

European Scrutiny Committee

Oral evidence: [Government's Approach to European Scrutiny](#), HC 953

Wednesday 18 January 2017

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Members present: Sir William Cash (Chair); Alan Brown; Geraint Davies; Steve Double; Richard Drax; Kate Green; Kate Hoey; Craig Mackinlay; Mr Jacob Rees-Mogg; Mr Andrew Turner; David Warburton

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Witness

[I](#): Rt Hon David Lidington CBE MP, Leader of the House of Commons

Examination of witness

Rt Hon David Lidington CBE MP.

Q1 **Chair:** If I may say so, Leader of the House, Minister, Cabinet Minister, former adviser to the Rt Hon Douglas Hurd, we have known one another now for the best part of 25 to 30 years on this subject, and I am delighted to be able to have the opportunity to address a few questions to you this afternoon. I am going to ask the first question, which is: in your view, is the scrutiny of European documents and the Government's approach to European Union proposals important?

Mr Lidington: It is important, and it will, Chairman, remain important up to the date that we actually leave the European Union. The Prime Minister has made it clear that, so long as we are members, we will stand by the rights and obligations of membership, and it seems to me that an integral part of that process is to ensure that the proper scrutiny procedures are observed.

Q2 **Chair:** Thank you very much. What would the Government do if the House rejected their approach on a European Union document?

Mr Lidington: It would depend very much on the nature of that document, and on the terms of the resolution that had been defeated by the House or the text of the alternative resolution that had been substituted. Legally, of course, these decisions about legislation at European level are ones that the Executive can take lawfully under the



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terms of the European Communities Act 1972. However, I would certainly hold to the view that the Government would, and indeed ought to, for reasons of prudence as well as principle, take very careful account if the House were to vote down the Government's approach to a particular dossier.

Q3 Chair: Of course, you will appreciate as the Minister for Europe in the previous Government the issues raised by our European Scrutiny Committee report on voting in the Council of Ministers, plus our concerns about the way COREPER has been evolving and matters such as the ports regulation, to give one example. These have suggested, as you know extremely well, that it is absolutely essential in the new regime—with the speech that the Prime Minister gave yesterday, not to mention 23 June, of course, as the fundamental point of departure—we evaluate the extent to which, both in explanatory memoranda and also in COREPER itself through UKREP, we take positions consistent with our national interest. We may, for example, need to vote against the ports regulation in order to make it clear that we could not possibly contemplate a position that was inconsistent with our national interest.

In that respect, when it comes to the House of Commons, to go back to our previous exchange a few minutes ago, the question of how the Government will react to what is decided in Parliament on a question of this kind is bound to be affected by what is in the national interest in the whole of the Brexit context. Do you not agree?

Mr Lidington: I agree with the principle, Chairman, but of course the definition of the national interest is itself going to be an element in the debates that we all have on the subject of the European Union. I suspect that there will be differences of view among members of this Committee, as well as in the House as a whole, about precisely what constitutes the national interest in any one dossier.

Ultimately, it is going to be for Ministers in the elected Government to make a judgment as the negotiations proceed, and also in the context of the ongoing EU business, to which we will be a party, as to what constitutes the national interest and to take decisions accordingly.

To take your particular point about being ready to vote against particular questions, that has always been the case. I can certainly remember as Europe Minister having voted at Council meetings against some dossiers in order to assert a particular principle. Sometimes that was because we wanted to make a particular point about the delineation of EU and national competencies; other times, it was because a particular measure had not cleared parliamentary scrutiny, and we wanted to uphold that principle. In that sense, I do not think the way in which we operate will change.

However, clearly, the facts of the referendum, and then the strategy that the Prime Minister set out yesterday, make a difference to how we conduct EU business. Although we continue while we are members, of



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course, to operate within the bounds of the legal duties derived from the treaties, including the duty of sincere co-operation, an approach to negotiations on dossiers that enabled others to paint us as wreckers would not be helpful in the exit negotiations. We will take a firm view on each dossier about how our approach best serves the national interest in terms of the new policy direction that the Prime Minister has set.

- Q4 **Chair:** One last thought: of course, sincere co-operation is one thing; solidarity is another. Those are all principles that are common to the manner in which they have tried to shackle us to the acquis. For practical purposes, whereas I hear what you say, the reality is that there are, as you indicated, lines that have to be drawn. All I am saying to you is that it would be helpful to ensure that very careful consideration is given within Government Departments, the Cabinet Office, the Secretary to the Cabinet etc. and No. 10 to be sure that we think through the consequences of how we react in the framework of COREPER and UKREP in relation to matters that are quite clearly affected by the Brexit decision. I will just leave that with you as a thought. I am sure you would agree with the sentiment that lies behind it. We need to be able to ensure that we get a balance.

Mr Lidington: I have no quarrel at all with the way you have said that.

Chair: That is very kind. Thank you very much.

- Q5 **Craig Mackinlay:** In some ways, David, carrying on from that, we are in a slightly new world now for this Committee and what we may be suggesting for debate. What would be a useful guide for us to consider in what we should be putting forward for debate in this post-23 June world? Should it be things that are just of general interest to us that we would have always been interested in, or something that rather more links in with the Brexit process and the type of debate that we will be having in the House anyway?

Mr Lidington: I am slightly hesitant, Chairman, as a Government Minister, in terms of giving advice to the Committee.

Craig Mackinlay: Of course. I am sure we will not take it. I am just interested in your views.

Mr Lidington: Were I in Mr Mackinlay's shoes, my first principle would be to be guided still by the degree of importance that attached to a particular measure. The Committee members know better than anybody else that you see piles of papers that are, in terms of substance, of relatively minor consequence. These are punctuated by some that can be very far-reaching. I would have thought the ones that might attract the Committee's attention are any dossiers that look as if they could have a significant impact, in the time we remain within the EU, on British business, the powers of UK institutions and so on.

Also, yes, it is perfectly reasonable for the Committee to inquire and ask of Ministers how the Government's approach to a particular proposal



coming out of the EU system fits with the ongoing negotiation and regime that we hope will apply after exit. Of course, there will be occasions where Ministers will not be able to disclose details of what may be going on in a fluid negotiation. However, those are not unreasonable questions for parliamentarians to ask.

- Q6 **Craig Mackinlay:** One good example of something that has vexed us is the ports regulation. Pretty much everybody opposes the ports regulation in the UK, across political parties, unions and everyone else. What should Parliament do if there is a similar regulation that may be implemented or come into discussion before our date of departure but would have force afterwards? What should we do with those types of matters? They are really difficult, because these are the sorts of matters that we would probably be the first to get rid of out of our statute books when we were free to do so. How should we approach those, and how should Ministers approach those as well—particularly matters that we would want to vote against but may lose on QMV?

Mr Lidington: Each Department and each Secretary of State will have to decide on not only the substance of a particular measure but the relative significance of that measure in the context of our overall negotiating objectives.

One is talking hypothetically here, but let us say you had a measure that was, from a UK point of view, irksome and unnecessary—one that we would happily do without but did not in practice trouble us so much. If that happened to be very important to one of the 27, there would remain a case—and the Minister would have to judge and defend their approach to Parliament—for saying, as a part of the broader picture, that it was not worth digging in and opposing that particular measure. There could be other matters where we take the view that “This really does impose quite unnecessary burdens upon UK business or public services”, and you would fight it as hard as you possibly could in the negotiations.

Of course, the reality is, as the Committee knows, that it normally takes a bit of time between the Commission first publishing a new proposal and that proposal taking effect. If I am looking at a state of affairs where article 50 is triggered before the end of March this year, and the two-year timetable under article 50 is not extended by unanimity, then we are looking at an exit date before the end of March 2019, and possibly past the implementation period the Prime Minister spoke of yesterday.

Therefore, with a measure introduced de novo by the Commission in, for the sake of the argument, June this year, the probability is that it would not actually come to be implemented in member states until after we got to the exit date. There are obviously issues with the ongoing programme, but it seems to me that the two-year timetable is pretty important in making our calculations.

- Q7 **Geraint Davies:** Can I ask you a general question first of all? We have recommended debates from this Committee that are often delayed for



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months and years. I just wanted to get an idea of whose responsibility that was. Was it the Departments, the business managers, No. 10 or No. 11 that would tend to make the decision to kick these debates into the long grass?

Mr Lidington: I am at the risk, Chairman, of repeating things that I have said in a previous incarnation to this Committee. It is a collective process involving the Department that is in the lead—now the Department for Exiting the European Union, previously the Foreign and Commonwealth Office—the business managers, No. 10, and the Treasury has its fingers in everything; certainly anything that involves spending involves the Treasury as well. There may well be more than one Department that has an interest in a particular measure as well, so it is a collective decision to which everyone has to agree for something to go forward.

I have had a look at some of the outstanding debates that the Committee has been seeking, and there have been some cases where, yes, I think the Minister has been right to apologise; there had been a failure to stick to timely programmes to deliver what the Committee asked.

Q8 **Geraint Davies:** To pin you down, if you like, we proposed a debate on steel on 13 April, and it seems that we are going to have one now. However, basically all of the real issues around steel have now gone past. More pertinently now, you will be aware that the Foreign Affairs Council agreed CETA, the free trade proposed deal between the EU and Canada, which was very controversial. That has been agreed before a debate in Parliament, and the Minister went forward and signed that.

You will also be aware, perhaps, on that issue, that CETA has been voted down by one of the primary Committees in the European Parliament, the Employment and Social Affairs Committee. It is due to be voted on in the European Parliament and is being discussed next week in Strasbourg. Would it not be appropriate for this House to have the opportunity to debate the pros and cons of CETA before the European Union makes its final verdict? Otherwise, it is a complete waste of time us talking about it.

Mr Lidington: I am hopeful we can get that debate on CETA, either separately or perhaps tagged to a broader debate about international trade, relatively soon. On steel, the date has now been set. When we look at what happened this year, there have been, by anybody's measures, some exceptional circumstances that help to explain some of the problems there have been. The fact of the referendum itself, and the purdah period that preceded it, made a difference. Then, the day after the referendum, the Prime Minister announced his resignation. We had some stasis in Government until the new Prime Minister and her team took office in the second week in July.

Then the new Government were faced with the duty of implementing the referendum result, which, whatever view any of us took of the referendum, represented an enormous break from roughly half a century



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of assumptions about the alignment of a key element of UK external policy. That meant, for example, the creation of two new Government Departments and finding staff for them. It meant a whole new bunch of Ministers with European responsibilities not just getting used to those responsibilities over the summer but having to do so while the policies and strategies themselves were in a state of flux.

Then, not unreasonably, the PM and the Exiting the European Union and International Trade Committees wanted to take time to think very carefully through the issues that were going to be at stake in the forthcoming negotiation. That bore fruit yesterday in the speech. It is now that we are in a much better position in Government to articulate dossier by dossier how we handle individual pieces of European legislation in that broader context of the strategy the Prime Minister has set.

Q9 Geraint Davies: We appreciate you have been very busy with Brexit, and it has been very difficult. At the same time, the specific issue of CETA is that it is basically giving transnational companies the power to sue democratically elected governments for billions of pounds for laws they have passed that could impact on their future profit, to do with protecting our environment, our public health and our rights at work.

This would sign us up for some 20 years, which is much more significant than any particular Parliament, or even being in or out of the EU. Yet, the Government have failed to give the opportunity for Parliament to discuss this. We are running up against a deadline where the EU will put a solid stamp on it. It has already put some sort of stamp on it, because the provisional agreement on CETA has been agreed. It is all very well saying that you have been very busy doing other things; I am sure you have. However, this is a fundamental issue about our democracy and the power of Government versus corporates.

Mr Lidington: If we look back at the history of that dossier, as the Secretary of State for International Trade has explained to the Committee, the facts of the parliamentary timetable meant that it was not possible to schedule the debate ahead of the extraordinary Foreign Affairs Council (Trade) on 18 October this year. To be honest, the agreement moved forward a lot faster than the Government had anticipated it would at this stage.

I agreed with Liam Fox that it would have been contrary to this country's interest—both in terms of our place in the EU, and the negotiations that are looming, and in terms of our relationship with Canada—had we not supported the signalled political agreement at that 18 October Council meeting. Liam wrote to the Committee immediately afterwards to explain the decision, and appeared here, of course, on 26 October.

I think it is clear here that there was an error on the Government's part, in that the written statement covering both the General Affairs Council and the extraordinary Foreign Affairs Council (Trade) did not explicitly



reference the fact that this had been an override of scrutiny. I know the Secretary of State has apologised for that.

In particular response to Mr Davies's concern about the international court system of arbitration, which has replaced ISDS in this agreement, that, as I understand it, is not part of those elements of CETA that are due for provisional implementation. That has been separated out from those areas where the intention is to give early effect to elements of CETA pending national ratification.

- Q10 Geraint Davies:** My understanding is that ISDS will be looked at by the European Parliament in the round. The key issue on that, as you will know, is whether there are sufficient protections for investors. The argument against ISDS is that there are three levels of legal protection for inward investors, which are domestic law, European law and the European Court of Human Rights. As part of the Brexit discussion, there is some talk, is there not, of us withdrawing from the European Court of Human Rights, which would increase the case for these arbitration panels that could sue us?

I am making the point that this debate is pertinent vis-à-vis Brexit as well as intrinsically important in any case. The House of Commons has agreed in the Thursday business debate on two occasions a motion that there should be full transparency through Parliament of these transatlantic trade agreements. Those decisions and votes have been completely ignored. It has just been bulldozed through by Liam Fox against the national interest, and certainly against parliamentary interest.

Mr Lidington: I do hold the view that CETA is very much in our national interest. Frankly, if we want a first-class bilateral trade deal with Canada after leaving the EU, it would not be sensible to be blocking this European agreement that Canada very much wants to achieve now. The European Parliament is debating this, in February I think. However, as I said, my understanding is that the ISDS element is not part of the provisional application of the agreement.

- Q11 Chair:** On that, first of all, it is a mixed agreement. As I understand it, therefore, there would have to be ratification by all the Parliaments. Although you have taken it to a certain stage here, subject to debate, which I shall mention in a second, the fact is that it will also have to go through a ratification procedure in any event in national Parliaments, including our own.

I do not want to claim in vain, in case he disagrees with me, but as I understand it—and I say this to Geraint, who may not know this—Mr Fox is actually very keen to have this debate. Perhaps you could take that up with him, because that is the information I received when I had a meeting in his Department very recently, and I rather thought it was also a debate on the Floor of the House. I do not want to tie him to something that was told to me outside of a formal arrangement, but it is worth your taking that up with him. I think you will find that there is less



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resistance to it than perhaps some people might have thought.

Mr Lidington: I tried to signal a bit earlier, Chairman, I am optimistic that we can move forward on this one.

Q12 **Chair:** It may well be on the Floor of the House as well.

Mr Lidington: I do not want to give a firm guarantee, because I do not know if the Committee has heard that the Supreme Court has announced that its judgment will be made next Tuesday. Obviously, depending on the outcome of the judgment, we may need some time on the Floor of the House for other matters. However, I note the Committee's continued wish for this to be on the Floor on the House.

Chair: Thank you very much indeed.

Q13 **Kate Green:** My question leads on tremendously well from the discussion we have just had on debates on the Floor of the House. We as a Committee have often recommended matters for debate on the floor—matters that we have considered are of importance and interest to all Members. We have observed that the Government at times have seemed quite reluctant to schedule floor debates. One example might be in the area of a complex set of issues we have been considering over a longish period in relation to asylum. It would be very helpful to understand the Government's attitude to scheduling debates on the floor, and what the reason is for the apparent resistance to doing so.

Mr Lidington: If one looks back at the history of this in recent years, there have been a fair number of debates on the floor, as well as in Committee. I accept that since Lisbon there is a wider range of issues that come before the Committee that could be referred. It is true that there have not been any referred debates on the Floor of the House so far since the opening of the 2016-17 Parliament. That is largely because of the political events that I referred to a bit earlier on.

The Government will always take requests for debates on the Floor of the House seriously. However, we have to balance those against the other pressures on Government time in Parliament. We are in a world now in which, for good reason, following the right reforms, the Government control less of the parliamentary timetable than would have been the case about six or seven years ago. The time allocated to the Backbench Business Committee has shifted that balance—not as far as some would wish, but it has shifted it quite considerably in terms of trying to find slots for Government business as well for things like referred debate.

There is no government policy of trying to fend off all floor debates, but it is important that the Committee over the course of the year does think carefully about the priorities that really need a floor debate rather than a Committee debate. My experience as a Minister, having had to do this, is that those Committee debates, where you have to be prepared to answer detailed questions for pretty much an hour following a brief initial statement, are quite taxing.



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- Q14 **Kate Green:** We do think very carefully about that, if I may so, Minister, in this Committee. Whilst recognising the pressures on Government time, is it not the case that debates on the floor can be taken after the moment of interruption, so there is no need for the Government to lose any of their business time?

Mr Lidington: They can be taken after the moment of interruption if the House has agreed to that. Members on all sides tend to have an expectation that the times that are normally set for parliamentary hours should be followed. Exceptions can be made, but there are a variety of views across the House, I think, about going later than seven o'clock on Tuesdays and Wednesdays, which would be possible, or even going later than five o'clock on Thursdays. I suspect that would be less popular around the House than going later on the other two days.

Speaking as somebody who voted in favour of the old hours—of planning on going until 10 pm midweek—it would be contrary to the spirit of the changes that the House has voted to support more than once were we, as a matter of routine, simply to go beyond the moment of interruption. It should be an exception.

- Q15 **Chair:** I want to be quite blunt with you, Minister, about this. You implied in your opening remarks in reply to Kate that it was all a matter of priorities and Government time. The free movement of people debate was meant to take place as a result of a recommendation we made when you, if I may so, were the Minister for Europe in, I think, January 2014—so you know the background to this; you know who made the decision. We are now in January 2016, two years later, and we still have not had that debate.

Mr Turner: 2017, Chairman.

- Q16 **Chair:** 2017, I do beg your pardon. I am so sorry; of course it is 2017. Here we are, three years later. It is clearly something within your knowledge. You were a participant in the decision-making process not to hold that debate. Was it No. 10, as Mr Geraint Davies referred to and as we understood it could have been? Or was it something that was decided by the Whips, who are after all under instructions from the Government themselves, and from the Prime Minister etc.? Can you please elucidate why it is that here we are, three years later, as my hon. Friend mentions, and we have not yet got that debate scheduled for the Floor of the House? Please explain.

Mr Lidington: As I have said on previous appearances when Europe Minister, and I think as William Hague said to you when he appeared as Leader of the House, it would not be right for me to go into detail about how the Government come to make a collective decision. I am not going to do that. On the particular question about free movement, I would expect that there will be an opportunity at some stage for that to be debated in the new context of the referendum decision. I would certainly be happy, if that happened, for us to look for an opportunity to link it in



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some way to the Committee's request for a debate on those particular five documents.

- Q17 **Chair:** I will not speak for every member of the Committee—they can speak for themselves—but speaking for myself, I simply do not buy into the argument that this can go on any longer. It is a matter of huge importance. The Prime Minister has made it absolutely clear, both in her speech yesterday and previously, the issue of free movement is at the heart of our Brexit decision, which came out of the referendum on 23 June.

I simply leave this with you to consider seriously. Take it back to whoever you have to, and then tell us by letter—if you have not been able to give us an answer today—why it is that we are not going to have that debate, if it is not going to be within a very reasonable time, by which I mean within the next month. Could I ask you to do that?

Mr Lidington: That is fine, Chairman.

Chair: Thank you very much.

- Q18 **Richard Drax:** Minister, you are not prepared to answer the Chairman's question. This issue was of significance prior to the vote on 23 June, and the Government led by David Cameron were very keen to remain in the EU. Would it be fair to surmise that they knew full well that free movement of people was a key issue in winning or losing that referendum, and that politically it would have been to their disadvantage to hold such a debate on the Floor of the House, and therefore we were not granted that debate?

Mr Lidington: Members of the Committee can surmise, but, with all respect to Mr Drax, I am not going to get drawn into a discussion of how this would have been debated within Government at that time.

- Q19 **Chair:** What you can do is talk to other members of the Government about this question.

Mr Lidington: As I have agreed to do.

Chair: I have made my point, and I will now move on.

- Q20 **Mr Turner:** Perhaps you could start, Minister, by not commenting on what I am about to say. If we had had the debate, the then Prime Minister would have been more successful in persuading Europe—that is, the EU—to make the changes that he said were necessary, and we would still be inside the EU.

Mr Lidington: It is an interesting piece of counterfactual history. Again, it is tempting to get drawn into that. There is a passage in one of the Chronicles of Narnia where Aslan says to Lucy that no one is ever told "what would have happened".

Chair: T.S. Eliot said, "Humankind cannot bear very much reality".



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Q21 **Mr Turner:** In the next year in the House of Commons, which starts in April or May, we are going to have this great debate.

Mr Lidington: The Great Repeal Bill.

Q22 **Mr Turner:** We are going to have this Great Repeal Bill, which is a rather odd description when it is not being repealed at all. Do you expect there will be a huge amount of debate on that?

Mr Lidington: I am going to be in the hands of the House on that. My expectation is that the Bill will need to be dealt with on the Floor of the House at all stages as a constitutional measure. It will, broadly speaking, do three things. First, it will repeal the European Communities Act 1972. Secondly, it will transfer our *acquis* obligations to a United Kingdom legal basis. Thirdly, it will propose a power—which will be defined; it will not be an unlimited power—for Ministers, by means of secondary legislation, to modify those *acquis* obligations to ensure that they can continue to operate in a coherent fashion on the day we leave.

To take the most obvious example, there will be many directives and regulations that make reference to a named EU-level regulator. Clearly, the name of a UK regulator will need to be substituted for the EU regulator. That type of change is going to be essential in order to have what I think we all want to see, which is British business being able to operate on the basis of clarity about what the law requires of them. We really do not want to have uncertainty there.

Those will be, broadly speaking, the three elements. Both the Secretary of State for Exiting the European Union and the business managers are keen that the Bill should be as elegant as possible. However, with a Bill on the Floor of the House in a Parliament in which the Government have a small overall majority, it clearly depends on the appetite of the House for prolonged debate as to how long we will continue. It may take a long time, but I will be in the hands of colleagues of all parties.

Q23 **Mr Turner:** I am sure. However, what we seem to have is a view that this is going to take a long time, but I cannot see anything controversial about it. We are moving from A to B. It is the same rules and the same law.

Mr Lidington: If it proves not to take a long time, I shall be delighted, because that would mean that there will be more opportunities to introduce legislation dealing with important domestic reforms that the Government also want to secure. However, my view is coloured by my experience in my first Parliament of the debates on the Maastricht Treaty, and to a lesser extent by what I remember about the debates on the Lisbon Treaty in 2009; that took less time than the Maastricht Treaty debates, but it still involved quite a few days of House of Commons time being given over to various articles of the Lisbon agreement.

Q24 **Mr Turner:** Moving on from the end of the two years, when we have left and are free, what amount of legislation and, perhaps more importantly,



regulation will it find time for over the next two or three years?

Mr Lidington: The truth is that in order to have a coherent, workable book of law on day one, we will need to have taken through changes to secondary legislation in advance of the date of exit. That does mean that there will be some pressure on Parliament and on Government resources between the date of Royal Assent of the repeal Bill and the date of exiting the EU.

I am working with David Davis and with other colleagues to try to identify ways in which we can enable this to be done as smoothly as possible, but also in a way that is completely fair to Parliament. We are not proposing to try to take through reams of controversial secondary legislation on the nod. We need to find a way in which Parliament feels it is able to digest the material, and we are looking for ways in which we can, if possible, reduce the number of different secondary legislative instruments that might be needed.

Q25 **Chair:** On that, are you saying that the Henry VIII procedure would be available? It may be available, but would it be used? Just as a secondary question, are you intending that the Repeal Bill will be programmed? Clearly, all Bills are programmed. What kind of programming would you have in mind?

Mr Lidington: The second question, Chairman, takes me beyond where the Government are at the moment. We have not taken any decision on that. On the first question, again, it will depend on our final judgment about the number and character of changes to secondary legislation that might be needed. I completely understand that Parliament will want to take a close interest in the scope of secondary legislative powers included within the repeal legislation. That is something DExEU Ministers are very alive to.

Q26 **Chair:** Once the Repeal Bill has passed Parliament, on the assumption that it has as a matter of principle, then it follows that its consequences in terms of secondary legislation—by its nature being secondary—are subsidiary to the principle that has already been completed. There really would not be any apparent problem in placing the same principle of using Section 2(2) of the European Communities Act to implement the legislation on the way out.

After all, for heaven's sake, I have spent the last 25 or 30 years having to deal with section 2(2) legislation on the way into the statute book, and I was on the Statutory Instruments Committee as well. I find it very difficult to see why there should be an extended period for unnecessarily long debate in relation to matters of that kind, when the principle would already have been conceded by the passage of a Repeal Bill itself. What is your comment on that?

Mr Lidington: I hope you are right, Chairman. I would be pleased if you are. However, clearly, as a Government we want to try to reduce the burden on Parliament so far as possible by getting our definitions right.



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We are also trying to limit, if we can, the number of separate SIs that would be required. At the end of the day, we come back to the degree of appetite that there is in the House of Commons to debate matters at length. You and I can both remember times when it was quite common for Members to debate even uncontroversial measures for the entire duration of debating time that was allowed.

Q27 Chair: I do not think that ever occurred. That is a highly prejudicial remark, if I may so, because it was entirely justified on the basis of the content. As it happens, as you well know, many of the provisions in directives, regulations and indeed other similar subsidiary instruments contain within them on entry into the statute book matters that, were they to be under Westminster jurisdiction in their own right, would be Bills of Parliament, which would have to go through all the procedures of both Houses and could contain material that would require primary legislation. I just invite you to accept that this is a very important question. You cannot apply a different standard on the way out from the standard that was applied on the way in.

Mr Lidington: I understand the point about having a section 2(2) equivalent. My point is that if we end up with a very large number of changes to existing legislation deriving from EU obligations, even if many of those are technical in character, they will require the allotment of parliamentary time. It is that we are bending our minds to at the moment.

Chair: As you appreciate, I drafted the essence of the repeal Bill in May last year in order to achieve this degree of transposition. I am sure you would agree that I was very pleased to note that the Government accepted the principle, though I am quite sure parliamentary counsel will greatly improve on my original draft. Leaving that aside, the actual idea has been to try to create some degree of certainty, so that we are in a position to be able to get this done and then move forward.

Q28 Geraint Davies: I am sure we all welcome collapsing the debate on the Great Repeal Bill, but the big issue surely will be that, when the Supreme Court makes its judgment next Tuesday, there will be a different Bill to trigger article 50. Would you agree that we need to maximise the time around debating that Bill? As soon as we trigger article 50, as you know better than most, we have handed back our membership card, and the EU 27 will decide, in essence, what we get.

Before that point, we need to decide the pros and cons of article 50, when it should be triggered, whether there should be a final say of the people before it is triggered, and if there should be a such a proclamation so that the EU knows the people will have another look at the detail, and therefore might negotiate before article 50 etc. There is a big debate to be had there. If it is agreed to trigger article 50 by March, then we can rush forward with Bill's Bill, but that's not the Bill I am talking about; I am talking about the article 50 Bill. Would you agree that we need to have—I do not know—12 days or more for the House to debate?



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Mr Lidington: First of all, I am not going in any way pre-empt what the Supreme Court says on Tuesday next week. We have to wait and see the judgment, because, of course, it may be more than one judgment. The Supreme Court was considering the Government's appeal from the High Court in England, but also the Northern Ireland case, which had been brought on different grounds, and the subsequent representations made by the Scottish and Welsh Governments. We will have to see what the Court says, and clearly if there needs to be legislation, the Government will bring forward legislation. I am not going to speculate about how much time that will require.

Q29 **Geraint Davies:** In simple terms, either the Executive will decide and the Prime Minister will just trigger it on her own, or Parliament will decide, and there may be some rights for Scotland, Wales, etc. If Parliament does not decide, we will not have a lot of time to talk about it, because Theresa May will do whatever she likes. Let us assume for a moment that we will decide. What sort of time do you think would be reasonable to debate such a momentous change?

Mr Lidington: We will want to bring the Bill in swiftly, because we want to stick to the Prime Minister's timetable, but we will be in the hands of the House—and for that matter the House of Lords—in terms of how long those debates take. I hope that if legislation is required, the majority of people in all political parties, and on either side of last year's referendum campaign, will accept that the logic of having supported the Referendum Bill last year is that the referendum outcome has to be honoured.

It is difficult for me to go much further, except on the point about negotiations. The other 27 have stuck very firmly to their position that they will not enter into negotiations until article 50 has been triggered. To delay unnecessarily the triggering of article 50 seems to me simply to add to uncertainty; that does not serve British business, British agriculture, or other interests in this country. They take the view that they need to plan for the future. They want to take decisions knowing what the landscape is likely to look like. Certainly, the feedback the Government have tended to get from business, despite the fact that business was pretty decisively on the remain side during the campaign, is, "The decision has been taken; we may not like it, but we need to get on with this now".

Q30 **Geraint Davies:** Given that the French elections are in May and the German elections are in October, and therefore those new Governments are to be primary players in the negotiation, if there is one, even if it is only among the EU 27, there is no point triggering it before October. Is it not the case, finally, that the incentive for pre-article 50 negotiation would be giving the final say to the people before the triggering?

Mr Lidington: Those elections present challenges to the negotiating capability of the 27, when the two biggest Governments in the EU 27 are in election mode. However, they are both grown-up Administrations that know this is business that has to be done. What has to happen under the



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terms of article 50 is that once the notification has been given, the 27 must meet and determine an opening negotiating mandate to give to appointed negotiators, who seem likely to be Michel Barnier with Didier Seeuws for the Commission, and probably the rotating Presidency as well, working with the Parliament in some way. That is up to the 27; that is an appointed negotiator.

Once they set that mandate, the negotiations can get under way. While, understandably, most of the focus in this country is on the nature of the long-term relationship, there is also quite a lot of important technical detail that has to be got right about the terms of exit itself—about joint assets and liabilities and looking to the future, particularly where you have got multiannual programming that would go beyond the date of departure. What happens to UK citizens who are working within EU institutions? One could think about addressing the issue of each other's nationals who are currently lawfully resident in terms of that divorce settlement as well.

There is a lot to be getting on with, and I have picked up no suggestion from Paris or Berlin that they want a delay. The risk of delaying it further is that in my experience there is almost always something going on at EU level that is a potential distraction. Last time around, the Bundestag elections were, from memory, in early October, but the new German coalition was not established and given a vote of confidence by the Bundestag until the week before Christmas. If we end up with a Bundestag with more political parties than the present Bundestag, it could take even longer for them—and it is the Germans—to form a Government. Are we saying that we would simply wait to trigger article 50 until then?

If you then run a two-year timetable from, let's say, a 2018 date, that means that in 2019 we are appointing another Commissioner and running candidates for European Parliament elections. I have to say, I think the British public would think that we were a bit crazy if we were in that situation. And it is not just that. I have to say, the reaction I got in the tail-end of my time as Europe Minister after the referendum was that the other 27 desperately regretted the decision that we had taken in the referendum—to say they were grief-stricken is not an exaggeration in some cases—but they all said, "We have looked at the voting figures; this was legitimate. You cannot set this aside. We now have to get on with it".

The 27 have got priorities they need to address as well. They have got to think about how they manage a budget of 27 after the UK's departure. The multiannual financial framework negotiations for 2021 onwards really have to get under way by 2018 at the latest if they are to be agreed in time. It took about two and a half years last time around to get the MFF agreed. They would be discussing again how common agricultural policy works, is financed and is structured after UK departure. They need time to do that, for those decisions to be taken and come into effect when the



current setup ends. The current setup of EU-28 ends whether or not we are out. There has to be a decision taken. From their point of view, they want this decision, however much they regret it, to be implemented in a way that gives them the time to have those alternative arrangements in place and operate smoothly.

Q31 Geraint Davies: That is only assuming we are necessarily leaving. If there was to be a vote before triggering, and therefore there was some prospect of us staying in the EU, they would have an incentive to negotiate, would they not?

Chair: We have carried this just about as far as we can. I would like to move on.

Q32 David Warburton: I wanted to ask about debates on opt-in decisions. Many years ago, as Minister for Europe, you told the house that opt-in debates would “significantly strengthen Parliament's oversight of EU justice and home affairs matters and make the Government more accountable for the decisions it takes in the EU”. The asylum reform package is a bit of a sore point. It had seven opt-in proposals, and two debates were recommended by the Committee. Only two of the opt-ins could take place after the debate had taken place, so the debate took place before. I am sure you would agree with me that there is not much point in scheduling opt-in debates after the Government have already opted in. It rather proves Aslan's comments you related earlier.

Mr Lidington: I have a lot of sympathy with Mr Warburton's comments. It is the case, as I said earlier, that we have had a new set of Ministers getting to grips with new responsibilities, and in a completely changed European environment from that which pertained before 23 June. Having said that, I look back at what happened over the asylum reform package, and my view is, yes, the Government did not do what we ought to have done in terms of handling that.

I can understand that the Committee would have been doubly upset when there was that unfortunate mess-up over the premature moving of a motion on 19 December. Apologies were given rapidly after that to the Committee for that error. I am happy to take up this question of JHA scrutiny with the Secretaries of State concerned. We need to do our utmost to try to make sure that those commitments to enhance scrutiny are delivered.

The rider I would add to that is one, Chairman, you have heard from me before. The Brussels timetable and the eight-week turnaround time for notification of the opt-in does not take account of parliamentary recesses in the UK or any other member state. Therefore, I still think—it is not something new from me, as I have said it before—there is a case for the Committee also looking at whether, during recesses, there are ways in which it could come to a view, either through virtual meetings or by delegating powers to the Chairman or to a small group of its members to



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be on duty during a recess. Having said that, the Government need to make sure they are delivering on their side of the bargain.

Q33 **David Warburton:** Without the Committee getting together during recesses, is the problem likely to persist?

Mr Lidington: No. I am saying the Government have a responsibility to make sure they are doing everything they can to deliver on those commitments to enhance scrutiny. I have one caveat. Let's say you have a proposal coming out from the Commission in early July and Parliament goes into recess at some stage in the second half of July. Even if the Government take all their decisions and send off an explanatory memorandum, it is simply not possible, without a recall of Parliament, to have a debate and for the Committee to come to a recommendation—unless the Committee chooses to meet during recess. It is one detail I just wanted to flag again, but it does not remove from the Government their responsibility.

Q34 **David Warburton:** It is a small part of the whole.

Mr Lidington: Exactly.

Q35 **David Warburton:** However, the large part is with the Government, of course.

Mr Lidington: Yes, I accept that.

Q36 **David Warburton:** There are measures that the Government can put in place, no doubt, to speed things up.

Mr Lidington: As I said, Mr Warburton, I shall be taking steps to remind the relevant Departments that there are responsibilities that have been entered into.

Chair: As we speak, there is a debate on the Floor of the House on leaving the EU regarding security, law enforcement and criminal justice. We are as a Committee much exercised and concerned about the position on a whole raft of matters that came before our Committee last week related to asylum and the whole range of JHA questions. We are not happy with the way in which the Minister has handled these, and we are going to ask him to come and see us for that particular reason.

It would be very helpful, in view of your extremely detailed and considerable experience of these matters, for you to have a chat with him, because we are really not happy with the way in which the Government are responding—or, should I say, not responding sufficiently—to our concerns over those matters. There are a lot of them, and we acknowledge they are very complex.

Q37 **Steve Double:** I am going to ask about overrides. Our Chairman recently wrote to you asking that you remind ministerial colleagues that, unless this Committee has agreed to such an override, they need to explain their reasons for an override on a document awaiting debate, to



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the House as well as to this Committee. What have you done to raise ministerial awareness of this requirement?

Mr Lidington: Yes, we are trying to get this sorted. We had scrutiny performance generally, including this matter, raised at a meeting of senior officials chaired by the DExEU Permanent Secretary just before Christmas. DExEU is organising a meeting in the next few weeks for departmental scrutiny co-ordinators, where the concerns of the Committee will be raised. It is primarily for DExEU now, in the way it used to be the responsibility of the Foreign and Commonwealth Office, to ensure that good practice is followed. However, I will certainly be happy to reinforce the point.

Again, looking back to my ministerial experience at the FCO, while there was generally good, decent practice, there are occasions where people do not give, for whatever reason, sufficient priority to getting the important technical detail right, telling the Committee where there has been an override and following up the Committee's questions on a particular document. I will happily do what I can to try to ensure that best practice operates, but I know David Jones does take this seriously and is following this through.

Q38 **Richard Drax:** Minister, do you agree that Members' incentive to engage with the scrutiny system will be lessened if the Government do not respect the spirit of the House's standing orders or its undertakings?

Mr Lidington: The respect of Members for the scrutiny system is there. Members would also expect to see the Government follow up on their undertakings and deliver on them.

Q39 **Richard Drax:** Right, and so the answer to that one is yes.

Mr Lidington: Yes, I do not disagree with that.

Q40 **Richard Drax:** We are grateful to the Government for arranging debates on reasoned opinions quickly. However, other debates that have recommended for years are scheduled with very little notice and are not always listed in a business statement. There will always be a low turnout for low-profile debates arranged at short notice. What are you going to do to ensure that there is more notice of these debates and more information about them?

Mr Lidington: If we have determined on a debate ahead of the Thursday business statement, then it would be included in the Thursday business statement. It sometimes happens that, for a variety of reasons, a slot comes up after I have given the business statement, and we will sometimes then try to slot a European debate in there.

It may be small consolation to Mr Drax, but it is not just this Committee that sometimes has to act very rapidly after being given a very short deadline by business managers. This happens to Secretaries of State as well. We have sometimes, for various reasons, had to turn round to a



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Minister and say, "Right, you are going to bring in your Bill next Tuesday. I know you thought that it was going to be a week later, but we now want this now".

Some of this is just a feature of parliamentary business, which sometimes has to be altered. That is perhaps because a particular item that we were expecting to be ready, such as a Lords amendment, was not ready, or because Lords amendments for which we had provisionally booked time did not appear, and therefore we had some time available. Yesterday, it looked at one stage as if the time taken on two statements was going to take an unreasonable proportion of an Opposition supply day. As came near to happening, there might be a need to reallocate another half-day to the Scottish National party. There is always an unavoidable element of fluidity about the management of business.

Q41 Alan Brown: Just before I come to my question, Minister, you talked earlier on about triggering article 50 and respecting the outcome of the vote. It goes without saying that I would remind the Government we should respect the vote in Scotland, which was a 62% vote to remain, and obviously the Scottish Government has made representations about the single market.

In your previous role as Minister for Europe, you said that the Government were committed to helping Parliament make full use of its power to directly influence EU initiatives. Given the discussions we have had today and your new role as Leader of the House, how are you going to make sure that is implemented?

Mr Lidington: I continue to believe it is important that the Government respect fully the requirements of Standing Orders and the Scrutiny Reserve Resolution, and that they do their utmost to help this and other Committees of the House to discharge their responsibilities. In terms of what I can personally do in my current responsibilities, as I said earlier, it is in the first place the responsibility of the Secretary of State for Exiting the European Union to try to ensure best practice across Whitehall and to deal with some of the cross-cutting concerns the Committee has about the handling of scrutiny matters.

However, I am very willing to give David my support in doing that, and, as I have indicated over a couple of items in our earlier discussions, I am willing to talk to particular Secretaries of State or Ministers where there may be particular problems. If it is helpful for the Committee, while I do not want to try to supplant the proper role that DExEU has in handling these matters, I am quite willing to try to be of assistance, perhaps informally, if the Chair wants to let me know of a particular problem and see whether there is something that can be done to unblock a particular obstacle.

Chair: I find that extremely helpful, as a matter of fact, because we are in my experience, having been on this Committee now for 32 years, in a unique situation: we have got a Leader of the House who really knows



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what he is talking about, and in addition to that was the Minister for Europe for six years. The idea that you do not know what is going on or what could be done is for the birds.

For practical purposes, I am very grateful to you for that suggestion. It may help to make the situation—in light of the referendum result, the Prime Minister's speech, and all that flows from it—much easier to handle if we have full engagement between you, as Leader of the House, the Whips Office and the Cabinet Office, not to mention individual departmental Secretaries of State. I see this as a unique opportunity, and it is really, I hope, something that you will be prepared to do as you have suggested, because it will be extremely helpful to us if we use it responsibly and helpfully.

On that note, if I may, thank you very much for coming, and we will continue our dialogue, informally as well as formally, in the future. Thank you very much.