HOUSE OF LORDS

Select Committee on the European Union

EU Financial Affairs Sub-Committee

Corrected oral evidence: Brexit: EU Budget

Wednesday 18 January 2017

10.20 am

Watch the meeting

Members present: Baroness Falkner of Margravine (Chairman); Lord Butler of Brockwell; Lord De Mauley; Lord Desai; Lord Haskins; Baroness Liddell of Coatdyke; Earl of Lindsay; Lord Shutt of Greetland; Lord Skidelsky; Duke of Wellington; Lord Woolmer of Leeds.

Evidence Session No. 3 Heard in Public Questions 25 - 33

Witnesses

I: Dr María-Luisa Sánchez-Barrueco, Senior Lecturer in EU Law and Politics, University of Deusto

Examination of witness

Dr María-Luisa Sánchez-Barrueco, Senior Lecturer in EU Law and Politics, University of Deusto.

Q25 **The Chairman:** Good morning, Dr Sánchez-Barrueco from the University of Deusto in Spain. We are delighted to welcome you as a witness at our evidence session on Brexit and the EU budget. Before we commence, I have to go through some administrative points. You have a list of interests that have been declared by Committee members. This is a formal evidence-taking session of the Committee. A full transcript will be taken. This will be put on the public record in printed form and will be on the parliamentary website. You will be sent a copy of the transcript and will be able to revise it by correcting any minor errors. The session is on the record. It is being webcast live and will be accessible subsequently via the parliamentary website.

Dr Sánchez-Barrueco, would you like to make some introductory remarks, to frame the context?

Dr María-Luisa Sánchez-Barrueco: Thank you very much. I warmly thank the Committee for the invitation to give evidence today. I am a senior lecturer at the University of Deusto in Bilbao. I am here in my capacity of researcher in European and international law, with a strong focus on the management and financial accountability of the EU budget. My contribution will be focused on the legal aspects of the budgetary implications of Brexit, drawing on the best of my knowledge and the legal framework currently in force. However, I assume that the legal framework currently in force will be substantially revised or reassessed in the light of the negotiations that will happen when Article 50 is triggered by the Government. I seize this opportunity to declare that all my remarks are made from an independent position. I am not a direct beneficiary of EU or UK funds.

Before we delve deeper into the legal implications of Brexit for budgetary relations, I would like to place budgetary matters within the broader framework of the legal implications of Article 50, which is a question that I missed in previous sessions of the Committee. I believe that addressing this matter will help us to focus the debate and to determine the answers to come.

The procedural rules that have been established in Article 50 are well known to all of us. However, in my view, insufficient attention has been given to what Article 50 does not say. I would like to stress two aspects. First, Article 50 does not establish provisional measures to be applied if the two-year period expires with no withdrawal agreement in force. Secondly, Article 50 does not solve the question of enforcement: who will be the competent jurisdiction to adjudicate on post-Brexit matters or conflicts?

I find that to be the main flaw behind the golf club metaphor that was voiced here. When disputes arise between a golf club and a withdrawing member, eventually those disputes can be solved before national courts.

However, we are placed in the realm of international law and the answer is not so straightforward. I hope that a withdrawal agreement will eventually take care of these matters. Failing that, my understanding is that Brexit will thrust the UK and the EU into one of the worst scenarios for a legal scholar—that of legal uncertainty, or even legal void. As things stand, I believe that we are discussing a legal framework that is bound to expire, as far as bilateral relations between the EU and the UK are concerned, by April 2019.

In my view, from a legal perspective, there will be only two options in April 2019: either an agreement, in which case its provisions will apply, or nothing. When I say nothing, I mean it. If the treaties collapse for the UK, the whole legal building—all the legal documents hanging from the treaties—will collapse. That includes the MFF, the annual budget, the programmes and the individual funding decisions for beneficiaries.

As I see it, the sole value of the current legal framework is not a legal one, but a political one—to crystallise the balance between the UK and the EU that will represent the starting point for the negotiations. I can see only three potential exceptions to that scenario according to which the current legal framework would remain in force. The first two would require a compromise between the parties—either a withdrawal agreement or a unanimous decision to extend the two-year period. The third exception would be unilateral—if the UK Government decided to include specific provisions of the current budgetary framework in the great repeal Act. Both options present risks and shortcomings. The first option—the bilateral solution—presents obvious risks of not reaching a negotiation. The unilateral option presents the risk that it will be unilateral and will not ensure that the EU meets its commitments.

In my view, there is no legal basis in the current legal framework to defend an extension of the binding force of the treaties or the legal Acts hanging therefrom if the parties do not reach explicit agreement on it. The underlying reason, to me—I am willing to discuss it with members of the Committee—is that Article 50 is the prevailing provision in the treaty. It prevails over the remaining provisions in the treaties—the provisions that provide for the binding force of the MFF, the annual framework and the competence of the European Court of Justice, because it is the lex specialis applicable to a withdrawal situation. If Article 50 orders the treaties to cease to apply, it means the whole of the treaties—everything. The underlying reason is that Article 50 was drafted by member states so as to allow for withdrawal, but to discourage it—to encourage negotiation leading to an agreement. The alternative will be the absolute void.

There are two conflicts of laws in Article 50 if the two-year period expires with no agreement. First, there is a lack of rules on provisional measures, which will make the whole legal building collapse with regard to the UK. Secondly, there is a lack of rules on enforcement and dispute resolution. There is a conflict of laws in this second aspect. It arises between Article 50, on one side, which imposes that the ECJ's jurisdiction should cease to apply to the UK, and Article 344 of the TFEU, whereby member states agree to solve their disputes by submitting to the Court of Justice and not by other means. In my view, the conflict of laws should be solved by giving preference to Article 50, because the purpose of the Treaty on European Union, in which Article 50 is enshrined, is to organise the relationship between sovereign states so as to create the international organisation, but the purpose of the Treaty on the Functioning of the European Union, in which Article 344 is enshrined, is of a more administrative nature—to organise the internal functioning of the European Union as an international organisation. Therefore, I would say that Article 50 will prevail over Article 344.

Besides, if we consider that the treaties cease to apply to the United Kingdom and pay attention to the definitions of the jurisdiction of the European Court of Justice—I believe that your Lordships have a document that I have circulated with the relevant legal framework—all the provisions in the Treaty on the Functioning of the European Union that define the legal remedies before the Court of Justice accept as parties only member states. If the UK ceases to be a member state, it will lose its legal standing before the Court of Justice. It will not be able to introduce proceedings in Luxembourg against the European Union and the European Union will not be able to introduce proceedings against the United Kingdom, because it will no longer be a member state. Unless the treaties are revised to allow for third countries' participation as plaintiffs or defendants, the UK will be refused access to the ECJ—and the other way around.

There is an exception to this situation. It relates to British nationals. They will not lose legal standing before the Court of Justice, because individuals of whichever nationality can introduce proceedings to seek annulment of EU Acts if those EU Acts have been addressed to those individuals and are of individual and direct concern to them. In my view, British nationals will enjoy legal standing before the Court of Justice post-Brexit, but the UK will not be in a position to defend the interests of its citizens as a whole, just as third countries are not in a position to stand before the Court of Justice, but third-country nationals are. Imagine a British beneficiary of EU funds, be it a natural person, a university or a town council, who faces a Commission decision to interrupt grant payments. The court will have to adjudicate on it, but not necessarily to sustain it, because the whole legal building will have collapsed, failing an agreement.

I have checked contracts signed between the European Commission and beneficiaries. There is no clause that allows for a suspension of grant payments because that person ceases to be a national of a member state, simply because it was not foreseen. However, according to the hierarchy of laws, if the higher law ceases to apply, the lower-rank decisions will cease to apply, too, in my view.

There is no jurisdiction for the Court of Justice in Luxembourg. Would we be able to use another international jurisdiction? I think that it is very difficult. There is another international jurisdiction—the International

Court of Justice in The Hague. There would be a very small possibility of the ICJ being able to address budgetary disputes between the UK and the EU, but the EU lacks legal standing as such before the International Court of Justice in The Hague. However, there is a possibility that one member state, or all the member states, could sue the UK before the Court of Justice in The Hague. That has happened before, the other way around, concerning the legal standing of NATO. Serbia and Montenegro decided to sue several of the member states of NATO before the International Court of Justice. The proceeding was dismissed, but for reasons regarding the legal standing of Serbia and Montenegro, not the legal standing of the member states of NATO. That might be a small possibility.

Those are my two conclusions with regard to jurisdiction and the adjudicating jurisdiction. I have a strong suggestion to make, which is that withdrawal negotiations lead to an international arbitral body to adjudicate on disputes post-Brexit and that the provisions regarding that body be included in the potential withdrawal agreement. There is a precedent in this matter—the EEA Joint Committee, which adjudicates on potential disputes between the EFTA countries and the EU.

I am sorry for having taken so long.

Q26 **The Chairman:** Not at all. Thank you. That was very illuminating. It was particularly topical, given our Prime Minister’s speech yesterday.

In your description of the difficulties of having agreed jurisdiction, you did not comment on Article 70 of the Vienna Convention on the Law of Treaties—or on the Vienna Convention at all. We were told about that by Professor Tridimas when we took evidence last week. Did you manage to see that session?

Dr María-Luisa Sánchez-Barrueco: For the most part.

The Chairman: He was quite clear that there were certain obligations on member states, once the jurisdiction of the European court did not apply, that would oblige both sides to treat each other in a certain way. With regard to the budget, he thought that Article 17 of the MFF regulation provides for its revision in the event of “unforeseen circumstances”, although that requires unanimity. Do you have any thoughts on that?

Dr María-Luisa Sánchez-Barrueco: First, the EU as an international organisation can never be a party to the Vienna Convention, but all member states are. The Court of Justice in Luxembourg has repeatedly resorted to the Vienna Convention to adjudicate on matters regarding the external relations of the Union—that is, disputes over the extent, scope and territory of EU agreements with third countries. That does not mean that the Vienna Convention binds the Union. Advocate-General Eleanor Sharpston, who is British, has stated explicitly that the Union is not and will never be a party to the Vienna Convention.

That said, it is true that the Vienna Convention is positive law, but it is also true that the provisions of the Vienna Convention reflect international customary law. That means that there are principles of a larger scope or extent in the Vienna Convention that will be applicable to the EU. However, I would like to focus on the withdrawal situation, which is the specific framework for bilateral relations. Here, I believe that the relevant provision is Article 5 of the Vienna Convention, which states that the convention applies to the constitutive treaties establishing international organisations "without prejudice to any relevant" provision contained in them. Since there is a relevant provision contained in the constitutive treaties of the European Union—Article 50—I believe that it prevails over other provisions of a more general scope contained in the Vienna Convention. That is my view. Of course, this is subject to discussion.

The Chairman: To clarify, failing the scenario that you set out—if there is no agreement—you do not believe that the Vienna Convention would enable the EU as a body corporate to be adjudicated upon. Do you believe that the UK could have enforcement action taken against it through Vienna?

Dr María-Luisa Sánchez-Barrueco: But where? That is the point. There is no adjudicating body. The UK could reject the ECJ's jurisdiction if it were sued by the Commission, for instance. This is a Utopian situation, but imagine that in April 2019 the UK refuses to pay budgetary contributions. From a legal perspective, it is no longer a member state, so there will not be any enforcement against that. Let me expand on that a bit. From a legal perspective, there is no objection to either of the two parties stopping bilateral budget contributions. Such a situation will obviously benefit the UK from a budgetary perspective, because it is a net contributor to the EU budget, but it will come at an immense political cost and will represent an immeasurable loss of international image for all parties. However, in my opinion, it will probably hit the UK harder than the EU.

Lord Butler of Brockwell: Is it not the case that if the EU launches proceedings against the UK in the European Court of Justice before the UK ceases to be a member—that is, before April 2019—the Vienna Convention requires that the UK should continue to accept the jurisdiction of that court after it leaves?

Dr María-Luisa Sánchez-Barrueco: I cannot see any legal basis for that.

Lord Butler of Brockwell: Is that not a provision of the European convention?

Dr María-Luisa Sánchez-Barrueco: Of which European convention?

Lord Butler of Brockwell: I beg your pardon—I meant the Vienna Convention. I misspoke. Does the Vienna Convention not require that countries that are parties to it, which include the UK, continue after the ending of a treaty to accept the jurisdiction of the court that applied when they were members of the treaty?

Dr María-Luisa Sánchez-Barrueco: In my view, the Vienna Convention establishes principles to help to interpret international treaties, including constitutive treaties of the European Union, but specific legal provisions in those international treaties would prevail. The Vienna Convention covers the gaps in interpretation of the treaties. However, if a clear-cut solution is provided by a provision in a treaty that establishes that the treaty ceases to apply, I cannot see the resort to the Vienna Convention to expand the extension from a temporary scope. That is my view.

The Chairman: That is quite clear. I come to the multiannual financial framework and the elements that the UK would pay. The regulation contains a provision for that to be amended in the case of an accession of a new member, but it does not say anything about a member leaving. What is your assessment of whether the provisions that cover new membership can be inferred, in legal terms, to members leaving?

Dr María-Luisa Sánchez-Barrueco: On the legal nature of the multiannual financial framework, it is important to highlight that it is a regulation. Therefore, it hangs from the treaty. Can you repeat the question? I missed the point.

The Chairman: Whereas we have some guidance on what new members' obligations are, there is none on members leaving. Is it possible to infer from the guidance on accepting new members what the rules would be for members leaving?

Dr María-Luisa Sánchez-Barrueco: If the catastrophic situation is not in force, I expect that the multiannual financial framework will be revised to introduce a new logic to budgeting. It is important to highlight that the underlying logic of budgeting in the European Union is of a redistributive nature. Member states contribute to the EU budget regardless of what they get in return—for the most part, at least. However, we can find examples within the framework of the EU where a different logic is applied—a logic of fair return. The multiannual financial framework might be revised to introduce some sort of fair return, whereby the UK can contribute to the extent that it expects to receive.

I will give you an example. The EU budget is implemented in the most integrated policies, but there are also less integrated policies. The most intergovernmental one is probably the defence policy. In defence policy, I can mention the example of the European Defence Agency. The European Defence Agency, of which the UK is a member, implements two types of projects. I want to refer to one of them. These projects follow the logic of fair return, whereby member states contribute to projects, expecting a fair return for their defence contractors. Eventually, the balance will be more or less fair for the contributing member state. It is possible to instil a certain logic of fair return, provided that agreement among member states is secured. That also exists currently in the EU.

The Chairman: In your opinion, would the revision take place under Article 17 of the MFF regulation, which provides for unforeseen circumstances?

Dr María-Luisa Sánchez-Barrueco: No, I do not think so.

The Chairman: It would just happen because of negotiations.

Dr María-Luisa Sánchez-Barrueco: I do not think that Brexit can be presented as an unforeseen circumstance. The proof is that it was foreseen in the treaty.

The Chairman: By the existence of Article 50.

Dr María-Luisa Sánchez-Barrueco: Yes—the option. I am missing now the reference to a legal scholar who supports that, but I can provide it in writing afterwards.

The Chairman: That is very interesting. Is the UK legally committed to paying until 2020, even if it ceases to be a member in April 2019?

Dr María-Luisa Sánchez-Barrueco: In my view, this question deserves the same answer as the previous one. From a strict legal perspective, nothing in the present legal framework allows us to derive an automatic extension of the UK liabilities. Even if there was a legal basis, it would be difficult to enforce if the UK drew on its brand-new status of third country to reject the jurisdiction of the court. However, from a political and economic perspective, I expect that such a solution would entail retaliation in a varied range of domains.

Q27 **Duke of Wellington:** Following on from the discussion about obligations under the multiannual financial framework, there is, of course, the annual budgetary process, in which all member states participate through the Council. The Parliament is involved as well. In each annual budget, there is the expected or agreed expenditure in the year about to take place. I was a Member of the European Parliament many, many years ago, so I do not quite know how it works now, but there always used to be another column of future commitments under the same line. In the budgetary process, the European institutions commit themselves not only to the budget of the next year but to subsequent commitments in following years. We are terribly interested in trying to establish what, in your opinion, our legal obligation is to allow our share of own resources to be called on to discharge those commitments in future years, even though we may no longer be a member state.

Dr María-Luisa Sánchez-Barrueco: That is a very poignant question. Let me refer to the situation of acceding countries. Acceding countries pay the full amount of their dues, according to the EU budget, from the very start. However, their participation does not yield return until several years afterwards. I am speaking about participation in spending programmes. For instance, when Bulgaria and Romania joined the European Union in 2007, a budget contribution to those countries was decided, because they had lost access to their pre-accession funds, but they were not expected to get full participation in the whole array of EU programmes until several years afterwards. Therefore, a budget compensation for acceding countries has happened in the past.

However, I go back to the logic of redistribution, which is the underlying logic of the EU budget. Member states contribute to the EU budget according to their relative share, regardless of whether that EU budget is going to be spent in their countries. I am not an economist or an accountant, but, in my opinion, it is difficult to establish a specific share of the EU budget, because of the varying nature of the own resources. The GNI own resource is established according to specific rules, but the VAT own resource is heavily affected by the consumption habits across member states. There is no relationship between the VAT own resource and the relative share of GDP, as compared with the Union GDP. In my opinion, the logic of redistribution requires that the liabilities of the EU—multiannual commitments—cannot easily be ascribed to the UK. That would need to be made the object of a negotiation. In my view, there is nothing in the current legal framework that allows us to establish a portion of the EU budget for the UK.

Duke of Wellington: That is very interesting. Your view, which is slightly different from that of other commentators, is that, once the UK leaves the European Union, we no longer have any obligation to contribute to programmes that had been agreed in the annual budgetary process while we were still part of that process. Your view is that, the minute we leave, we have no further obligation to allow our share of own resources to be paid over to Brussels.

Dr María-Luisa Sánchez-Barrueco: That is my view, from a strict legal perspective. If Article 50 obliges the treaties to cease to apply to the UK, that means all the remaining legal acts. That is my view—again, subject to adjudication by the relevant competent jurisdiction.

Duke of Wellington: If the UK decided, on exiting, that we would no longer allow any payments to flow from London to Brussels to discharge any of these future commitments, I assume that there is no way, in your opinion—given that you have said that at the moment of exit there is a legal void—in which the European Union could bring any case against Britain for not allowing contributions to flow. Is that your view?

Dr María-Luisa Sánchez-Barrueco: That is my view—and I am willing to defend it.

Here, I would like to add another subject for discussion. In such a situation, the bilateral flow of funds would stop. That would be beneficial for the UK, to the extent that it would no longer have to contribute, through the co-financing share of EU funds. EU funds are channelled towards member states to cover issues that, potentially, are not of interest to the member state. I have sustained my position from a legal perspective. However, from a political perspective, it will all come down to the difficult political decision about which economic sectors in the UK deserve to be supported by government, who will cover the stopping of funds and which sectors or institutions deserve to be left out in the cold. It will also be an opportunity for the UK to restructure the economy according to priorities set by the Government.

The Chairman: That was very clear.

Q28 **Lord Butler of Brockwell:** Could I extend a similar question to pensions? As we understand it, the EU's status as an independent legal entity means that liability for pensions to retired staff is a liability of the EU and not of the member countries. They are paid annually out of the budget, but member states guarantee those payments. Supposing that such a guarantee has not been called, does the guarantee impose any liability on the United Kingdom once the United Kingdom has left the EU?

Dr María-Luisa Sánchez-Barrueco: In my view, the status of EU staff of British origin should be made the object of a specific agreement, or part of the withdrawal agreement should take into account their specific situation. Most of those officials did not meet the requirement for the June referendum, so they could not take part in the vote. It would seem to me unfair that they should face losing their jobs as a result of the outcome. In practice, they will not lose their jobs—theoretically—because being a national of a member state is a prerequisite only on entry and is not taken into account throughout the career of EU officials. In principle, British civil servants have acquired the right to a retirement pension and other allowances from the EU. However, as your Lordship pointed out, the fact that member states are the guarantors of the staff fund, as embedded in the EU, complicates things and makes it very likely that the remaining states will refuse to cover this part of the expenditure. This is enshrined in Article 83 of the EU staff regulations.

In my view, this represents a liability for member states. I can even imagine that, from an accounting perspective, national Treasuries have an indication in their budgets acknowledging that liability. Again, I must recall that the underlying logic of the EU budget is not one of fair return, but one of redistribution, and that national contributions are determined regardless of the number of British civil servants, for instance, in the EU institutions. I would not say that the UK's budget contribution depends on how many British civil servants there are in the EU institutions. It is probably the other way around. Depending on the UK contribution, there will be a greater or lower number of British civil servants.

I can draw a comparison with Croatia, for instance. No acceding member so far has benefited from a reduction in its budget contribution upon entry based on the fact that there are not enough civil servants of that nationality or that they have not reached the stage of entitlement to specific allowances or pension rights. On similar grounds, neither do member states' contributions increase over the years.

In my view, there is currently no way of setting a straightforward figure for UK pensions liabilities, because the future status of civil servants of British origin is yet to be determined. I expect that figure to drop significantly in the years to come. Some current British officials will stay in the EU institutions until they reach retirement age and will claim pension rights. Any claims will be adjudicated by the Court of Justice in Luxembourg, because they are workers of the international organisation. However, others will surely seek absorption by the UK Administration and import their pension rights from the EU to the UK's social security. Those eventual claims will be adjudicated by British national courts. Others will probably obtain or seek Belgian or French nationality, drawing on the length of their stay in other member states. There is a final possibility of retirement in the interests of the service, which is provided for by Article 50 of the staff regulations, whereby the appointing authority makes redundant a specific person working for an EU institution. This is not a disciplinary measure, but they are entitled to an allowance, which is paid by the EU. All in all, it is very difficult to establish a figure for the potential UK liability for pensions.

Lord Butler of Brockwell: Does it not follow from the fact that there was no reduction in the contribution for acceding states because they had not previously had any staff that the pension liability is a matter for the EU's current budget and no liability will fall on a state that has left—as a legal matter?

Dr María-Luisa Sánchez-Barrueco: I agree with your Lordship that the legal status of member states as guarantors of the staff fund is secondary to other matters. In my view, the origin of that provision is to be found in the years—during the 1980s—in which the Union's revenue dropped significantly and did not meet the expenditure commitments. In a situation where the EU budget was not able to cover the staff fund, member states would be requested to step in. Otherwise, I would leave the matter for political negotiation between the remaining member states and the withdrawing member state.

If we look at precedents in international law, I have not been able to secure figures on this matter in situations of a withdrawing state. Provisions similar to the one in the staff regulations were applied when the League of Nations was dissolved. There was a provision in the resolution to dissolve the League of Nations whereby member states would cover the cost of the staff pension fund, according to their share of the contributions. However, I do not see that as a precedent, because we are not talking about the dissolution of the EU—at least, I hope not.

Q29 **Lord Shutt of Greetland:** Liabilities are one thing, but let us move on to assets. After 42 years of membership, the UK has been paying in and building up assets; buildings have been acquired and so forth. Where do you think we stand there? Does the UK own part, some percentage or other, of those assets? Should that be taken into account in a withdrawal?

Dr María-Luisa Sánchez-Barrueco: That question requires different answers depending on whether the member state is a founding member state or an acceding member state. When the UK joined the European Union, no additional contribution was requested from the UK to cover a share of the assets already owned by the European Union. I would apply a similar solution to withdrawing from the Union. The Union is an international organisation, not a company. No state can claim a share of the assets when withdrawing. When the UK joined the European Union, it did not have to pay an additional contribution. All the buildings and assets that have been purchased since then have been purchased using the EU budget, so the UK budget contribution has increased alongside that of the remaining member states. My view is that there is no room for claiming any share of the assets.

The solution is different in the case of the European Investment Bank, because here we are talking about a bank with an international legal personality and of which member states are the shareholders. In this case, if it is possible to set a figure for the equity of the European Investment Bank, I believe that there will be room for negotiating a sale by the UK of its share in that equity.

Lord Shutt of Greetland: Someone else will raise that with you later. From listening to all that you have said this morning so far, it seems to me that you are taking the view that, legally, the UK can just walk away.

Dr María-Luisa Sánchez-Barrueco: I am a legal scholar.

Lord Shutt of Greetland: That is what you are really saying—that we can walk away from liabilities and have to accept that we walk away from assets. Legally, that is what the UK can do. I am not convinced that that works politically or that it is about an orderly departure.

Dr María-Luisa Sánchez-Barrueco: Of course. I totally agree with that. This is not orderly departure, by any means, meaning or implying that substantial negotiation must take place. I do not agree with the view that no agreement is a bad agreement; I think that no agreement is the worst possible situation. That is my view, as a legal scholar.

The Chairman: We move on to infrastructure.

Q30 **Lord Haskins:** Following on from that, I think that the answer that you will give to my question will be the same. Will any commitments to institutions in the UK after 2019 be honoured or not? You would say that, legally, they do not have to be honoured.

Dr María-Luisa Sánchez-Barrueco: I do not think that this question involves a change to my previous answer. I am not an expert in financial matters, but I have done some research on the buildings policy of the EU institutions. I have found that, for the most part, the buildings are rented or leased. They are legally owned by the Union, even though the institution is the one dealing with the legal ins and outs—forgive my expression—of the legal ownership of the building. There has been a trend towards purchasing the buildings where the institutions are through emphyteusis—a lease with an option to purchase in the long term.

We must also take into account the buildings that the Union owns in third countries—the ambassadors' houses and the European External Action Service's embassies. I found that only 20% of the buildings are owned legally by the Union. The rest are rented. There is an interesting report of the European Court of Auditors from 2007 and another more recent one on the buildings policy of the Union that offer relevant information on this matter.

Lord Haskins: From a different perspective, if an agreement has been made with UK universities for research or infrastructure beyond 2019, is the EU legally obliged to honour that commitment?

Dr María-Luisa Sánchez-Barrueco: That is a question for discussion. I cannot provide the answer to that question. It falls within the framework of my comments this morning.

Lord Haskins: Basically, you are saying that the legal structure around Article 50 is not designed for the job that it is meant to do and that the dispute resolution process is inadequate.

Dr María-Luisa Sánchez-Barrueco: Exactly.

The Chairman: That is pretty evident.

Lord Haskins: That leads me to conclude that pretty soon the negotiators will realise that they will have to face up to this. If they let it run on in a great period of uncertainty, the economic and political consequences of that uncertainty will be too dreadful to contemplate for all concerned. If they decide that Article 50 is not up to the job, can they in the period available put in something to replace it that makes the dispute resolution process work? Alternatively, rather than having the EU at the centre of the settlement, could the UK make a settlement with 27 different countries? Once that settlement had been made, anybody who was unhappy with it could tackle the particular countries, rather than the EU. That seems horrific, but it seems that it is a likely consequence.

Dr María-Luisa Sánchez-Barrueco: I totally agree with what you have said. In my view, Article 50 was designed, as I said before, to allow for withdrawal but to discourage it.

Lord Haskins: Absolutely.

Dr María-Luisa Sánchez-Barrueco: I understand that the unanimous extension of the two-year period to a later moment in time would be applicable only if there was political agreement—if the 28 member states had already agreed on a withdrawal agreement—but the ratification process for that agreement was too lengthy. I cannot see a situation in which no withdrawal agreement has been reached, yet they unanimously agree to keep on negotiating. Some states—or even the UK—will have an interest in the negotiations not reaching a positive outcome, for economic, financial or market-related reasons.

Lord Desai: If there is no agreement and the UK walks away, what happens?

Dr María-Luisa Sánchez-Barrueco: What happens? We are thrust into the realm of general international law, where member states remain sovereign to decide on dispute resolution mechanisms. Usually they resort to diplomatic means, because the international jurisdictions are flawed—allow my expression—from the enforcement side. They lack the necessary mechanism to make their decisions enforceable. There have been rulings by the International Court of Justice condemning the UK that took 40 years to be implemented by the UK. International general jurisdiction misses the enforcement element, because it is just one additional mechanism for solving disputes among sovereign states in the international community.

What will happen? First, the UK or the Union will suffer an immense loss of international prestige. In my opinion, that will hit the UK, which is poised to become a new international global actor, harder. What message will be sent to the potential partners of the UK if the UK did not honour its commitments, even though it is no longer legally obliged to do so? The consequences will be in the political and diplomatic spheres. I would expect retaliation in a variety of domains.

Earl of Lindsay: I want to go back to a point Lord Haskins touched on. It relates to research funding. A lot of British institutions in the university sector and research institutes are part of multiannual research contracts and programmes. Some of them run for three, five or seven years, through Horizon 2020 and similar EU research initiatives. Each of those research projects is underpinned and governed by a legally binding set of commitments on both parties—on the researcher, to fulfil certain conditions, and on the funder, to maintain the funding for as long as those conditions are met. Some of them will run until 2022, 2023 or 2025.

Dr María-Luisa Sánchez-Barrueco: Or even later.

Earl of Lindsay: Or even later. Will the legal obligation for the funding stream to continue flowing for as long as conditions are being met be maintained after the UK ceases to be a member state?

Dr María-Luisa Sánchez-Barrueco: Again, this is subject to discussion. In my view, there is no legal obligation on the Union to continue funding projects, because the whole building has collapsed. That is my legal view.

From a political perspective, and subject to agreement with the remaining states—that is essential—there will be options for the UK to buy access to specific programmes and projects, just as other third countries do. I do not know whether I should expand on that topic.

The Chairman: I suggest that we move on. If we have a bit of time towards the end of the session, we can ask you to come back to that.

Lord Skidelsky: I have a very quick question. You said that you can see no possibility of extending the time period under Article 50. May I put to you the thought that the EU has been extremely flexible in finding ways around treaties when it is faced with a serious practical problem? For example, the ECB is debarred by its constitution from being the lender of last resort, but they have found a way of making it so, because there was a crisis. Can one be led astray as to the actual possibilities in this situation by too rigid an interpretation of treaties?

Dr María-Luisa Sánchez-Barrueco: May I answer with another question? What will happen if a party does not accept the option of a more flexible solution? What will be the outcome? Flexibility requires that all parties take part in the agreement. If a single party rejects it, we come back to a rigid interpretation. If I am not mistaken, in Belgium alone, four Parliaments will have to ratify the withdrawal agreement.

Lord Skidelsky: There would be a crisis.

The Chairman: To pick up your final point about Belgium and the four Parliaments, we have the recent example of the Canadian free trade agreement. If I remember correctly, 39 different ratifications were needed. Do you think that this will have a parallel impact?

Dr María-Luisa Sánchez-Barrueco: I would expect so.

Q31 **Lord De Mauley:** Given all that you have said, what immediate and, indeed, longer-term concerns does the UK's exit present in financial terms for the remaining members?

Dr María-Luisa Sánchez-Barrueco: It is not as serious as it might originally have seemed. I expect the remaining net contributors to increase their contributions a bit, but I definitely expect the expenditure side of the Union to be reduced and better focused on priorities that are decided by the remaining member states, within the framework of the Council. In recent days, the Deputy Finance Minister of Germany has voiced the opinion that Brexit will not mean a higher bill for remaining net contributors, but a lower expenditure side of the EU budget in the years to come.

Lord De Mauley: We are aware that the EU is currently undergoing a review of the funding of its activities, through the high-level group on own resources. How might any ongoing commitments, particularly those involving payments drawn from both traditional own resources and from GNI contributions, be affected by the work of that high-level group?

Dr María-Luisa Sánchez-Barrueco: I am afraid that I do not have the answer to that question. It falls beyond my area of expertise. I apologise for that.

Baroness Liddell of Coatdyke: In essence, are you saying that, for the remaining member states, Brexit produces an opportunity to modernise and refocus how the budget functions?

Dr María-Luisa Sánchez-Barrueco: Yes—an opportunity, but also a challenge. Redressing the course of expenditure is always a challenge in the Union. It will be subject to heavy, tough negotiations. The next multiannual financial framework will offer a scenario for tough negotiations again. It can be presented as an opportunity or a challenge, depending on the viewer's position.

The Chairman: The next question is from Lord Desai. Perhaps we can pick up your previous comments about buying in access here.

Q32 **Lord Desai:** After Brexit, could the UK buy into certain facilities or services that it would like? Is there a way of doing that?

Dr María-Luisa Sánchez-Barrueco: I insist again—for the third time, I think—on the redistributive nature of the EU budget. In the relationship between the EU and third countries, I have, through my research, found two models for buying access to the EU domain. They provide for budget contributions.

One is based on an immaterial calculation. It is the European Economic Area agreement model—the Norway model. I forget whether this was addressed by previous sessions of the Committee. The Norway model is provided by a financial mechanism enshrined in Protocol 32, annexed to the EEA agreement, whereby a financial mechanism separate from the EU budget is established and the EFTA countries contribute to projects aimed at reducing disparities in the eastern European countries. For the current budget period, Spain is no longer eligible, although Portugal remains. For the rest, it is mainly the eastern European countries and Greece. However, this is separate from the EU budget. From an accounting perspective, it does not represent EU revenue and the partnered state remains free to decide on the adjudication of funds to specific projects. It remains freer to decide the priorities. For instance, the EFTA countries have decided to focus on environmental matters, to which they attach particular importance.

The EEA model will be a model. However, it is based on an immaterial calculation of the benefits received by the EFTA countries because of their access to the internal market. That presents the shortcoming that the internal market is everything. It involves not only free movement of goods, but free movement of workers. The EU has not ceased to stress the integrity of the internal market. For instance, when Switzerland decided in a referendum to stop EU workers, its participation in Horizon 2020 was stopped. The EU is placed in a stronger negotiating position, which allows it to impose its own conditions and its own price.

Here, I may introduce the other option. I would call the second model the Israel model. In principle, it is applicable to acceding countries, but not only to acceding countries. Turkey, Moldova and Israel participate in the second model, and they are not expected to join the EU in the near future. This model yields budget revenue for the EU, but it is a very small amount. In 2015, as stated in the consolidated accounts of the European Union, it was in the order of €946 million—less than €1 billion. Compared with the Union's €150 billion budget, that is really a small amount, but it represents budget revenue.

Through it, third countries buy access not to the immaterial opportunity of getting access to the internal market, but to specific participation in specific programmes, funds or projects. The Israelis do not take part in the whole scope of Horizon 2020—they pick and choose the projects. However, they pay a fee that is established by the Union and is higher than the fee that member states pay. That has been voiced by the European Parliament. According to information that I obtained from the

Chair of the Committee on Budgetary Control at the European Parliament, the Parliament is expected to request that the UK pays a higher price for access to these programmes than it currently pays as a member state. It is in the order of €100 per capita.

Q33 **Lord Skidelsky:** I have a question about the European Investment Bank. In a way, I think you have answered it. The question is, can the UK remain a shareholder of the European Investment Bank if it ceases to be a member? I understand that your answer is no. There would have to be some procedure for selling its shares and it would receive what their market value was. That is the first part of the question.

Dr María-Luisa Sánchez-Barrueco: I must declare that I am not an expert in the European Investment Bank. However, as it is a bank, I believe that the shares can be sold to the remaining states. The bank invests in third countries, but it does not foresee straight participation of third countries in the capital or the equity of the bank. The statutes of the bank would have to be revised to allow for the UK's participation. I do not see why the UK would be interested in retaining its membership of the bank. It will probably be more interested in selling its share. That will be a subject for negotiation. To my knowledge, an exact figure for the equity of the bank can be found in the bank's accounts. The question for negotiation will be whether the share claimed by the UK will build on the book value or the market value of the equity of the bank. That will be the subject for discussion.

Lord Skidelsky: That is a familiar dispute whenever you are trying to liquidate some assets. Of course, the UK would be interested in continuing to get money from the EFSI. However, as I understand it, those funds are largely leveraged from the EIB.

Dr María-Luisa Sánchez-Barrueco: They are managed by the EIB.

Lord Skidelsky: There is a connection. Do you have any ideas about how that might work out?

Dr María-Luisa Sánchez-Barrueco: I have the information, but I cannot share it with your Lordship right now. I am missing the exact answer to that question, but I can provide it in writing. I can feed it into the written annex to the transcript of the session, if I am allowed.

The Chairman: Thank you very much. It has been a very fruitful meeting. We would welcome any additional information that you can provide to us, Dr Sánchez-Barrueco. Thank you for a most interesting and insightful session.

Dr María-Luisa Sánchez-Barrueco: Thank you for your invitation.

The Chairman: That concludes today's public evidence. The Committee will now meet in private.