on the EU side are going to want to say, “I am sorry. That is one set of issues, but we need to negotiate that in the context of a wider range of issues.” That is where I think that complexity is likely to occur—when you get into the future arrangements.

Q20 **Michael Gove:** It need not. That would be a deliberate political choice by them to seek to complicate matters when they could be simplified.

Sir Simon Fraser: As they would express it, it would be their political choice to ensure that they were in a position to pursue their interests as they perceive them in the negotiation with us, rather as we seek to pursue our interests. We have to recognise that it is a negotiation. I am absolutely with you that we should avoid a catastrophist’s approach, or over-complexity, but I do think also that we should avoid over-simplifying it. It will be complicated. There will be interconnections between issues as we go along.

Q21 **Michael Gove:** Therefore, for my final question, your judgment would be that it would be a good thing during the two-year window that follows the triggering of article 50 to deal with the core article 50—the housekeeping issues that you acknowledge are significant—and at the same time work out what the details of our new relationship would be, so that at the moment we leave, there is also a new relationship agreement ready to be signed as well.

Sir Simon Fraser: That would be an ideal situation. I do not think it is likely to be an attainable one. I do agree that the ideal situation is that as we negotiate the exit, we are in a position to begin the negotiation and conduct a negotiation on the future relationship. That depends on the EU side agreeing to that process, and it depends on us agreeing the parameters of that negotiation and then starting it. It would be unrealistic to expect that second negotiation to be completed, which is why we are confronted with the question of whether we are prepared just to go to article 50, leave, and take the consequences, or whether we would like to negotiate, as part of the process, an interim ongoing relationship until we get to the final state.

Q22 **Michael Gove:** Why would it necessarily take so long to conclude the terms of our new relationship?



Sir Simon Fraser: It is simply just looking at the extraordinary range of issues. If you look at the timeline that is usually involved in negotiating, for example, a free trade agreement—not only a European Union free trade agreement, but others—that is an indicator. This is going to be a much wider set of negotiations, because I assume we will want it to cover not only our economic relationship with the European Union, but our relationship with European countries in aspects of foreign policy and defence as well. That is quite likely. In addition, there is our co-operation in security arrangements, such as those that we are already involved in. It is a very wide-ranging set of issues potentially, which goes beyond the normal parameters of a trade agreement. I think that is why one would expect it to be a long-term process.

Professor Barnard: Can I just add two points to that? First, Mr Gove, I am sure you will appreciate that when we are talking about trade, trade is not just about tariffs. In one sense, tariffs are just the tip of the iceberg. What is actually a much bigger problem for all of our imports and exports is non-tariff barriers, so regulatory standards. Of course, while tariffs are significant, particularly if you are talking about an agricultural product—something in the region of 40% to 50%—we also know that for a lot of products, the average tariff is about 3%. It is not tariffs that are the problem. Of course, trading goods is only about 15% of our economy. It is services that are the big issues. Therefore, in a quickie divorce of the kind you imagine, if access to the services market in other member states is suddenly turned off because there is no agreement, that is a problem.

Q23 **Michael Gove:** It could not be turned off. The European Union could not prevent its citizens from buying UK services. It might simply be the case that new UK regulatory barriers emerge, or are created, but that would have an economic cost to the European Union as well, would it not?

Professor Barnard: I agree with that, but of course it then becomes much more attractive for a French person to buy a German service rather than a British service. On the point about sequencing, which you have been touching on and Sir Simon has alluded to, the issue seems to be that article 50 is about the divorce, quickie or otherwise. The future relationship is regulated not by article 50 but possibly article 207 and certainly 218. That requires us to be a third party—a third country—and that is the issue at the moment. The EU is taking a fairly tough line on that, and saying we are not third countries at the moment, so therefore we cannot engage in negotiations. If there was good will on both sides, we could negotiate in anticipation of becoming a third party, but that is why there risks being the lacuna into which the transitional arrangements have got to go.

Q24 **Chair:** Professor Barnard, can I just follow up on that last point? Is it not the case that in relation to some highly regulated services, particularly banking, in the absence of an agreement, their legal right to operate on the basis that they do currently would cease?



Professor Barnard: That is the concern. In respect of free movement of capital, article 63 of the treaty does apply to third countries, but that does not apply to services. This is a position that Switzerland finds itself in. Switzerland does not have a full, proper services agreement with the EU, so Swiss financial services cannot have access in unrestricted terms to the EU market. There are various discussions about how to get round this problem, whether we could rely on some sort of principle of equivalence that the US benefits from. All of this will take time to set up.

Q25 **Mr McFadden:** Good morning. I want to continue on this line of questioning, because I want to get a picture of how this might work. There has been an assumption, perhaps a mistaken one in the UK, that there will be at least two negotiations going on in parallel. That is the divorce negotiation, which Michael Gove referred to, and some negotiation on future relationships. There is a story on the front page of the *Financial Times* this morning suggesting from EU sources that that might not be the case, and that this may be done sequentially, rather than in parallel. If I could begin with you, Sir Simon, what do you think the effect is of negotiating the article 50 divorce first, before we go on to a negotiation on future relationships?

Sir Simon Fraser: You are right that the orthodox position, as we have just heard, that has been taken by the European Commission has been that article 50 has to be completed before the article 218 or 207 negotiation begins. That was an orthodox position taken. In practical political terms, I do not think it is a very realistic position to take, and indeed article 50 itself says that article 50 will be negotiated and concluded, taking into account the provisions of the future relationship. There is an inherent contradiction there.

It is also a political question. We have to sit down at some point and agree the agenda and nature of these negotiations and the sequencing of them with the European Union negotiators and member states. Having said that, my own view is that if we were to conduct the article 50 negotiation and leave and then begin a negotiation for the future relationship, we would be conducting that second negotiation from a less advantageous position, because we would be negotiating, essentially, as a third country with the European Union, without any of the existing rights that we have in our relationship with them. It would be a more complicated negotiation to conduct. That is my interpretation of the politics of it. I would be interested to hear what my colleagues feel about that. By contrast, if we were to begin that negotiation, set out our objectives more clearly for the future relationship and conduct that negotiation as we leave, the psychological and political context would be a more positive one.

Professor Barnard: I very much agree with all of that. The interesting question is what article 50 means by saying, "Taking account of the framework for its future relationship". With good will and good sense, that would suggest that even though a future agreement may well not



have been agreed, at least the direction of travel is pretty clearly worked out. That feeds into what the transitional arrangements would look like in anticipation of some formal future agreement.

The stumbling block about the future agreement is that it cannot be concluded under article 50. Forgive me for being technical—I am about to say something that confirms that all lawyers need to get a life—but in respect of article 50, it is qualified majority voting. It is only about the divorce. In respect of the future agreement, particularly if it is broad and covers some of the things that Sir Simon was mentioning, it is very likely to have to be concluded as a mixed agreement. As we have all learned recently from the experience with CETA—the Canadian free trade agreement—that means with the agreement of not only the Council, probably acting unanimously, but also all of the national and regional parliaments, of which there are about 34, including Wallonia. The interesting question is whether a future agreement will be a mixed agreement, which has to be concluded by all of the member states and the national and regional parliaments, or whether it could be considered to be an agreement that falls within the exclusive competence of the EU. If it is that situation, then you do not need the involvement of the national and regional parliaments, and it will speed up the process.

Q26 Mr McFadden: Just to get this clear in my mind, you are saying that if it can be done in parallel and concluded as part of the article 50 process, if not the technical negotiations, that means we do not have to clear it with the Wallonian regional parliament.

Professor Barnard: No, article 50 is purely about the divorce, and the problem is how far you stretch the divorce. The divorce may be enough to include transitional arrangements, so you can do that under qualified majority voting. However, certainly a definitive future agreement can either take the form of an agreement that falls within the exclusive competence of the EU, which means only the EU, which of course includes the 27 member states who need to agree it if it is a unanimous agreement, or the risk is that it is concluded as a mixed agreement. A mixed agreement does involve all the national and regional parliaments as well. It is likely to be a mixed agreement, because the Commission said in 2014 that CETA would be a mixed agreement—that is the Canadian one—and TTIP, which is the one with the US, will be a mixed agreement, and there are one or two others.

There is an important case before the Court of Justice at the moment on the agreement with Singapore, which is on precisely this question: is it an area of exclusive competence for the EU, in which case no national and regional parliaments need be involved, or, because the scope and breadth of agreement is so broad, is it a mixed agreement that requires the involvement of national and regional parliaments?

Sir Simon Fraser: I will just add one point. I agree with that, but it seems to me inevitable, given the breadth of the agreement that we are likely to have, that it will go much deeper and wider than Singapore's



HOUSE OF COMMONS

free trade agreement with the EU. This is going to end up being a mixed agreement. That would be my expectation. That is by far the more likely outcome.

Q27 Mr McFadden: Let me move on to this question of transitional agreement. Again, there has been quite a lot of commentary around this, and you reflected some of it this morning, Sir Simon. This is all pretty wide-ranging and complex. It is very ambitious to try to conclude a future relationship within two years. We may well be in the territory of trying to have some kind of transition or interim arrangement as a bridge between leaving and the future relationship. There is another view that says, "Why do we want to bother with all of that? What is the problem with just leaving?" In a sense, Michael Gove's question reflected that. Could you say a bit more about that? Why would we want to bother with all of this? What is the problem with leaving and just relying on WTO rules?

Sir Simon Fraser: If you leave and you rely on WTO rules, a number of things can happen. First of all, we have to establish our own trading schedules in the WTO, which can be done, but it is a process that has to be gone through. Some people think that is a very complicated process. Others, including Mr Lilley, think it is not a very complicated process, but it has to be done. We have to establish that. We then have to have a tariff regime with the European Union, which means that the cost of trade increases. The cost of trade on both sides increases if we go down that line.

Another option would be that we decide not to have a tariff regime and that we do not apply tariffs. If we do not apply tariffs, under WTO rules, to the EU, we have to not apply tariffs to other countries under the so-called most favoured nation agreement. We then expose our industry and agriculture to a much wider range of competitive imports coming from around the world, which will have an impact on our economy. We have to think through those consequences. The other issue is that, as has been alluded to, the provision of services is not covered to the same extent under WTO provisions and GATT provisions as it is within the European Union. The advantages we have in terms of provision of services within the EU market would be undermined. Those are some of the reasons why most people looking at this believe that economically it would be undesirable for us to resort to WTO terms with the European Union, both from our point of view and from the point of view of the European Union.

Dr White: The other point to make is that obviously the WTO terms is one aspect of where we would be if we just decided to leave. However, there are other aspects of our relationship with the EU that would be unresolved if we left without negotiating those, as my colleagues have already referred to. That is things to do with our access to regulations in the EU. We will want to know, if we are not using the European Medicines Agency to sign off drugs that we can sell here, what we are



HOUSE OF COMMONS

going to do. That might be quite a simple decision. It might be that we just decide to piggy-back on anything the EMA says, or it might be that we want to set up our own agency. If we wanted to set up our own agency, then we would have to think about doing that before we left. There are various consequentials about our relationship.

Q28 Mr McFadden: Let me end with this. You are basically telling us that simply concluding the divorce within the two-year period and not concluding anything about the future could have these disadvantageous consequences for agriculture in terms of competition, for manufactured goods in terms of tariffs, and for services in terms of access. That points to some kind of transitional arrangement being absolutely critical if we have not concluded article 218 negotiations on a future deal. What can you tell us about such a transitional arrangement? Who would have to agree that, and what might it have to cover?

Professor Barnard: It would have to be done as part of the divorce negotiations. The key point is that the transitional deal would have to be quite limited in time, because if it has a very long window—10 years or more—the risk is that it is no longer seen as a part of the divorce but indeed becomes a surrogate for the future relationship. In addition, it is avoiding the procedure laid down in article 218, because it is being delivered under article 50 and the qualified majority voting, but the areas covered are the ones that Sir Simon has mentioned.

Sir Simon Fraser: In terms of coverage, it would have to be an agreement that was reached with the other negotiating parties, which are the European Union member states. They would have to accept on their side that there should be an interim arrangement. We would have to convince them that it was in their political and economic interest to have this, which should be attainable, because it is. There is a political element that overlies that.

With regard to the sorts of things that it would have to cover, the most obvious and high-profile example that we have heard a lot about already is this question of passporting for financial services, and the risk that if we do not agree some ongoing arrangement for passporting or recognition of equivalence between our financial services providers and those in the European Union, then that will have a very significant impact on the decisions of people based in London as to where they continue to conduct their business. There are differences of view on how great that impact would be and how rapid it would be, but it is a very clear example of the sort of thing that one would want to look to cover in an interim agreement.

Q29 Mr McFadden: To end, might this continue to involve the payment of fees to the European Union after we have left? Is that possible?

Sir Simon Fraser: Yes, it may, because there are different models that you could have. One model might be that we agree that for a certain period of time, we continue to enjoy the rights of, and respect the



obligations of, all or a large part of our European membership. That would involve us getting benefits in terms of market access, but the corollary of that presumably would be that there would be some ongoing obligations for contributions, and for dispute settlement by the ECJ, potentially, and of course the question of freedom of movement would have to be factored into that as well. It is not simple by any manner of means, and those issues are all on the table. One has to balance, over a period of time, what the advantages and disadvantages are. Different people take a different view on that balance.

Q30 Mark Durkan: A number of weeks ago, the Government held a joint ministerial committee, bringing the devolved Administrations into Whitehall. Now someone characterised that as meaning that after four months, the devolved Administrations got a phone number and the promise of future dates. However, I am sure that Whitehall will say that their engagement with the interests of devolution is much more proactive than that. What are your own observations on just how well Whitehall is geared to the differential needs and requirements of the devolved Administrations?

Dr White: It is clear that it is for the UK Government to lead the Brexit process. At the end of the day, it will be for Westminster to have the final say on the negotiating position. That being the case, it is really important that Scotland, Northern Ireland, Wales and England are brought to the table and engaged in a really meaningful way in reaching what that negotiating position should be. That means joint working at ministerial level, of the sort that, as you say, was kicked off a few weeks ago, but also at an official level, with a thorough exchange of information, which I understand is under way, and also, as I say, a seat at that table so that views are clearly understood and explained.

Sir Simon Fraser: Clearly it is very important. I am not that close to the detail of what is going on, to be absolutely honest with you. It seems to me that it is very important that the devolved Administrations are involved. After all, there are a number of policy areas where they have primary responsibilities, as I understand it; agriculture is one of those examples. It is not just a question of involving the devolved Administrations in order to make sure that everybody is in it; there actually are direct implications, in terms of decisions to be made for the future. It is a very important process. I do not know whether you feel that the arrangements that have been put in place are sufficient for that; the implication seems to be that they are not.

Q31 Mark Durkan: On another point, we had questions earlier about the issue of transitional arrangements between the UK and EU. In the context of what we are being told about the great repeal Bill—which is really a great “download and save” Bill that will take all EU rights and standards into UK law—as things stand at the moment under a number of devolution Acts, those competencies rest with the devolved Administrations, to various degrees; there is obviously a different gearing



HOUSE OF COMMONS

for each devolution settlement. Are you aware whether there has been any great engagement as to when the competencies that are transferred under the great repeal Act will actually be devolved? Under current legislation, it should be on day one, unless the great repeal Act says, "No, they will be held in some sort of holding pattern here before they are subsequently devolved." There are key interests there, and key issues for a number of the devolved Administrations. The question of possible transitional arrangement within the UK may need to be addressed. I have not heard anybody talking about them so far.

Dr White: I am aware of the issue about where powers that are repatriated to the UK sit. That is definitely under consideration and, as you say, differs a bit depending on the different devolution settlements in different parts of the UK. There will absolutely need to be clarity. I have not heard anything about the timing of when that would happen, but there will absolutely need to be clarity about who has responsibility for what and when.

Q32 Mark Durkan: It will become a key political issue, and that will be different between Belfast, Cardiff and Edinburgh as well. Would one possible rule of thumb that might occur to the Treasury around that matter be that those areas that are dealt with by the Treasury under the departmental expenditure limit might qualify for early devolution, and those areas of spending that come under AME might be held in the longer term, and devolved on a different basis

Sir Simon Fraser: You are now getting into the complexities of Government, which is very complicated. To be honest with you, I am not aware what level of detail thinking has reached within Whitehall on these issues. I am aware, as we have said, that people are conscious that they have to be addressed. On the actual timing of bringing in the great repeal Bill, I do not know if you know about that, Catherine. The whole thing, for me, is an area of some uncertainty, in terms of when it is going to be brought forward and what the terms of it will be.

Professor Barnard: My understanding is that it is going to be in the Queen's Speech and so will be brought forward early next year. Of course, it will not come into effect until Brexit day. It is quite a clever move to show that things are being done, but actually it is essentially a post-dated cheque.

Dr White: Another possibility is that the Government could choose to introduce either a few clauses of or indeed the entire great repeal Bill for pre-legislative scrutiny, which might be something that this Committee would be interested in conducting. That would enable people to satisfy themselves about what was and what was not on the table, in terms of the great repeal Bill.

Q33 Mark Durkan: Sir Simon, in a number of your remarks earlier in setting out a number of the issues, you referred to some of the status questions, in terms of Ireland and Northern Ireland. We hear a lot from



Government about consulting with the Executive in Northern Ireland, as with the other devolved Administrations, and issues of the hard border. In terms of the questions of status of Ireland and Northern Ireland, there is another dimension, which is reflected in annexe 1 of the Good Friday agreement. This comes at the start of the Good Friday agreement, not, as annexes normally do, at the end. This states the key constitutional precept around the future potential of a united Ireland. Would it be understood, from an Irish constitutional perspective, that that would need to be clearly reflected in any new UK-EU treaty?

Sir Simon Fraser: Which point precisely are you referring to?

Mark Durkan: I am referring to the provision that in the event of there being a referendum on a united Ireland, if there was a majority in Northern Ireland for that, Northern Ireland would automatically become part of a united Ireland. There would be no question mark over Northern Ireland, or Ireland's status in the EU, in terms of any new negotiations that would then be needed. The Good Friday agreement says clearly that that is a matter for the people of Ireland, the north and south, without external impediment. A number of people have identified serious risk that if this is not specifically reflected in the new UK-EU treaty, there could be uncertainty there, such as was raised in the context of the Scottish referendum. We cannot rely on the Germany precedent in the context of current treaties. Do you think it is understood in the UK that there could be a very specific requirement to have that issue actually reflected in clear and explicit terms in the new treaty?

Sir Simon Fraser: You highlight a very important issue, but I have learned in making these appearances that it is not wise to seek to appear to be an expert on issues on which you are not an expert. For me, this question falls into that category. It is very important that it is raised. Clearly, it is an important and significant matter. I do not feel competent or expert enough to give you the sort of response or assurance that you are seeking. I do not know, from a legal perspective, whether you do, Catherine.

Professor Barnard: I am in the same position, but what is striking is how little detailed discussion there has been over the very specific and complicated issues raised in respect to Northern Ireland and its relationship with the south. This is where this Committee has an important function to really tease some of those issues out.

Q34 **Joanna Cherry:** Good morning. Dr White, you said at the start that there had been an element of misreporting in *The Times*. I read this morning that they reported that the Institute for Government had said that the Prime Minister's secretive approach was hampering the preparations to leave the European Union. Is that accurate reporting? Have you said that?

Dr White: We have said that.



Q35 Joanna Cherry: Can you expand for us on what it is that you say is being kept secret, and why that is hampering preparations for leaving the EU?

Dr White: The point that we have been making is that the Prime Minister has quite rightly said that in the course of negotiations, she would not want to be giving a blow-by-blow account of everything that was going on at every moment and that could hamper potentially the negotiation process. What there could be a great deal more clarity about right now is the process that the Government plans to use to get to its negotiating position before it triggers article 50. We are not saying there needs to be absolute content about that. What we want and think would be really useful, both for external stakeholders of the Government and Whitehall Departments more generally, is to understand the process for getting to the position where the Government is happy to trigger article 50.

What I mean by that is things like what the process is for decisions being made, what role the Brexit Cabinet Committee is playing in this, and what the Government has undertaken with regard to Parliament having an opportunity to have a series of debates on different topics to the negotiations. Could they give us forward sight of when those debates will take place? I imagine Select Committees like this one might well want to undertake work to inform those debates, but without knowing what will be debated when, that is quite difficult.

The degree of secrecy there is just about the process of getting to article 50 is unhelpful, and if there was more clarity about that, it would give reassurance to external stakeholders, companies and so on, who at the moment, as Sir Simon has said, feel that they are talking to lots of different people in Government, but they do not know how what they are saying is contributing to thinking. They feel like they are having to repeat the message on different occasions. They do not understand the process. That is the point that we have been making.

Q36 Joanna Cherry: Moving from process to substance, do you think it would assist those consulting with Government to know what the Government's negotiating objectives or aims are?

Dr White: At the moment, the Government has been quite clear that it is in the process of reaching that. It would be counter-productive for the Government too soon to write things off, to take things off the table or to make definitive statements if it has not reached those decisions. Absolutely, in the run up to article 50, that is the process it will be going through.

The moment that article 50 is triggered, when negotiations begin, the Prime Minister will be going into a negotiating room with, at the very least, a high-level set of issues that she wants to have on the table for the article 50 negotiations. Some of that may be more concrete. Some



HOUSE OF COMMONS

of that might be red lines. Some of that might be general issues for discussion.

One point is that as soon as she does that, it is highly likely from the EU side that will become visible anyway. On the other hand, if you look at practice, the EU for CETA and TTIP published its negotiating mandate that the Council had given the Commission for those. It is not general practice to think that giving away that sort of high-level outline of what is in the negotiation is a problem for negotiations. It would certainly be helpful externally for people to have some idea of that as the negotiations begin.

Q37 Joanna Cherry: Just to be clear, you say it is not generally thought that putting in the public domain, at a high level, the outline of your negotiating position is problematic.

Dr White: You would not go into things like what your assessment was of the other party's view on things. You would not talk about what your fallback positions were. You would not distinguish between the things that were your absolute priority and the things that you were willing to give way on—all those things that come into the category of a negotiating strategy. In terms of your objectives—and by that I do not mean exact institutions or precise things, but the things that you are seeking to achieve in this negotiation—absolutely, those can be on the table.

Q38 Joanna Cherry: Just so we can have some clarity on that, would that, for example, include whether or not the United Kingdom wants to remain in the single market?

Dr White: It will be more likely to include what the Government's objective was in terms of some sort of future relationship. The Government would want to have as full a relationship as possible. Whether that goes into the exact in-or-out specification is less likely. It is the objective in terms of where we want to end up, in our relationship with the EU.

Q39 Joanna Cherry: Would you expect it to specify where we want to end up, in terms of our relationship with the single market?

Dr White: Not necessarily.

Q40 Joanna Cherry: Can I move to consulting other parts of the United Kingdom, which Mark Durkan asked you about? The institute have in the past warned the Prime Minister of a "full-blown constitutional crisis unless all nations of the United Kingdom are involved in the negotiations". Can you expand on what you meant by that? What did you mean by "constitutional crisis" and what did you mean by "involvement"?

Dr White: When my colleague was talking about that, what he was talking about was this, in terms of the devolution settlements to date: the process has been that the devolved legislatures have had to pass legislative consent motions if a piece of legislation passed at Westminster



is legislating on a devolved area, or affects the legislative competence of one of those legislatures. It would be almost unprecedented, given the history of what we have seen so far, for one of those legislatures to express concern and refuse to pass a legislative consent motion, and for the UK Government to go ahead. It has happened, but the basis of the constitutional settlement we have at the moment is that the UK Government take on the concerns of the legislatures.

Although we are very clear that ultimately the decision here is for the UK Government, it would be contrary to the precedents that have been established so far following devolution for a legislative consent motion not to be passed and for the Government to go ahead regardless. That is why it is in everyone's interests for there to be a very thorough process of involvement of all the devolved countries, so that an agreed position can be reached, if possible.

Joanna Cherry: Just expanding upon that, Professor Sionaidh Douglas-Scott, formerly of Oxford University and now of London University—I am sure Professor Barnard is familiar with her—is an adviser to the Scottish Parliament's committee dealing with European Union matters. She has given advice that in Canada, for example, although treaty powers are federal, just as the power to make treaties in the United Kingdom is reserved for the UK Government, in practice because the provinces have to implement treaties where they relate to their competences, provinces have tended to be involved in treaty negotiations in order to ensure later compliance. I understand that during the CETA negotiations, the Canadian provinces sat in the room with the Canadian Government. Do you think that is something that might be desirable here?

Dr White: I am not a lawyer and I cannot comment on the extent to which that precedent, given the different constitutional arrangements there, is appropriate here. We have not talked about the specific mechanisms, but just going back to the principle, it is important that all the nations are involved in these negotiations.

Q41 **Joanna Cherry:** Professor Barnard, perhaps I could ask you to comment on the question I put to Dr White.

Professor Barnard: Yes. Indeed, I have noticed that there has now been a challenge in Canada to the CETA agreement on issues very similar to the ones that we have been discussing about whether it should be an exclusive competence or not and the extent to which the provinces should be involved.

The problem the devolved Administrations will experience is, it seems to me, that the Government's language has moved from extensive co-operation with the devolved Administrations to a shift towards, "We went into the EU as one union and we will leave as one union", and so there does seem to be something of a change of emphasis. I can certainly see from your point of view that having a seat at the negotiating



HOUSE OF COMMONS

table would be desirable. Whether the Government would let you have it is another matter.

Q42 Alistair Burt: I want to come back to the issue of negotiation. In this vexed question about how much the Government might publish before they starts their negotiation, we have tended to look at it from our point of view and not revealing our hand, etc. Is there not another point? To what extent do you think that those with whom the United Kingdom will be negotiating already know what our broad parameters and objectives are likely to be?

As you indicated, on day one of the negotiations, the high-level objectives will be known to the other side and immediately leaked. To what extent are those objectives and the broad parameters already known? It would then make little difference to the United Kingdom's negotiating position for these to be made more public in order to induce the certainty that Dr White has been talking about today.

Sir Simon Fraser: Clearly the scope of the negotiation and the issues that we are going to seek to address will be known to the EU side. Frankly, I absolutely agree myself that when we trigger article 50, it will be appropriate to set out at a reasonably high level the agenda that we are negotiating on, and the objectives that we are seeking to achieve through that negotiation, without going into detail.

My own guess at the moment, to be honest with you, is that the Government is not in a position in any case to publish such a position because, as we have said at the beginning, the Government are still in the process of forming the position and gathering information and do not yet have a clear view on the conduct of the negotiating. That will come, and I would expect that to happen. I would expect senior Ministers to move into a mode of giving more information, as we approach the time of triggering, about what they are seeking to achieve, bearing in mind the very important point that we have touched on a number of times: that we need to have more clarity in our understand of what article 50 is and is not, and the different nature of the negotiations that we are likely to be entering into.

Q43 Alistair Burt: You mentioned earlier, Sir Simon, that the EU would be working to a negotiating mandate. To what extent is that publically available?

Sir Simon Fraser: My understanding of the process, although this is unprecedented territory, is that when we have triggered, given that the EU side has said no negotiation until notification, their position is they are waiting for us now to come to the table and say, "We want to leave the European Union. We want to have a negotiation under Article 50 on the following broad terms." They will then receive that. My understanding of what will happen is at that point they will then form their negotiating position. In other words, the Commission will probably make recommendations to the member states. The Council will discuss it and



HOUSE OF COMMONS

give the Commission a broad negotiating mandate to engage with us and then the negotiation will begin.

The negotiation per se does not start on day one after we trigger article 50. Now, that process will be relatively open, because it will consist of a debate within the institutions, between the institutions and with the member states. As has already been pointed out, it is the practice nowadays of the European Commission in trade negotiations to publish the terms of its mandate from the Council. It is a fairly transparent process, despite what some of us think about the workings of the institutions. I would expect there to be quite a fair degree of visibility on our side of the negotiating position from the other side.

Q44 Alistair Burt: Also, in relation to these negotiations, there seems to be a common view among some in the United Kingdom that most of the negotiations will be conducted on a very mercantilist basis; the EU will want to do a good deal because they sell us things. To what extent do you think those in the EU are motivated by other things—security, cohesion of the EU? The sort of things that brought the EU into existence might be part of their negotiating position, and therefore it may not be as straightforward as trying to work out how many cars the Germans sell us, because Germany may have other objectives in the negotiations, as may other states that feel threatened by what the United Kingdom has decided to do.

Sir Simon Fraser: It is a very important question. It is an opportunity to underline the fact that the article 218 negotiation will not be a free trade agreement negotiation of a normal sort. Part of it will be setting the future terms of trade with the European Union, but free trade agreements are about increasing trade. This is an agreement about reducing trade, because almost by definition, the new arrangement will be less advantageous for trade between us and the European Union, both ways. It is not a classic trade negotiation.

The other thing is the EU is not a classic free trade area. It is more than that. It is a common regulatory space, as we have heard before. The range of negotiation goes a lot further. There will be a hard-nosed, economic negotiation, I assume, on both sides to try to make sure that we achieve the best in our own national interest and that the EU side achieves the best in its interest in relation to access to our market, but it will go beyond that.

You also identify quite rightly that it will cover a wider range of issues that are not just economic issues. The issues that I have already alluded to are the security co-operation that we have, the foreign policy co-operation that we have, and the areas of defence co-operation that we have. Whether they are all negotiated as one package, I do not know, but they will all be part of the future framework agreement or agreements in one way or another between this country and the European Union that we will no longer be a member of.



Q45 Alistair Burt: From your experience, when push comes to shove and you presumably get down to that last-minute bit of negotiation that seems to characterise negotiations within the EU, some of these wider considerations might weigh upon the minds of other member states before they give agreement, finally, to the deal that enables us both to leave and to start a new relationship.

Sir Simon Fraser: Yes, because in the end this is a very important international negotiation about the future relationship between the United Kingdom and the other countries of Europe, which goes beyond trade. It has a big political component. It is important strategically as well. Those factors will weigh. It is true that at the moment the reaction on the European side is one of some disappointment, and even anger at the fact that the vote has gone the way it has gone in this country. That is just a fact, but over time it may well be that the calm counsels about the nature of the future relationship with the EU, and where the interests of the European Union—and indeed the United Kingdom—lie, could influence the final outcome of negotiation over time.

The other thing to say is a lot is going to happen in Europe and in the world during the time that this negotiation is taking place. We have elections taking place in the Netherlands, France and Germany next year. Politics in Europe is going to move along, so we do not know now what the context will be later on when we are coming to the end of these negotiations.

Professor Barnard: I have just two small points. First, there was a helpful Radio 4 *Analysis* programme on Monday evening presented by Anand Menon, who—I should declare an interest—is part of the *UK in a Changing Europe*, which is a programme I am working with. He was making the point that you make: that for a lot of European politicians the European Union is not just a simple trading bloc with knobs on. It is something profoundly deeper and there is a sense of perplexity about why the UK should want to leave such a symbolic and politically important organisation.

It always strikes me when I go to European Union countries and talk to European Union students. I say to them very simply, “How do you feel about the EU?”, and they used such strong language. They talk about, “I love the EU”. Language you would never get British students using. Even the most committed Europhiles would never use that strong language. It is a very different approach to the EU than the one we have here, and some of the people negotiating feel that very strongly.

Q46 Alistair Burt: Just to finish, the Committee is not to rerun the arguments about whether to stay in or not. The British people have made that decision. The point of my question was to suggest that, although technically a quickie divorce is possible and to some has some advantages, the complexity of issues surrounding the wider nature of the relationship, both now and in the future, would suggest that probably that is not a line that the United Kingdom would be wise to go down.



HOUSE OF COMMONS

Sir Simon Fraser: That is consistent with the view that I was expressing before.

Q47 **Jeremy Lefroy:** Setting aside the current issue before the Supreme Court, how much progress do you think has been made with the key steps that the Government should be taking between now and March to prepare for article 50 negotiations? Perhaps I could start with Dr White.

Dr White: As I have been saying, the Government have made some steps towards where they will need to be. It was welcome to have clarity about opportunities for Parliament to have some debates on the negotiating position before article 50 is triggered, although, as I have said, it would be good to have some notice of when those are going to take place and what the subjects of those are going to be.

The Government need to also be clear now what access it does expect Parliament to have to information during the course of the negotiations. That needs to be made clear before article 50 is triggered. David Davis has said on a couple of occasions that he wants to ensure that MPs have no less access to information than MEPs. It is not yet entirely clear how much access MEPs will have to the negotiating process, but it would be good to understand what the Government mean when they say that. That is one important area that the Government need to be clear about.

As we have heard already, it would be useful, both internally within Government and externally, for the stakeholders for the Government to give an idea of the objectives of the negotiation. Some of that might be very specific. There might be some things that they do want to be very clear about, for example sorting out issues in Northern Ireland. They might want to say, right from the start, "This is something that absolutely must be covered", whereas other things are vaguer objectives. The Government needs to have made more progress on that before it triggers article 50.

Q48 **Jeremy Lefroy:** Would either of the other two like to comment if there are any other significant steps that you think need to be taken?

Sir Simon Fraser: I agree with what has been described. Your question was about how much progress has been made, and my view is there has not been enough really, because of the complexity of the task. When you talk to people in Whitehall, they are working incredibly hard to try to understand and piece this together, but it is, as we have said before, a big challenge for them. More needs to happen and time is relatively short. If we are going to have a coherent position going into negotiations in about three months' time then the after-burners need to be put on.

It is very important, as I said before, that in this whole process there is as much coherence as possible between Departments, both at the political and civil service level, in order to make this collective task a success.



HOUSE OF COMMONS

Professor Barnard: The only thing I would add to that is that the sector-specific studies, which are being conducted by BEIS are really important. We have talked a lot about the devolved administrations, but we also have to remember that there is a lot of local government out there as well. We already know the issues in Cornwall, but the issues in Cornwall are different to those in Norfolk. It is not clear to me how much consultation has gone on with those levels of government as opposed to the devolved administrations.

Q49 **Jeremy Lefroy:** Could I ask Sir Simon specifically: you said recently there should be informal pre-consultation with the EU prior to article 50 being triggered. Do you think that is happening or that will happen?

Sir Simon Fraser: We are not yet in a position, because of what we have just been discussing, to have significant substantive pre-consultation or discussion. As I have said already, on the EU side there is a very clear formal position that there will be no pre-negotiation at least, because from their perspective they feel that we will go and try to cherry-pick things, pick things off and pre-cook the agenda, and they do not want to do that. They want to see an overall approach to the negotiation.

That will be quite tricky to manage, but it does seem to me absolutely sensible, and would be normal practice if we are going into a negotiation, to have prior discussions about the scope, conduct and timing of the negotiation. All those things it seems to me we have to enter into pre-discussion with the other side. We are not quite ready for it yet, but it seems to me entirely normal that that should take place.

Chair: We have made very good progress. Are there any other burning questions from other members?

Q50 **Dominic Raab:** Very briefly, going back to a point that was made at the beginning, you were talking about strain on the civil service in terms of delivering the Brexit negotiations. That is a relatively short-term issue, at least in terms of leaving the EU. I was caught by your suggestion that civil service headcount or the numbers have to stay in place after we leave the EU. I was rather jarred by that because presumably there is a significant countervailing reduction in bureaucracy and regulation as a result of leaving the EU. I wanted to ask you, Sir Simon, what your assessment has been of that. Secondly, Dr White, given the IfG's report today have you done any objective assessment on the long-term reduction in cost for the civil service? If not, would it not be a good idea at least for balance?

Sir Simon Fraser: I observed your reaction to the comment earlier on. It is just important to raise this question because it depends in a sense on what the outcome of the negotiation is. If, for example, we were to decide to leave the customs union, I assume that one corollary of that would be there would need to be new regulatory arrangements put in place, and checks, for example, on goods crossing the border, and in a



sense potentially a heavier bureaucratic burden on goods crossing the border. I do not know the detail of that, but it is very important to consider that. Presumably we may also need to have a tighter regime on the border to implement our immigration policies. Those require people. When I talk about civil servants, I do not necessarily mean policy civil servants at the centre.

Another example might be the administration of our national agricultural subsidy scheme, which presumably may require—I am not saying it does because I do not know—a heavier bureaucratic support within our country.

Q51 Dominic Raab: Can I just question that very quickly before turning to Dr White? I am still rather bemused by this. At the moment we have all sorts of arrangements with non-EU countries and we have arrangements with the EU. It is generally accepted that as a result of our EU membership, the bureaucratic and regulatory burden is, net, higher. I am therefore mystified how long-term, notwithstanding the transitional challenges and that we will still have to deal with EU countries in the way that we do with other parts of the world, the net regulatory and civil service burden can end up going up, not down.

Sir Simon Fraser: We do not know the answer. I do not have a clear view on this. It is just important not to make the assumptions before we know what the outcome is going to be, because we are going to have more national policies in place than we have at present. Take one other example. At the moment we participate in a trade anti-dumping regime that is administered in Brussels. If we want—and we may not want—to exercise those sorts of functions in trade defence nationally we will have to create the capacity to do it, so there will be some transfer presumably of functions out of the European Union that we will want to preserve there.

If we are not exercising those functions here at the moment we will have to create the capacity to do it. It is not simply a linear reduction in bureaucracy and indeed red tape, it seems to me. There will be pros and cons.

Dr White: In terms of the figures that were in this report and so on, we have said that we do not recognise those figures, but the only way you could think about talking about tens of thousands more civil servants being required to deliver Brexit is as exactly as Simon has been saying. We do not know what the outcome of the negotiations will be. One thing the Government have said, for example, is about controlling people at borders and controlling EU people coming into the UK. Those people currently just walk through passport control. If we are going to introduce some sort of tighter control on those people, objectively I would have thought we need more immigration officials on the border tracking those people coming into the country. Those must be the sorts of things that we are not currently doing where we might need some people to do those things.



HOUSE OF COMMONS

In terms of the institute's work, we absolutely do plan to undertake work on the future impact of Brexit on different Government Departments and so on. At the moment there is not a great deal of clarity on what we will be doing for ourselves.

Q52 Dominic Raab: Including the scope to cut bureaucracy and regulatory costs.

Dr White: Indeed, whichever way that it is going to go.

Sir Simon Fraser: That is always the objective of Departments, honestly.

Q53 Mr Whittingdale: Sir Simon, can I just come back to the point Alistair Burt was making: that there may be other factors in play in these negotiations? We have not been alone in our criticism of the way in which the European Union operates. To what extent do you think other member states who have shared a lot of concerns that we have expressed about some aspects of the European Union might view the negotiation as perhaps creating opportunities for broader reform? Do you think that is a negative or a positive in terms of the attitude of the European Commission when it comes to these discussions?

Sir Simon Fraser: Clearly, the reservations that have been expressed in this country at the political level, as well as the concerns that led to the popular vote, are shared in many other EU countries with different priorities, and with different degrees of acuity in different countries. This negotiation of Brexit is likely to take place against a changing context in Europe as well. I suspect that there will be pressures for reform in Europe of the way that some of the Union operates.

You are right to identify a certain defensiveness on behalf of the institutions in Brussels, who after all consider themselves to be the guardians of the orthodoxy of the EU, and that could be quite a complicated thing to do. What is not likely is that there is going to be a significant change in the underlying attitude towards the European Union as basically a good thing among the great majority of the member states of the European Union—perhaps not all of them to an equal degree, but the great majority of them. There is an opportunity for us to seek to advance reforms in Europe through this negotiation as well, and I hope we will take that opportunity.

Q54 Karl McCartney: Thank you, all three, for attending this morning. What I have taken from your responses has been that you have all sang from the same hymn sheet on this particular issue. I just want to say that those glasses in front of you should be viewed, if you answer my question, as being half-full and not half-empty at this point.

Civil servants, as far as some of us are concerned, have had 200 years of honing their procrastination skills, and we cannot look for long grass to put this into. This has to happen quite quickly. My colleague referred to this before: there are 307 people in the Department so far; all have come



from the civil service, from other Departments. We have to look outside for outside expertise. Those 307 are on secondment, so they have security of tenure, so what people get paid is a little bit of a red herring. To take you out of your comfort zone, would you accept that there is an alternative view to that of your own, and that you could trigger article 50 maybe even next month, or certainly before March next year? Yes, it is going to be technical and difficult, but we could exit the EU in less than two years, maybe six months or 12 months.

Sir Simon Fraser: I respect your view. I hope you respect the views that we have expressed here. I do not agree with your assessment that the civil servants' objective is to procrastinate. I know that civil servants are working incredibly hard. Part of the issue here is that civil servants do not feel that they have clear political direction at the moment, and if you are a civil servant, it is very difficult to bring to the table clear proposals to start a negotiation without that clarity. There is room for improvement across the board in making sure that we move rapidly forward.

My own view is that it would be a good idea now for us, the decision having been taken in the referendum, to trigger article 50 on the timeline agreed with the Prime Minister and move forward, because until we get involved in the substance of dealing with this issue, we will not be able to move very much further our understanding of the detail and make progress on it. Personally I am in the same camp: that we should now move forward, and I hope we will.

I do not know how long it will take to do the negotiation and to complete. I have said that technically the exit negotiation should be doable within two years. We will not be the masters of that timetable ourselves, because it is a negotiation with others. It is not a unilateral decision for us if we are going through the Article 50 process, so we have to engage with the EU.

Q55 **Chair:** Could it be done in six months? It is a very direct question.

Professor Barnard: The answer is no. The only experience we have had of this so far is when Greenland left the European Union.

Mr Lilley: Algeria.

Professor Barnard: That is true. Greenland left the European Union—a population the size of Croydon and the big issue was fish—and it took three years. I accept that they probably did not devote all of their time to dealing with the Greenland exit, but the breadth of issues involved are so vast. It is in everyone's interest that we do it properly, rather than have a cack-handed deal. We have that time. Some of that time the politicians will be distracted in France and in Germany, so that is one very good reason why nothing will happen within six months, even if it is triggered in March, subject to what is said in the Supreme Court.



Dr White: I agree with what has been said. Also, just to pick the thing that is not the central thrust of your question but the point about these people being on secondment to DExEU, one of the things we have found is that a really important factor that is making the DExEU model really well is that lots of people have come into the Department from other Departments and have established relationships with those Departments. I totally accept that it might be appropriate for Departments to bring in external expertise and so on. The fact that DExEU has brought people in from across Whitehall is making that process work well because those relationships are already in place, so that is a plus.

Q56 **Stephen Timms:** Can I go back to Professor Barnard, and what you were saying about the European Union not being seen elsewhere in Europe as simply a trading bloc with knobs on? We heard from French parliamentarians on Monday about the importance of the four pillars and an unwillingness to give the UK access to the benefits of the single market if we are not willing to sign up to the four pillars.

Last night it has been reported that the Chancellor of German suggested in talking to the German employer's organisation that she at least might be willing to look at some flexibility around freedom of movement. I was in a discussion recently with the Director-General of the BDI, who also suggested to us that Europe might be willing to look at a different definition of free movement of labour in order to help these negotiations. I just wondered what flexibility you think there might be on this specific issue—the freedom of movement of labour and whether a different way of thinking about that might enable these negotiations to be more fruitful perhaps than might initially have appeared to be the case?

Professor Barnard: Thank you for that. There is partly a problem of terminology. You hear people talking about free movement of persons all the time, when in fact what the original treaty said was free movement of workers. There is some evidence that free movement of workers—people who have jobs—either had to move because they had jobs before they came or that they were going for jobs that had been specifically offered.

It is certainly true that although that was the idea in 1957 when the treaty was signed, at Maastricht the notion of EU citizenship was introduced and there was a stretching of the concept of free movement beyond workers to include, it was thought, even people who did not really have sufficient resources to look after themselves. There was a period of time in the last 1990s, early 2000s when the Court of Justice seemed to be moving in that direction. However, the Court of Justice has done quite a dramatic volte-face, and is now taking a very strict line on those who are not economically active.

Going back to your original question—is there wriggle room?—absolutely, there is. This is where the Brussels agreement could be useful because although the Brussels agreement, which David Cameron negotiated in February with a view to him being able to say that he would campaign to remain, is absolutely dead now because it is clear that it was conditional



HOUSE OF COMMONS

on us voting to remain, the Brussels agreement had some flexibility in it. Most strikingly, it talked a lot about free movement of workers, not free movement of persons in general, and most striking of all, it emphasised that if a country was facing a particular difficulty in terms of unemployment or in terms of particular issues in regions, then the country could restrict free movement of labour.

I was always surprised at the time that more was not made of that bit of the agreement, because although there was a lot of attention focused on the so-called emergency break in respect of benefits, in fact it was not quite an emergency break and the bigger concession was in respect of being able to restrict free movement of labour.

If I have one more minute to say that in the European Economic Area, it respects the four freedoms, but what is striking about the EEA agreement is that there is no reference to citizenship, so Norwegian citizens are not citizens of the EEA, to use the jargon. They enjoy the rights of free movement of workers and of establishment, so free movement of the self-employed. They also respect aspects of the Citizens Rights Directive, but crucially in the EEA agreement there is a big emergency break built in, which rather mirrors what you find in the Brussels agreement. Where there are serious problems in the host country, the host country can restrict free movement subject to certain conditions being laid down. It is not confined just to free movement of workers. It also applies to the other freedoms as well.

If in the negotiations you are thinking about whether there a way of maintaining some form of free movement of the economically active, whether it be high skilled people in the NHS or academics—I recognise that there is a degree of self-interest there—if you were to go down that route there is already some precedent in the Brussels agreement and the EEA that could be drawn upon.

Q57 Sammy Wilson: You mentioned that, because of the expectations that there were in devolved administrations and because of the fact that some of the competences that would be brought back from Europe were devolved and there may even be requirement for legislative consent motions on occasions, it was important that devolved administrations be involved in the negotiations, and indeed, if I quote you correctly, that everyone reach an agreed position.

Given first of all the differences that there are within the devolved administrations—one of them refuses to accept the UK decision and the other half of the people in the Northern Ireland one refuse to accept the decision that has been made by the people of the UK as a whole—could I ask you two questions? First of all, do you believe that it is possible to reach an agreed position on these negotiations? Secondly, how do you see, in practical terms, the devolved administrations being involved in the negotiations?



Dr White: You highlighted a very important point, which is when this referendum took place the decision was made to leave the EU, but there were differences of view and not everyone voted to leave. Certainly there were geographical differences of view that you can see and differences within the devolved areas.

It is a very challenging task to think that you could come up with an agreed position, but what is important is that the negotiations that take place surface all the relevant concerns and what different administrations would see as an ideal end point and that the devolved administrations can see that the UK Government are in good faith trying to reach a position that resolves as many of those concerns as possible. That means substantial talks at an official level as well as a ministerial level and not just the transfer of information from the UK to the devolved administrations, but a genuine dialogue and a sustained programme of discussions. That is what we have called for.

Q58 Emma Reynolds: I would like to ask just two brief questions. Is there a potential mismatch between what the Government expect that they need to deliver in March in the article 50 letter—that level of detail—and the level of detail that the Council, Commission and Parliament want, because a number of Labour MPs were in Brussels last week and it was my impression that they think that there will be quite a significant level of detail to that letter? A second brief question would be to Simon: from your recent experience in the Foreign Office, how concerned do you think the EU 27 are about discouraging other member states from going down the same path as us and what kind of impact will that have on the negotiations?

Sir Simon Fraser: On the first question, that is a very important point, because there is a risk of a mismatch of expectations. It would be a great shame if that were to happen because it would be undesirable to start this negotiation with a misunderstanding about the scope or nature of it, which takes us back to the point about pre-discussion or pre-consultation and why that is important, accepting that that is not pre-negotiation.

If we were to come forward with a proposal on article 50 that were to be rejected on the other side that would be a big setback and definitely something we should seek to avoid. I do not know what the expectation is on the EU side at the moment and I do not know what the emerging thinking is about the proposal on our side, but they have to be brought together. It is a good point.

On the second issue, it is clearly the case that the EU member states and the Commission will want to make sure that in their terms the UK does not benefit from leaving the EU and in fact that there is a price attached to it, because they will want to discourage any tendency in other member states in that direction. They will negotiate hard anyway in their own interest as they perceive it and that will be one of the factors.



HOUSE OF COMMONS

Against that we might weigh other things. For example, the election of President-elect Trump will make some people in Europe think about the future relationship with the United Kingdom in the context of European security and so forth. We do not know exactly how that is going to pan out, but what I am saying is that there are countervailing arguments why the European Union over time may come to the conclusion that the most collaborative and close possible economic, political and security relationship with the EU is in our shared interest. The dynamic of the negotiation remains to be seen.

Q59 Craig Mackinlay: There have been some very interesting opinions today. I will keep it very tight. It really is to you, Sir Simon. You made a statement, which I would like you to try to justify if you can, that most free trade agreements, like CETA, are designed to expand and increase trade. You said that this is probably the first time that a new agreement is designed to reduce trade. To me that seems like the hymn sheet of Project Fear is still very much alive and well with you, even though it seems to be unravelling on a daily basis. I will take it at face value what you have said.

Sir Simon Fraser: It is not what I said, if I may. What is said is this is an agreement, the consequence of which is likely to be the reduction of trade or at least making trade within the European Union between the UK and the EU more expensive. It is not an agreement that we are entering into with the express purpose of reducing trade, but it is not like the standard FTA negotiations that the EU or other countries launch. That is the point I am trying to make and indeed was the point made by the Dutch Finance Minister yesterday in an interview.

Q60 Craig Mackinlay: I will accept what you are suggesting: that this will possibly lead to a reduction in trade. I do not agree with that, obviously. Do you think that the opportunities for expanding free trade by the UK by being liberated and being able to have free trade agreements with other parts of the world, which the EU has not been able to penetrate in all these years despite 600 officials and all the rest of it, could more than compensate for any potential difficulties and losses that you perceive that I do not?

Sir Simon Fraser: There will be opportunities and clearly the United Kingdom, having left the European Union, will have the opportunity to pursue its own international trade policy and to pursue trade agreements with other countries around the world, some of which are very important countries. There will be opportunities. Whether those new opportunities and the realisation of them will more than outweigh the potential impact on trade in goods and services within the European Union, I do not know because we do not yet have the evidence.

All I would say is it is important to bear in mind the relative size and quantities of our trade in Europe and America as compared with other countries. We do much more trade. The volumes of trade are much



HOUSE OF COMMONS

higher at the moment. Over time that balance may shift, but I do not expect that balance to shift very dramatically very fast.

- Q61 **Chair:** Just on that point, Sir Simon, you said earlier that if we were to offer tariff-free access to the 27 after we leave, then we would be obliged, as I understood it, under the most favoured nation status rules of the WTO, to offer that to everybody else. If that is the case, is that not giving away what we would expect in other circumstances to offer in negotiations with third countries because of the opportunity to come and sell into us without tariffs? Does that not undermine what we could do?

Sir Simon Fraser: It is a policy choice that one makes, because in trade negotiations these days, tariffs on goods are one element, but there are many other objectives that one seeks to pursue. It is a policy choice one could make. All I am saying is that my expectation would be that that would expose some sectors in our country to additional levels of international competition, which we would have to respond to.

- Q62 **Peter Grant:** Earlier on you discussed the two extreme situations. One is where article 50 is basically, "Dear Europe, we are leaving. Lots of love, Britain." The other is where, by the time we trigger article 50, we have quite a detailed view as to what the future relationship might be. That second option is clearly going to be a lot more time-consuming and a lot more complex to develop. Is there a danger that, having set a deadline of 31 March, which is likely now to be politically impossible for the Prime Minister to extend, that either that pushes us into a very brief article 50 statement, or alternatively a triggering of article 50 that looks quite detailed but where the detail has not been thought through clearly?

If that happens what does it mean, at the end of the day, for ordinary people? Today we have spoken a lot about process, protocols, treaties and so on. What are the potential impact in real life if, for example, we deliver an article 50 notification that has been badly worded or that parts of it have not been properly thought through? Why is it important to ordinary people that we make sure that every part of the negotiation is thought through in very fine detail?

Sir Simon Fraser: On the timing of triggering article 50, in the end that was a political choice that the Prime Minister made. The factors that lie behind that choice are very clear and understandable. I assume subject to the legal and parliamentary processes that we will go ahead with that timetable as proposed.

What it does do is set the clock ticking for a negotiation. Given that we have these elections in France—the presidential election—and then in Germany, it seems to me that the chances of getting into the political end of the negotiation before the end of 2017 are quite slim. However, as we have said before, once we have triggered there will be a technical process of setting up the negotiation and conducting, if you like, official level parts of negotiation, which can go forward. Progress can be made once it is started.



The reason it is important to the voters and people in this country is because they need to understand what is at stake and they need to have a sense that the Government has mastered the issues, has a clear sense of the national interest and is in a position to pursue those interest effectively in negotiation, both in terms of our separation and the clarification of the future relationship. That will affect all of us because the outcome of that negotiation could lead to different trading arrangements, different economic relationships and therefore potentially impacts on jobs across the economy in different sectors in different ways.

That is the interest that people have, as well as understanding that we have reached the best possible outcome in terms of our capacity to work with other countries in Europe to protect our security and to manage immigration and the other concerns that people have.

Q63 Chair: Just a final question from me, coming back to where we started and reflecting on the evidence that you have given. The Government have said, "We are working out". I think you, Sir Simon, wrote about the Government getting their head down in the autumn and working out what the policy issues are. The question is: when is it going to raise its head and reveal the product of that work?

In the case of Nissan, there was a particular issue and the Government in the course of responding to that revealed a lot about what their negotiating objectives are going to be for the motor vehicle manufacturing industry. This is a question of what falls to the side of the line that says, "This is our negotiating tactics, our red lines, our fall-backs", which clearly would not be sensible to reveal, and what, on the other hand, provides a degree of certainty to our partners with whom we are going to negotiate what it is we want to talk about, and also to many people in this country who are affected by this process and the stance that the Government take.

I would be really interested just in final observations on the kind of clarity that you would expect to see in the plan, the objectives or whatever we describe them as when they come out, because, apart from anything else, in the absence of a degree of clarity, is it not the case that there are many organisations who potentially can be affected who will have to make their own decisions about what they are going to do, because they are not entirely sure, whether it is six months, two years, five years or whatever, where they will find themselves when this process is finally concluded?

Dr White: As I have already said, the Government should give as much clarity as is possible about the process of getting to the article 50 trigger and then the process that it sees taking place thereafter. We have talked today about what will happen in the EU once article 50 is triggered and the extent to which some issues may be able to be dealt with in working groups at quite a technical level and other things might take a longer time.



Being as clear and open about that as possible is definitely in the interests of promoting confidence that the Government have a plan and are executing that plan effectively. We would say that clarity about the process is really important, but also a degree of clarity, as you have said, about the high-level negotiating objectives, not necessarily exactly how we are going to achieve those objectives, but what is on the table and what is important to us.

Some of my colleagues were in Brussels last week and they said that the universal view of the people they were talking to was they were very much waiting to find out what the UK wanted and what the UK thought should be in the article 50 negotiations. A lot of their thinking at the moment is about the remainder of the EU and the issues for the remainder of the EU and what will happen once the UK has left. They have not yet been able to focus on the exiting process for the UK because they do not know what we think should be part of that negotiation, so if we can give clarity on that so much the better.

Sir Simon Fraser: I was going to say on your last point, Chair, that it is inevitable, whatever the process, that there will be uncertainty for important stakeholders—economic and other stakeholders—throughout the process. That will not only apply to article 50 negotiations, but to the definition of the future relationships. The Government, I would imagine, will over the next few months develop quite a clear internal understanding of priorities for the negotiation. I would not expect the Government to make that detailed understanding public, because that is negotiating material and it is sensitive. In relation, for example, to priorities for certain sectors as compared with other sectors of the economy—

Q64 **Chair:** Can I just push you on that point? Let us take a specific example because you mentioned it earlier—the European Medicines Agency. Is saying that our objective would be, for instance, to remain members a negotiating objective in your view that can properly be shared as opposed to a detail that should be kept for the negotiation?

Sir Simon Fraser: These things fall into different categories. For example, it would be possible for the Government, if they had come to a policy conclusion that they intended to leave the customs union, to say that, because that is a policy position. However, if, for example, they were thinking about what they were going to seek to achieve for the automotive industry or the financial services industry, they would not say that because a) it is commercially sensitive information and b) they may not be able to deliver that in relation to the business constituents. Those things would be expressed in more general terms.

With the European Medicines Agency, the issue is the location, first of all. Do we want to keep it in this country? Secondly, do we want to remain within its jurisdiction? It is perfectly reasonable to express as a negotiating objective that we would like to stay if it is a policy choice that we make. Some things you sense are public policy choices and others



HOUSE OF COMMONS

touch more on commercial and other interests and are possibly in those senses more sensitive.

Professor Barnard: The final thing that I would add is that, as we have already heard, we are leaving for the benefit of the UK as a whole and therefore there should be a sense that the public as a whole will benefit from whatever deal is entered into. It should not just be seen as a deal that benefits the City of London or whichever sector has the most powerful lobby groups, because there are a lot of sectors out there who do not have powerful lobby groups—people who have suffered as a result of deindustrialisation in parts of the north-east and so forth.

They need to be able to feel that they are getting the benefits too, and so there has to be some effective communication thought given to what impact Brexit will have on the country as a whole and not just on the sectors that are very vociferous, for absolutely understandable reasons, but they are more organised than other groups.

Chair: Thank you very much indeed. On behalf of the Committee, can I thank you, Professor Barnard, Sir Simon and Dr White, for your evidence today? You have given us a great deal to think about. That concludes this morning's session. Thanks, everyone.