

European Scrutiny Committee

Oral evidence: [Ports](#), HC 884

Wednesday 14 December 2016

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Members present: Sir William Cash (Chair); Alan Brown; Steve Double; Richard Drax; Kate Green; Mr Jacob Rees-Mogg; Graham Stringer; Michael Tomlinson; Mr Andrew Turner; David Warburton; Mike Wood

Questions 1-34

Witnesses

I. Rt Hon John Hayes CBE MP, Minister of State, Department for Transport, and Philip Grindrod, Head of Competition and Port Development, Department for Transport

Examination of Witnesses

Witnesses: Rt Hon John Hayes CBE MP, Minister of State, Department for Transport, and Philip Grindrod, Head of Competition and Port Development, Department for Transport

Q1 Chair: Minister, welcome this afternoon. This has had what could be described as a chequered history: the Port services regulation is not popular. I would like to ask you some questions, and I will ask the first question.

This Committee and the Committee in the previous Parliament have held this proposed regulation under scrutiny since June 2013. As long ago as July 2014, it was recommended for debate on the Floor of the House. The Government have ignored this recommendation and have failed twice to have the matter debated in a European committee. What possible justification do the Government have for this failure, and can you tell us when it will be debated?

Mr Hayes: Chairman, you describe the history of this proposed regulation as chequered; it is not chequered for me. The first time I heard about it, when I was a Minister in this Department last time around, I made it very clear to my officials that I wanted it stopped. It is certainly not in our interests; it has never been in our interests.

It was not a matter of “on the one hand, but on the other”. It was a clear-cut case of a European regulation that was not good for Britain, so I did all I could to try to stop it, including going to continental Europe, travelling there—as you know, I do not like to leave the east of England, so that was quite a big step for me—and trying to persuade those I met there that this was a very bad idea. That is what happened in my part of Government, on my direction. I made it very clear to my officials that they should confirm that was what I felt.

As for the Government, in respect of timetabling debates in the House, you will know that that is not a matter over which I have direct control. I have never been resistant to the idea of debating these matters, as you can see evidenced from the stance I have just described to you. Clearly, what is debated on the Floor of the House is decided at a level both beyond and above mine.

Q2 Chair: What is the Government’s voting intention on this proposal?

Mr Hayes: Let me be very clear about that: we will vote against it.

Chair: You are going to vote against it.

Mr Hayes: We will vote against it, as I always wanted us to do.

Q3 Chair: Why did we not do so before?

Mr Hayes: The original advice—before we knew the happy day was going to arrive when we left the European Union—was to try to do three things:



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to delay it, to dilute it and to get Britain out of it. My officials went about trying to do all those three things and, to some degree, succeeded—we can talk about that in detailed questions—by changing the regulation, removing some of the things from its original incarnation, including pilotage, dredging and other such matters, and by suggesting and getting agreed the competitive-market exemption, which again we will talk about, no doubt, in due course.

The first step—when we thought we were going to be burdened by the European Union in perpetuity—was to do the three things I described. It is absolutely clear now that there is no point continuing down that road. We will vote against it, because it is not right for Britain.

Chair: Voting against it quite clearly appears to be the view of all the parties concerned: the Labour party, the Conservative party, the employers—all 47—and the trade unions. Everybody is agreed, but unfortunately it is still going to go through. I understand there was going to be a meeting today or yesterday in a plenary.

Mr Hayes: Yes.

Chair: Now, the question after that is: what is going to happen thereafter? We vote against it, but it still goes on. Is that not rather a bad message for the United Kingdom?

Mr Hayes: You might think it is a bad message. If it is not in the national interest, we should have the courage to say so. You are right, though.

Q4 **Chair:** Excuse me. It is not that we should not say so, because we should say so. We should also do something about it, but there is nothing we can do about it while we are within the European Union. Is that not right?

Mr Hayes: You are right in two respects, Chairman. In fact, indeed, you are right in many respects, but we do not have time to explore all of those today. It would require an extremely long meeting.

You are right in two particular respects. First, my stance on this—as my officials and Department are extremely well aware, because I was still more emphatic than I have been today in my discussions in the Department—was shared by the group of people you describe. This was quite an unusual circumstance where port owners, port workers, Members of Parliament across the House and a whole panoply of people associated with ports, who cared and knew about ports, regarded this as entirely unattractive and unacceptable from a United Kingdom point of view.

You are right that I was far from ploughing a lonely furrow. I was able to attract support from many parties in the campaign we waged against this regulation. However, you are also right, if I may say so, Chairman, that even if the United Kingdom does the right thing and votes against—and



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we will—by qualified majority voting, should the remainder of the European countries decide to go ahead with this, we could be defeated. To that extent, while we are members of the European Union, it would have application here.

Q5 Chair: We will come on to the next bit in a moment, about what happens afterwards, but I would just add one other thing that I believe needs to be raised. There is no enthusiasm for the competitive-market exemption amendment, because many believe that will effectively leave control in the hands of the European Commission and, therefore, it is less effective than some people thought it would be.

Mr Hayes: I asked exactly the same question of my officials, in almost exactly the same form, because the Commission will ultimately make the decision. You know why we argued for it, I am sure. We argued for it because British ports are competitive and efficient, unlike most of their European counterparts, so the competitive-market exemption, at least as a matter of principle, would free British ports from many aspects of this regulation in a way that it would not free, because they would not be able to pass the test, most European ports, particularly the Mediterranean ports and, arguably, ports like Hamburg as well, which are heavily subsidised. That is why it was there.

Q6 Chair: That question of being heavily subsidised is crucial, is it not?

Mr Hayes: It is. It is crucial, because the essence of our ports is not only that they are competitive; they are also private and efficient, for the most part. You will know that port governance is a slightly complicated area, because ports are governed in a variety of ways.

Q7 Chair: Wisbech is an example. It was raised with me only an hour ago by somebody, and they said, "Ask the Minister about Wisbech, because that is next door to him. He will know about that."

Mr Hayes: Wisbech is a charming fenland town with a coast, which has, like so many other east-coast towns, small ports associated with it. Most of those ports, as you know, are in private hands. They only survive on the basis of their ability to compete. They often do so—and I do not want to get too detailed about ports outside the terms of the regulation—because they specialise and have been equipped to do so.

It is nonsense for them to have some heavy-handed European regulation imposed upon them. This is probably the archetypical example—I can think of none better—of the inappropriateness of the European Union. This is the European Union taking a heavy-handed approach and applying a regulation, in a pan-European fashion, that ill fits British circumstances. It should be fought at every turn, and it will be by this Government. However, you are right: in the end, the Commission would decide on the competitive-market exemption. Of course, while they are obliged to do so objectively, if anyone still has faith in the European Commission, well, what can I say?



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Q8 Mr Turner: James Cooper is the chief executive of Associated British Ports, with 25% of all UK seaport capacity. He has raised concerns about the rapporteur's insistence on making a link between PSR, EU state-aid policy and the general block exemption regulations. It is regarded as regressive for the ports sector, and Mr Cooper thinks it is bad practice to use one regulation to extend the scope of another in a different policy field. Do you believe your argument, presented by your officials, stands, although all the owners of major privately owned ports in the UK reject the current system?

Mr Hayes: As you say, James Cooper takes a view on this. It is a view he has expressed to me, too. I have had discussions with him about this. He is right in his assertion that this is unhelpful and burdensome to British ports, not least because there is minimal state aid to ports in the UK. It is demonstrably unnecessary for ports here, because they have illustrated, by example, that they are prepared to invest to succeed in modern facilities and technology. You are right, and he is right, that this is entirely ill-suited to our circumstances.

Q9 Mr Turner: On 29 June, Coreper adopted the text that had emerged from the trialogue discussions. Did UK representatives agree to this?

Mr Hayes: As I described to the Chairman earlier, my original objective was to dilute, delay and exempt the UK where necessary. The competitive-markets exemption was an attempt to exempt us, because we could prove we were competitive and most of the Europeans could not, although I accept the caveat, Chairman, that the Commission would have to make the decision on its application.

The dilution was taking out things like pilotage and dredging, which were in the original incarnation. The obfuscation and delay was debating these things for the longest possible time. It is a well known way of trying to stop Europe being even more injurious to us than it would ideally like to be.

Mr Turner: Did UK representatives agree or disagree to the trialogue discussions?

Mr Hayes: The European representatives at that stage agreed, but I have been very clear that I am not happy to continue down that road.

Q10 Mr Turner: How has that happened? You are a Minister. You are a Minister in this Department. Perhaps at the time you were not a Minister in this Department. I am not absolutely sure.

Mr Hayes: Qualified majority voting is the problem.

Mr Turner: We were backing it because they wanted us to back it, not because we were in favour of it.

Mr Hayes: We were backing it because we knew we could not stop it. We wanted to—



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Q11 **Mr Turner:** That means that Minister's representatives, representing you, say they do not want it but are perfectly happy when we go ahead and back it.

Mr Hayes: At the end of the day, when it comes to an incarnation that will arrive very shortly, we have to take a view about whether we are going to agree to the whole package. What we did previously was not to vote for the package; it was to accept that qualified majority voting was needed to proceed. We had little option but to do that. We could not claim that qualified majority voting would not apply, because it would have applied. We were not happy with the content.

Mr Turner: That is true now, and you have said you are going to oppose it.

Mr Hayes: That vote was about the process. The vote I am going to oppose is about the content.

Q12 **Chair:** Can I just jump in here? We have a relatively new Committee, but, before the referendum, we did a very important inquiry into the manner in which decisions were taken behind closed doors, on the basis of consensus, because people knew in advance what was going to happen on a vote in the Council of Ministers. Although people generally talk about qualified majority voting, it very rarely takes place. It is done on the basis of a consensus. The problem you had in this particular instance was that you knew what the outcome was going to be, but it appears there was no real resistance, pre-referendum, to the question of how you were going to handle that issue within the framework of the arrangements for consensus in the Council of Ministers.

Now, liberated, one might say, from the constraints of the previous situation, having had a referendum that says we are going to leave, and as I am sure you will accept immediately that we are going to leave, we are in a different situation. Would I not be right in saying that that has helped you to arrive at a point where you are going to be far more emphatic in saying you will not have it? Will you give reasons in the minutes of the Council of Ministers, when you register that negative vote, as to why?

Mr Hayes: I remember you describing to me the earlier inquiry you did, preceding the referendum, and I recall its detail. Just for the record, though, let us be clear: on the general principles of this, the UK abstained. My view at that point was that we could not support it and we would try to do the three things I have described, which I do not need to amplify.

The aim was, because I thought this was undesirable and injurious to the interests of our ports, to do all we could to mitigate, prevent, delay—all the things I have set out. We are now going to be dealing not with the process, nor with anticipating what might happen. We are going to be dealing with the final incarnation of this, following the negotiations and the work that has taken place.



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Even in this amended form, for all kinds of reasons, it is still not in our interests. I do not know whether it is in the interests of people in Spain or Italy; it may well be. The essence of this, from its very beginning, was ironically to make those ports more like ours. In fact, I can tell you, Chairman—I would not be breaking any secrets—that there were those in the European Union who said exactly that. They said, “Our ports need to emulate the success of the British ports, and this regulation will help them to do so.”

The consequence of their desire to be more like us was that we would have to be more like them, and that was never acceptable to me. That is why we are going to vote against it and oppose it at every turn.

Q13 Kate Green: Thank you very much, Minister, for coming in. I want to be absolutely clear that I understand what you are saying. You never intended that we would ultimately support this regulation. It was always your view that it was bad for British ports. However, you felt constrained to go along with the process, which resulted in an agreed text being adopted by Coreper on 29 June, and that text was agreed by all the permanent representatives, presumably including our permanent representative.

That was after the referendum. It was admittedly only five days after the referendum, but it was five days after the referendum, when the game had changed, as you say. Nonetheless, our representative felt constrained to agree a text, even though it was always Her Majesty’s Government’s intention to vote down any text that was concluded. Is that what you are saying?

Mr Hayes: Yes. I suppose I can put it in crystal-clear terms. When we first considered this, we did not know we would be leaving the European Union and we expected—we did not know, but we expected—the majority of European countries to go along with this regulation, because, as I said, for some countries it may be beneficial. Their ports are uncompetitive, often state-run or heavily subsidised, unlike our ports.

We anticipated that, whatever we did in the vote, we would probably end up with this. Although I was bitterly opposed to it, I sent my officials out to stop as much of it happening as they possibly could, thinking that we might end up having to have it, as a member of the European Union. That was the right thing to do, because, given that it might happen, talking to the ports, talking to the trade unions and so on, we wanted it to do as little harm as it could do.

When the British people spoke and overturned the orthodoxy that had been perpetuated by the bourgeois, liberal class for too long, and we decided to leave the European Union, the rules of the game changed. At that point, I was able to say to my officials, “Thank you for all the work you have done to try to dilute, delay and get us out of this. We are now in the position of being able to oppose it hook, line and sinker”, which is precisely where we are.



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Q14 Kate Green: I hope the Minister was not characterising me as the bourgeois middle class. Minister, that was very helpful. There was another route that could have been pursued. It was originally suggested that, if there had to be EU legislation on ports services, a directive would have been a less onerous route to follow than the introduction of a regulation. Did the Government at any time consider and pursue this option?

Mr Hayes: There was an argument about this. Indeed, I remember discussing this at the time with members of this Committee. The point is that the Commission made the decision to pursue this as a regulation, on the ground that it would be directly applicable.

Q15 Kate Green: Were representations made by the Government on this?

Mr Hayes: As you know, the difference is that it would be directly applicable. I suspect they did that not to be particularly spiteful towards the United Kingdom. I do not think that was their aim. They did it because they recognise that the variety of circumstances in different countries around ports and maritime policy meant that it might not be effective as a directive.

Despite all the unkind, you might say, but none the less accurate things I have said about the European Union so far, the people who devised this did not seek to be malign or malevolent. They thought a number of the European ports were in a bad place, and this might have the effect of taking them to a better place. Putting myself into the place of a Eurocrat—not an easy thing to do, but none the less—I suspect they thought that, unless they made it a regulation, it simply would not happen.

Q16 Kate Green: To be clear, the Government never saw an opening for challenging the Commission's determination that it would be a regulation.

Mr Hayes: I explored that with my officials. I asked exactly those questions in the Department for Transport when I was there the first time around. As I always say, ministerial office is a visit, no more than that. I have had two visits to the Department for Transport and I did indeed raise that. It was pretty clear, when we had the debate in principle that I referred to a few moments ago, when we abstained, that only Lithuania voted against. There was a strong wind behind this from a number of the other countries.

The other thing I explored—you will raise it if I do not mention it, Chairman, because I know how you are diligent about these things—was whether we could get a blocking minority. I talked to my officials about whether there was any likelihood. There was some thought, early on, that the French, for example, had worries about small ports; other countries had worries about the effect on the labour force, the workers.

There was some chance early on of forming a blocking minority, but, as is often the case with these things, that chance diminished over time as the



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powers that be in Europe picked off their opponents one by one. I explored both of those things, but it was clear that there was no head of steam for them outside of this country.

Q17 **Chair:** Was there a suggestion that Germany, with Hamburg, was very active?

Mr Hayes: Yes, but as you said earlier—

Chair: I see Mr Grindrod nodding his head. Germany was active.

Mr Hayes: Philip will articulate this case with more elegance than I ever could. Let me put it in this context. Each of the countries has a rather different flavour of ports. Some are large, key, extremely commercially active ports in continental Europe. As you said earlier when you pointed to the salience of the state support those ports get, even some of the large, important ports get a lot of Government subsidy and support. It is not true to say that only the small ports in southern Europe benefit from that.

There was never quite the broad agreement, which one might expect if one did not know this sector, between the successful and important ports that would have allowed us to use their influence to guide and influence their Governments. I think that is fair.

Q18 **Steve Double:** Is it the Government's assertion that the regulation that is now likely to be adopted is significantly better than what was originally proposed, and why?

Mr Hayes: It is better, because of what has been taken out. Let me give you an example. At the outset, the draft regulation included cargo handling, dredging, pilotage and passenger services. We argued—and we managed to get some support from other countries on this, by the way, because of course that is the way the European Union works—that all those things should be excluded. Each one of those things was debated separately. A case was made for their inclusion; we had to make a powerful case for their exclusion; and they are no longer there. That was a significant change and a significant improvement.

The second area of improvement was in the revelation of commercial information, particularly around discounts to port users, which was included in the original version of the draft. Essentially, these businesses, with all the normal confidentiality that surrounds a commercial organisation, were going to be obliged to lay themselves bare on their pricing, their relationships with their customers and how they negotiated the different deals they did with port users.

We felt that was not reasonable. While transparency is important, no business would want those confidential matters exposed to public scrutiny. It would not be appropriate; it would not be proportionate; it would not be fair. We argued for the exclusion of that. This was very



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much argued by the ports' representatives and others of the kind Andrew mentioned earlier. That was an improvement.

Finally, if I might say so, the competitive-market exemption was certainly an improvement, but I caveat that heavily by agreeing with your Chairman that, in the end, its application is in the hands of the Commission. I accept that criticism, but at least what it meant was that the regulation recognised that competitiveness was an appropriate test of the applicability and virtue of the regulation, and that was a significant change of mind on the part of the architects of this measure. All those things are significant but, clearly, not significant enough to encourage me to do anything other than vote against it.

Q19 Mike Wood: To what extent do those improvements rely on the goodwill of the Commission? You have referred to one example. Are they explicit in the current text or are derogations from the Commission required in order to deliver those improvements?

Mr Hayes: The deletions, of course, do not depend on that and so cannot be treated capriciously by the Commission. However, you are right to say that some other aspects of the regulation still involve the Commission exercising judgment. There are other areas around transparency, which I mentioned earlier, and some issues around procurement. We have mitigated those procurement elements. For example, the requirements of the utilities directive, as the Commission proposed, now do not apply, so it does not extend in that direction.

The fundamental issue with the Commission and with those at the heart of what is often called the "European project" is, to quote Chesterton, "It isn't that they can't see the solution; they can't see the problem."

Q20 Mike Wood: Have you come to any conclusion as to what impact the UK voting against these proposals is likely to have on the way the Commission approaches such derogations?

Mr Hayes: Mike, it seems that you are implying—heaven forbid that I should endorse it—that there might be a degree of spite. Perhaps you are implying—you will have to tell me whether you are or not—that, if we were to champion the interests of our ports and maritime industries in the way I intend to, the Commission might then take it out on us in a rather tit-for-tat way. I could not possibly comment on that. You would not expect me to do so. The Commission would still be under an obligation to act with objectivity and empiricism in the application of the parts of the regulation I have described that require their judgment.

I have nothing more to add. Philip might want to add something. I feel that I am rather hogging your attention.

Chair: No, no. We can move on to Alan Brown, who is a new member of the Committee from the Scottish National party.

Q21 Alan Brown: Thanks, Chair. Some of this has already been covered in



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your opening remarks. However, I am looking for absolute clarity from the Government Minister in terms of what the representatives of the UK ports sector think about the text of the proposed regulation, which we have heard is likely to be adopted. In terms of representatives, I am looking at operators, employers and employees. Maybe you could also explain how recently you have sought these views.

Mr Hayes: I have been actively involved in discussions with all those elements. I am very proud to be a trade unionist myself. I have enjoyed good and positive relationships with the trade unions in all the ministerial jobs I have done, including this one. They made very clear to me what their position was in respect of port workers, as you suggest.

I have a regular dialogue with the ports themselves. I was at the Port of London yesterday, and I have been to many of our ports to see their work. I obviously work with their representative organisations as well. I have discussed this with numerous people from across the sector. As your Chairman said earlier on in this meeting, while I would not go as far as to say unanimity, there is certainly a very profound level of agreement that this regulation is undesirable, unnecessary and unwelcome, and I share that view.

Q22 **Alan Brown:** Are you confirming that the trade unions are still resolutely against this?

Mr Hayes: That would not be entirely fair. It is certainly true that they were worried about the effects on workers, including in other countries, by the way. The European trade unions were engaged in this discussion and worked with their British counterparts to advance an argument. Indeed, this is not the first time this has been brought forward. As you will know, Chairman, with your long experience of such matters, the Port services regulation—

Chair: I have only been 32 years on this Committee.

Mr Hayes: Indeed, I never second-guess any European matter when your Chairman is speaking, because he knows more about it than all of us put together.

The Port services regulation is rather like an unhappy version of Christmas: it comes around every year, but it does not have any of the advantages of Christmas. It has been debated many times previously, and at each turn the unions have been among the critical voices. I would not want to speak for the trade union movement, but, certainly, over time, they have often expressed concerns about this regulation. It has come back again and again, hasn't it, like heartburn?

Q23 **David Warburton:** Notwithstanding the improved, compromised regulation we now have, I assume there are still a great many things you are unhappy with, as we all are. What are the main elements of those that you have discussed with the port operators and the unions?



Mr Hayes: There are still fundamentally the things that the regulation contains. I am not sure that the European Union should be taking a view about the procurement of port services at all. As I say, we have taken out cargo handling, pilotage and all sorts of other things, but I do not really see any plausible argument as to why the European Union should become involved in the procurement practices of private businesses that are efficient, effective and competitive.

Port charges is another area, David. Why should the European Union get involved in port charges? We have a Harbours Act, passed by this sovereign Parliament, that deals with these matters. I am sorry to use another Christmas metaphor, but this not just the icing on the cake; this is the icing on the icing on the cake. We do not want an excessive amount of icing. We need a balance between the fruit cake, the icing and the marzipan, and we have it.

Q24 **David Warburton:** Are there ways in which those effects can be mitigated?

Mr Hayes: Yes.

Q25 **David Warburton:** Are there things the operators and the employees' organisations can do to mitigate the effects of this regulation?

Mr Hayes: They are already doing it. If you look at the part of the regulation on consultation, it may well be that, in some distant land of which we know little, where they have ports, they do not consult the port users or customers. Businesses in Britain are not like that; businesses in Britain engage with their communities.

I was in the port of Dover last week. The work they are doing—not least due to the excellent work of my hon. Friend the Member for Dover—to engage with their local community and consult them and port users is exemplary. I do not know what is happening in far-off places, but that is what is happening here. In a sense, the things they are being asked to do good ports in Britain are doing anyway.

Q26 **Michael Tomlinson:** Minister, we have been discussing port operators; we have discussed employees' trade unions. I want to come on to customers or users of ports. You said you have had wide-ranging discussion with various groups. Has that included customers or port users? If so, what are their views of these proposals?

Mr Hayes: Yes. I am both the motorist's friend and the haulier's friend. Last week, I was with the RHA, the representatives of the hauliers, the Road Haulage Association. Their members, of course, use ports routinely. More than 90% of what we make, grow and export goes through our ports. More than 90% of what we need and, in addition, what we want—there is not always a coincidence between those two things—comes in through our ports.



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Yes, I talk to the very people who rely on our ports most, and I know what they want. They want ports where efficiency and effectiveness, which come through the level of investment I have described and the competitiveness I have highlighted, allow them to go about their business as quickly and efficiently as they can. Yes is the answer.

Q27 Michael Tomlinson: Minister, thank you. As you know, my constituency of Mid Dorset and North Poole is just outside Poole Harbour. Minister, you had the privilege of visiting Poole in the not-too-distant past. You said you met the RHA. What specifically are their views in relation to these proposals?

Mr Hayes: What I said about the RHA is they use our ports. If you think about the amount of goods that go out by lorries through the Port of Dover, you will see why ports matter to them so much.

Michael Tomlinson: And Poole as well.

Mr Hayes: I would not want to articulate their views on this regulation. That would be wrong. What I am very clear about is that they do not tell me they have complaints about the way our ports are managed and run. Of course, there are always issues about speed, congestion and other things, and we work on all that. None of them, however, has said to me, "What we need is a different regulatory regime for our ports." None of the users with whom I have engaged has said, "We want our ports to look more like the ports in the Mediterranean, Greece and other places like that."

There is no call; there is no popular demand. There is no clamour for this regulation. This is something that has been imposed from the top. It is the worst example of Europe at its worst.

Q28 Chair: Turning to the timetable, is the regulation likely to come into effect—the word "effect" is going to be significant in this context—before March 2019, which is the probable time of Brexit? I raise that for a very interesting reason, which is that the House of Lords has produced a report on trade in relation to these transitional arrangements they keep harping on about. Some of us regard this as most unsatisfactory, because it could be, using the language of the Lords report, that you would achieve Brexit but then it would not take effect until afterwards. Now, what on earth is the point of Brexit if it does not come into effect until a later date? Is this perhaps just a ruse?

I am not going to ask you to enlarge on the generality of the question, as you might get into trouble with the Chancellor of the Exchequer, for example, but I wish to know whether the totality of the regulation would come into effect before March 2019. If it were done properly, for this purpose, we would not need to have transitional arrangements, because we would simply bypass the regulation under our own repeal Bill, under our own legislation, and then bring in our own ports Bill. That is a thought, isn't it? We would then have our own regime, which would enable us within the Westminster jurisdiction to bring in our own



legislation.

Could you comment on whether the regulation is likely to come into effect before March 2019 and then perhaps touch on the question of transitional arrangements? Would you want the United Kingdom to bring forward its own legislation with its own ports regime? Do you have any thoughts on that?

Mr Hayes: I am grateful for your sagacity in advising me not to deal with the generality. In politics, as you know, it is best not to punch above your weight or to punch above your pay grade.

Chair: And not at Chairmen of Select Committees.

Mr Hayes: Yes, and unless you are the distinguished Chairman of a Select Committee.

The factual answer to your question, assuming the vote goes against us, is that it would come into force 20 days after, but you are absolutely right, with a lawyer's precision, to draw a distinction between force and effect. It comes into effect two years after that. Now that, as will not have escaped your notice, takes us to something like January 2019. The question is: at what point do we leave the European Union? I cannot make that call, but the sooner, the better.

Q29 **Chair:** The question is left in the air, as you might say. On the other hand, we certainly do not want to find ourselves caught up in a general election as a result of having these so-called transitional arrangements, and then find that all the work that has been done to ensure we get out of the European Union is, in the context of the ports, stymied by some overlapping arrangement that takes us beyond the date when we expected we would be out altogether. I cannot ask you to enlarge on that.

Mr Hayes: No, but you did ask a second question, which I rather impertinently did not address. That was your argument about whether we ought to have a ports Bill of our own. Of course, in the end, that would be a matter for our sovereign Parliament. I have made a case in this wonderful but all too brief opportunity to meet your Committee that much of what is in this regulation is unneeded.

However, there may be things that, with the agreement of our ports sector, with the support of our friends in the trade unions and with agreement across the House, we want to do in respect of ports, things which are proportionate and particular to our interests. I do not rule out the possibility of a Bill of that kind. How could any Minister ever do that? That would be a matter for us to gauge at the time. Certainly, it would not contain much of what we see before us in this invidious regulation.

Mr Turner: Can you make something clear? Assuming that they vote yes today and it takes 20 days to gain effect, presuming we leave the EU and we give our notice at the end of next March, would it be the



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great repeal Act, as it has been called, that reverses this? I am not quite clear. Are we saying it becomes our law once it has been put through the great repeal Act, but nonetheless it will be our law and we will have to comply with it for two more years, and then we will have to look to some time after that before we can take action to reverse the decisions? How long will that take?

Mr Hayes: Any confusion my hon. Friend feels is probably as a result of my inability to make the argument clearly, rather than his inability to grasp it. Let me make the case still more clearly.

It will not come into effect until two years after those 20 days. The real question is not what we do for the next two years plus 20 days; the real question is: at the end of that period, will we be in or outside the European Union? What the Chairman suggested is that it is possible, although it would not be right for me to speculate on whether it is likely, that the two years might happen before our exit happens, so there would be a very brief period in which the regulation applies.

I hope that is not the case, and we cannot really be clearer at this stage. It is too early to say, but there is no need to worry about it coming into effect in the short term, because we have this two-year window.

Q30 **Mr Turner:** Once we have adopted something that comes into effect in January 2019, assuming we are still a member for three months, it continues to be our law until we reverse it. Is that correct?

Mr Hayes: Do not forget that this is—I used the term earlier—a directly applicable regulation. In the sense that it is not a directive—it is a regulation—it would apply to us, but we are getting into slightly dangerous territory, because I am almost being invited to speculate on both when we leave the European Union and what is going to be in the great repeal Bill. Having said only a few moments ago that I am not going to punch above my pay grade or above my weight, I had better not do so.

Chair: As I drafted the repeal Bill in May in the hopeful—and, as it turned out, correct—assumption that we would get a leave vote, that has now become party and, indeed, Government policy. I am very glad that you are prepared, at the moment, to hesitate to say exactly what the sequence of events will be, but I will say that the idea of our still being entrenched in a regulation is something that would be deeply offensive to the ports industry, if we had also decided we were going to leave.

That is something we cannot ask you to speculate about, but it is worth putting on the record. We would not want to be in a position in which our ports industry had ended up by still having a regulation applying to them although we had exercised article 50 and repealed the legislation in question. I am not going to take you any further down that road, because it would be unreasonable.

Q31 **Alan Brown:** No matter the hypotheses we have just heard about,



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whether the regulation is going to apply for a few months, be repealed or whatever, it looks like the continental ports are going to be governed by this regulation, whatever happens. What consequences does the Government Minister foresee for the UK ports sector on that basis, assuming the UK eventually leaves the European Union?

Mr Hayes: The future will be a very rosy one. Speaking to our ports and maritime industries, they see our departure from the European Union as an important opportunity for two reasons, really.

First, the subject of trade has been elevated in the political narrative, the concerns of Government and, dare I say it, the House. When I was a Minister in what was then called BIS and is now called BEIS—at some unknown point in the future, it may have another acronym, on which I would not want to speculate—trade was dealt with by a single Minister in the House of Lords. We now have a whole Department focused on trade. The ports know that. They are engaged with my Department and that one on how it is going to affect them. Our ports' future is a very bright one, now that we are leaving the shadows of the European Union.

In addition to that, if our ports become ever more effective, efficient and competitive and the European ports are tied up in all kinds of regulation, I suspect our ports will continue to thrive, whereas their future is altogether uncertain.

Q32 **Alan Brown:** You did not spell out any consequences there, apart from the view that everything will be great. In the way ports operate, cargo goes out of one port and is transported to another port, and that other port will be governed by this regulation. Therefore, are there any consequences for UK ports and the trade associated with that, given that will be the scenario? Will that form part of the UK Government's negotiations with the European Union?

Mr Hayes: I gave you an elegiac answer, but I can tell that was not enough. I will give you a slightly more technical answer. The regulatory regime that pervades in respect of maritime and seafaring matters predates the European Union. It is largely in the hands of the IMO and, while the European Union tries to get involved, usually unhelpfully, that continues to prevail.

The very nature of maritime industries, including our ports, is that they are international and will continue to be so. The agreements and arrangements that occur between ports, by and large, take place outside the purview of the European Union, and I suspect they will continue to do so. It is absolutely right that our relations with those countries and those ports should be preserved and defended. I see no likely negative effect of our departure from the European Union in that regard.

Q33 **David Warburton:** Minister, you have pretty much covered this question. I was going to entice you to stray in dangerous post-Brexit waters, which you have covered with some eloquence. I take what you



have said to mean that there will be a great repeal Bill at some point post-Brexit, which will bring everything into UK law. At that point, we can chop and change and chuck out the elements of this regulation that we do not like. However, there will be some elements, as you said, that we do like and we are likely to keep, which might be valuable in the future. I was going to ask you about those, but is my understanding of the timeline correct?

Mr Hayes: I have two points to make. It is important that we have not yet ruled out an EEA. There might be some continuing connection by that mechanism. Again, Chairman, it would not be right for me to—

Chair: Some of us have ruled it out.

Mr Hayes: What I meant was that we as a nation, as a Government, as a Parliament, have not yet ruled it out. You and I may have a particular view on these things. They usually coincide, by the way.

Chair: We are sometimes predictable.

Mr Hayes: I would not like to make a decision at this juncture, in this moment, for the whole of the Administration. I am not sure the Prime Minister would appreciate that.

The second part rather reflects what I said earlier about trade. All of those whom I speak to in the ports sector either for ever, in other words always, took the view or are coming more and more to the view that, given where we now are, this difficulty represents an opportunity, to quote Winston Churchill. I do not see much pessimism in the maritime industries. They are largely buoyant; they are heavily investing. I was in the Port of Liverpool recently, where they just made a major new investment, as you will know. They are looking ambitiously at how this new set of circumstances will affect their business, but not in a mood of pessimism.

Can I make another point on that, with your permission? It is probably fair to say that we as a country, and perhaps successive Governments, have slightly undersold ports and the maritime industries. They have always been fundamentally important to our economy, for the reasons I gave earlier, but they are important of themselves. They are significant employers; they are very significant businesses. They allow for the development of very high-order skills, providing very large numbers of jobs.

In answering Alan's question, I was talking about how trade has assumed a new significance in the political narrative and political dialogue. It is true to say that maritime concerns and ports are suddenly being seen in a new light. They have been drawn into sharp focus. That is why the sector sees this as an opportunity and, increasingly, is becoming persuaded, as I am, that it is a golden opportunity.

Q34 **Chair:** I will just finish on this note. Thank you for coming. I would



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perhaps just note a fact about our great ports of Liverpool, the Port of London, Bristol, and all the way around the whole of the United Kingdom.

Richard Drax: And Portland, Chairman.

Chair: Yes, and Portland of course, because Mr Drax has a special interest in that. These great ports existed, thrived and delivered prosperity to this country many hundreds of years before the European Communities Act was even thought of. Maybe we can end on that note. Thank you very much for coming, Minister.

Mr Hayes: Thank you, Mr Chairman. Can I thank you for your questions and the chance to come here? I quoted Chesterton, and I would feel I had not done my job if I did not quote CS Lewis. CS Lewis said that we are what we believe we are. I believe we are a proud maritime nation, whose future can be as glorious as our past.

Chair: Thank you very much.