

Foreign Affairs Committee

Oral evidence: [Implications of leaving the EU for the UK's role in the world](#), HC 431

Tuesday 7 February 2017

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Members present: Crispin Blunt (Chair); Ann Clwyd; Mike Gapes; Stephen Gethins; Mr Mark Hendrick; Daniel Kawczynski; Ian Murray; Andrew Rosindell; Nadhim Zahawi.

Questions 369-452

Witness

Jonathan Faull, former Director-General, European Commission.

Examination of witness

Witness: Jonathan Faull.

Chair: Welcome to this afternoon's session of the Foreign Affairs Committee and our continuing inquiry into the implications of leaving the European Union. We are examining Britain's future role in the world and what the implications are if there is no deal at the end of the article 50 process. Jonathan, thank you very much for coming. Will you formally introduce yourself for the record?

Jonathan Faull: Good afternoon. My name is Jonathan Faull. I was until the end of last year a director-general in the European Commission and I have now retired.

Q369 **Chair:** Thank you very much indeed for coming to give evidence. I repeat the Committee's thanks for the way you looked after us when we visited Brussels earlier in the Parliament. Obviously, it is of huge benefit to us to be able to draw on your experience. The timing of your retirement is extremely helpful for the Committee.

May I start by asking you about what lessons the British Government ought to have learned from the conduct of the renegotiation that then led into the referendum? What lessons should the new Government draw from the previous Government's attempt to renegotiate the UK's EU membership before the referendum?

Jonathan Faull: Without in any way wishing to be critical—

Chair: Feel free.



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Jonathan Faull: —I think it is largely to do what Mr Cameron's Government did, which is to engage both with the Brussels institutions and with the other 27 member states, because the negotiation with the European Union involves them all. It is a complicated process. Each of those 27 countries has its own politics, interests and concerns, and its own elections, in some cases, this year. The Brussels institutions will no doubt play their role to the full as well, so it is a complicated business. It always was: it was when we were a member without intending to leave, and it was during the negotiation leading up to the agreement in February and then the referendum. The basic techniques are still the same. It is no doubt more complicated. What is now going to happen is unprecedented.

Q370 **Chair:** That would suggest that the last Government, in terms of the balance of its effort and in terms of engaging people, got it about right. Would you say there is any mileage in the notion that there was too much focus on Germany and if they got the Chancellor of Germany in the right place, everything else would follow, or did they cover their bases as well as they reasonably could have done?

Jonathan Faull: Frankly, I do not know exactly what transpired between the British Government and the other 26. I am sure there were visits and discussions in Berlin, but also in Paris and all the other European capitals as well. I seem to remember prime ministerial visits and ministerial visits. No doubt ambassadors and senior officials were fanning out all over Europe. In Brussels, through the ambassadorial circuit and more formal meetings, there were lots and lots of bilateral and multilateral discussions. I do not know to what extent the focus was more on Germany than on others. It is not for me to comment.

Q371 **Andrew Rosindell:** It is good to see you again, Mr Faull. Thank you for coming. What lessons, if any, do you think the EU learnt from the renegotiation process? What lessons do you think they picked up from having to deal with Britain during that whole process under the previous Government?

Jonathan Faull: That it is, for the EU as a body and the Brussels-based EU institutions, a very complicated set of discussions because it is necessary to operate on the basis of agreement among the 27, and to operate on the basis that when negotiations come to a final decision by those who are empowered to make the decision—Ministers and leaders—it is likely to work. As you remember, we had a European Council summit in December and then the conclusive one in February. What did we learn from that process? Well, unsurprisingly, that it is very difficult, that one has to understand the concerns of 28 different countries—that remains true in this phase as well—and that that involves a lot of hard work and discussion.

Q372 **Andrew Rosindell:** Do you think they learned that we were serious about this? Do you feel that during the process this was more of a theatrical thing—we were trying to move the deckchairs around so that the Prime Minister of the time could come back—or do you think they understood the seriousness of this and how deeply unhappy the British



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people were with the EU?

Jonathan Faull: There was never any doubt about the seriousness of the discussion. This was never about deckchairs. It was made very clear to those of us who might not have known that this was a very serious matter. This was the first time a member state was voting on a decision to stay in or to leave the European Union. We happen to speak a language that everybody can more or less follow, so the debates, the media and what went on this House were all watched very carefully. Nobody was in any doubt, whatever the ups and downs of opinion polls, that what happened was one of the possible outcomes.

Q373 **Andrew Rosindell:** Perhaps what I am trying to ask is this: was it a question of just ticking as many boxes as possible in order to ensure that the referendum went remain, to keep us in the EU, or was it a genuine attempt by the EU and the Prime Minister of the time to get a fundamental renegotiation of our position?

Jonathan Faull: Obviously it is not for me to comment on the Prime Minister, but it was not box-ticking. We sought to respond to what the Prime Minister of the country said he and his Government wanted at that time. That was set out in a letter and the negotiations followed the basic structure of the letter he sent in November to the President of the European Council. The negotiation was on those terms. I do not hide from you at all that the other 27 member states and the Brussels institutions wanted the United Kingdom to remain a member of the European Union—I do not think anybody ever hid that—and therefore there was a very strong desire to meet the concerns expressed by the Prime Minister.

Q374 **Andrew Rosindell:** Do you think that the experience of the last renegotiation, which clearly eventually failed and was rejected by the British people, will lead to a change of approach this time around? Have any major lessons been learned, so that this time the approach will be different?

Jonathan Faull: We will have to see. We do not even know yet what the United Kingdom is going to say in its article 50 notification, so we have not yet seen any negotiations beginning. This is no longer a renegotiation leading up to a referendum. This will be negotiations within the framework set out by article 50 for a member state that has decided to leave. That is a completely different set of facts. No doubt there will be differences in the approach that people take, but it is too early to tell exactly what.

Q375 **Andrew Rosindell:** Is there still patience and good will towards the United Kingdom in the European Union or has that run out now?

Jonathan Faull: No, I think there is patience and good will, and I hope that if the negotiations are to succeed—everybody should start out on them with that hope—that good will remain in place. That is easy to say in abstract; we do not yet know exactly what the article 50 negotiations are going to cover. We are beginning to hear more and more, in speeches and in the recent White Paper, but we do not yet know the detail. People will no doubt make more formal and precise reactions in due course.



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Q376 Chair: Before I ask Mr Gethins to come in, can you give us a picture of whether there has been some recovery from the emotional hurt that the result of the referendum must have caused within the EU institutions? We saw it in British institutions here—for example, I know it was suggested to the one Foreign Office Minister who was in favour of Brexit that it might be an idea if he did not turn up to work on 24 June because of the pain there was among officials in the Department. If that was the reaction here, the reaction in the European institutions must have been, in that sense, more profound. What kind of recovery has there been on that emotional level? Do you see a difference between what is being said and some of the political position taking by, say, the leader of the EPP Group in the European Parliament and what is happening within the Commission at an official level in preparation for the negotiations?

Jonathan Faull: Civil servants get on with their job. They will have a political framework set by the politicians in which to work. One may perhaps distinguish British officials from others. As far as I know, most of the British officials working in the European institutions were particularly upset, but time has passed and we are now in a different context. Other things have happened in the world as well. We are approaching the beginning of the article 50 negotiation. We have seen the development of the British position, through the Prime Minister's and others' speeches, and now the White Paper. I no longer work in the Commission, but I can well imagine that my former colleagues there are gearing up to do the job of work that will be asked of them.

Q377 Mr Hendrick: Clearly there will be a number of British officials there, and you have described how they may feel. Traditionally, we have always been under-represented in the European institutions, and with the withdrawal I would think there will now be zero flow from Britain into those institutions. How isolated do they feel? Do they feel it has affected their future career prospects, and how secure in their longer term employment do those who are not fortunate enough to be able to retire, as you have, feel?

Jonathan Faull: I am the lucky one who retired naturally because of my age and didn't have to face that dilemma. All I can say is that there is absolutely no animus against British officials because of their nationality and passports. When I was still there, we received assurances from the President of the Commission and the vice-President in charge of human resources that we would continue to be treated like anybody else—there would be no discrimination on grounds of nationality. That is in force now. After we actually leave the European Union, some of these issues will no doubt have to be looked at again. Clearly, if we are not a member state, there will not be a British commissioner, there will not be a British judge in the Court of Justice, there will not be British Members of the Parliament and so on.

Q378 Mr Hendrick: That is my point. Certainly in the five years I did as a Member of the Parliament I was well aware, as I am sure you are, that certain positions and jobs were directed towards people from certain parts of the European Union—maybe a northern or southern state. They



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were trying to get a balance in some way with the combinations of staff that were used in different DGs, for example. Surely it will affect the composition if we haven't got British membership and Britain is no longer in that equation?

Jonathan Faull: Once we are not a member state, we cannot expect to return Members to the European Parliament or to have commissioners in Brussels or judges in Luxembourg. The way the institutions work generally is that they are nationality-blind in respect of civil servants, with due respect to a reasonable geographical balance. It has worked pretty well in my experience—I was there for 38 years—and we may be, and may have been, under-represented in numerical terms, but the influence of Britons in the European system has been considerable. That will be lost or will fade out over time, quite clearly.

Q379 **Stephen Gethins:** Thank you for coming before us again. Given your knowledge of the Commission and the task that the UK Government and particularly the officials have in front of them, what advice would you give to the UK Government about how they approach this negotiation with the Commission?

Jonathan Faull: Again, I have to say that it is not for me to advise the British Government, but—

Stephen Gethins: It is for us though.

Jonathan Faull: Indeed. I would say take the Commission seriously. It will be the lead negotiator under guidelines set by the European Council under a mandate decided by the Council of Ministers. The Commission is full of dedicated, hard-working, straight people. They are experienced negotiators. This is an unprecedented negotiation and no doubt there will be difficult moments and ups and downs, but we should all go into the negotiation with a view to being successful in it. It is in the interests of Europe, of the European Union and of the United Kingdom that this be done properly, accepting of course that the timetable is very tight. That is what the law says.

Q380 **Stephen Gethins:** Let's take for granted that they are going to take this seriously. Do you think the UK Government have the capacity at the moment to undertake this negotiation?

Jonathan Faull: It is very hard for me to judge, but yes. The British civil service has always had a reputation across Europe for high quality. It is often said that some of the key expertise and speciality may be lacking in some parts of Whitehall because things have been done in Brussels for all these years; that is possible, but people are adaptable. I would not underestimate the quality of the British civil service.

Q381 **Stephen Gethins:** We do not. You mentioned earlier that it is not for you to advise. Actually, we would suggest that if we have to advise the Government, maybe you can advise us about these things, so I would suggest that maybe it is. Who do you think the Government should be taking advice from? We are obviously going to be giving them advice, but



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they might not listen to us, so who do you think they should be speaking to? Are they speaking to you, for example?

Jonathan Faull: The Government will be advised by their own civil servants. I am sure that they will respect this House and all its Committees, and the other place and its Committees too no doubt, and they will be talking to all the people who will be affected in the public and private sectors in the UK and beyond, because this is unprecedented—I keep saying that, but it is. It is going to reshape our continent. It will have an impact in Ireland—I think everybody is aware of that—most immediately, but it will also have an impact on relations across the continent of Europe, so I am sure that the Government will be talking to people from all sorts of different walks of life as they set about implementing the referendum.

Q382 **Stephen Gethins:** Have they approached you, given your experience? You are a very experienced official in the ways the Commission works, so have you been approached by the UK Government for your advice?

Jonathan Faull: I talk to British officials on occasion, I am always available to people who want to talk to me—I am a British citizen after all—and I welcome this opportunity, but I have had no formal discussion with Ministers, no.

Q383 **Stephen Gethins:** That's a no—okay, thank you. To build on that a bit, where do you think the gaps are? If we acknowledge that this will be taken seriously and acknowledge the strength of the civil service—but obviously, there is a resource issue—are there any areas in which gaps need to be filled? Even if you do not know that, are there any areas that you would expect to be tricky?

Jonathan Faull: Thinking of areas of policy where Brussels has had extensive responsibilities for many years, which in turn means that member states have not had to devote effort and resources to them, everyone talks about trade, and that is obviously true. Trade agreements have been negotiated by my former colleagues in the Commission trade department for many years now. It is only recently that the United Kingdom has re-established a Department for International Trade. That is an obvious area, but there are others. Customs rules are largely European. Of course there is a British Customs service, but customs policy has no doubt largely been governed by the development and then the existence of the customs union and the European Union these last decades. No doubt there are other areas too—air transport agreements, air traffic control arrangements, all sorts of areas of policy where a lot work has been done through the European Union system for many years. What exactly happens to those areas and to what extent the United Kingdom has a completely autonomous set of policies in the future, or has agreements with others for the sake of some continuity—all of that will be discussed in the negotiations.

Q384 **Stephen Gethins:** Given the gaps you have identified, do you think the UK Government need to start looking at recruiting some of these people? They have not approached you, but are there others whom you think that

they ought to be approaching?

Jonathan Faull: I am past my sell-by date—

Stephen Gethins: I'm sure you are not, with all that experience.

Jonathan Faull: —but my understanding is that there is recruitment going on. The two new Departments that were created—the Department for Exiting the European Union and the Department for International Trade—have been recruiting. One reads in the newspapers that there are all sorts of discussions going on with countries around the world about trade expertise and so on. I am pretty sure it is happening, but I have no inside knowledge.

Q385 **Stephen Gethins:** What about your former colleagues in the European institutions?

Jonathan Faull: I do not know that any of them have been asked to move back. If that is the case, frankly I do not know.

Q386 **Stephen Gethins:** The Chair asked you earlier about how the people in the institutions were feeling. What do you think the is view of the UK from the member states? Have we been damaged? Is that view recovering? How high up is Brexit on the agenda for Ministers in the different member states?

Jonathan Faull: It varies from country to country. We have not seen the full scope of the issues yet, because the article 50 negotiations have not started. It is important, but of course it is not of overwhelming importance in countries where there are other major priorities. It will vary from country to country. You would imagine it to be higher up the agenda in Dublin than in some other capital cities—that is an obvious example. We will see to what extent senior officials, Prime Ministers, Presidents, Foreign Ministers and so on are able to devote a lot of time to it, because it is going to be, not all-consuming, but of considerable importance, with regular meetings and regular discussions.

I do not want to give anyone the impression that this is not taken seriously. It is a very important issue for the whole of Europe—for the whole of the European Union and for the whole of the continent—so I am sure that people will work very hard on it, both in Brussels and in the individual capitals.

Q387 **Ann Clwyd:** When I was elected to the European Parliament in 1979, there was a great deal of hostility towards the UK among our fellow Members: first, because we had taken so long to join in the first place; secondly, because we had very poor results in those first elections; and then, certainly in political parties, there were splits between those who were pro and those who were anti. I was elected as an anti, but after two years I switched to being a pro. That caused almost as much trouble as being an anti; nevertheless, I decided that that was the right thing to do. I cannot believe that everything is the sweetness and light that you depict. Perhaps the Commission itself is more measured than the European Parliament, for example, but having watched some of the



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debates in the European Parliament, Members are very hostile towards the UK. In each debate I have watched where the issue has been under discussion, there is a great deal of hostility towards the UK. I just cannot believe that everything is as pleasant as you depict.

Jonathan Faull: I started in the Commission in 1978, so we arrived at roughly the same time. I cannot say I sensed any hostility in the Commission to what must have been the second wave of British officials coming in, and I am sorry to hear that there was in the Parliament. What has happened since then is that we are not the only country where Europe is a contentious issue in national politics. I am not sure we were the only one in 1978-79, but we are certainly not any more.

A country with parties hostile to Europe and even parties split with some elements of them less favourable to Europe than others—that is not a description only of the United Kingdom today. Perhaps they have all changed somewhat. The European Union is a hotter issue in national politics than it was in many countries in the late 1970s. That is no doubt also because the European Union does many more things. Money is the European Union in most European countries now—19 of them. Migration is seen as a European issue. Issues that are very much at the heart of national politics, such as taxation, public expenditure, interest rates and border control, are seen today—rightly, to a large extent—as bound up with the European Union. That probably was not the case back in those days.

The other thing I should say for the sake of completeness is that what I do hear from time to time is the view that Britain already had a fairly favourable set of arrangements from the European Union—arrangements that were confirmed, codified and extended in the agreement secured by the former Prime Minister, but largely existed already as a matter of fact. We did not join the euro. We did not join Schengen—I am going to use “we” in various confusing ways. I think the context will help. I am talking about “we” British. We had the opt-out, opt-in arrangements that we wanted for justice and home affairs and so on.

Without going so far as talking about having cake and eating it, we had a situation that many of the others thought was accommodating of the specific demands of the British people as manifested through the British political system. That plus the agreement in February last year on the “new settlement for the United Kingdom within the European Union”, as it was called, proved not to be enough, obviously, but a lot of people hearing talk about how the European Union is monolithic point out, “Actually, it is not that monolithic.” It has always accommodated member states wanting to do different things.

Q388 **Ann Clwyd:** How high on the EU agenda is Brexit right now?

Jonathan Faull: Very. It is understood everywhere as being a very important issue in European politics. The European Commission set up a dedicated taskforce, but I imagine that in every capital city Governments are setting up or have already set up their own machinery for dealing with



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it. It is not about one or two issues; it is about hundreds of issues and the massive negotiation that is about to start on a very tight timescale.

- Q389 **Nadhim Zahawi:** Do you think the EU negotiators understand the UK's position a little better post the Prime Minister's speech and the 12 points? Is there greater clarity now in their mind?

Jonathan Faull: I cannot speak for them any more, but yes I think there is greater clarity. I am not sure how great the clarity is though. It is understood that the United Kingdom does not want to be a member of the single market but wants the best possible access to it. It is understood that the United Kingdom does not want to be a member of the customs union of the European Union but wants an agreement with it. The detail, of course, remains to be revealed, negotiated and so on. So yes, there is a little more clarity and, no doubt, a great deal more to come.

- Q390 **Nadhim Zahawi:** Earlier, you talked about different states in the 27 having different priorities. May I push you a bit more on that? One strategy is to negotiate only with the negotiators. Another strategy is to negotiate with nation states and look at where their priorities are. Can you give us some flavour as to which states you think we should prioritise in that process? The Spanish Foreign Minister came out last week saying, "We need a parallel process for a trade agreement with the UK because it is so important." Can you give us some detail? If you were still there, who would you negotiate with? How is this playing out in their economy? All politics is local.

Jonathan Faull: Every country will have its own trading relationship with the UK—historical, future prospects, the mix of services and goods. Each member state will have its own geopolitical notion of its relations with the UK—its co-operation with the UK in military, strategic and other areas. Every country has its own politics—its own domestic political calendar and its own domestic political concerns—which are affected by Brexit. So the only sensible thing to do is to talk to all the other member states and to talk in the formal negotiation process with the formal negotiator, which will be Michel Barnier in the European Commission. I do not think that it is a choice between two conflicting strategies.

The European Union system, which the British civil service and British politicians are very familiar with, is a permanent negotiation—a mixture of bilateral, multilateral and institutional. That is how the place works and it will, in principle, be no different in this new, unprecedented negotiation. The magnitude is considerably different, but the basic techniques are well known.

- Q391 **Nadhim Zahawi:** I am going to push you one more time, because I asked you to prioritise. Which states would you prioritise as the top five or 10 that we should focus on in terms—

Jonathan Faull: With respect, it would be a mistake to prioritise in the sense of neglecting those that you do not prioritise—

Nadhim Zahawi: No, there is no neglect.



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Jonathan Faull: That is what prioritising means. You have got to do all of them.

Q392 **Nadhim Zahawi:** Of course you do, but if you were to start, which would you start with? Where is the low-hanging fruit?

Jonathan Faull: Sorry, but low-hanging fruit depends on what the fruit that you want to pick is. We do not know yet the detail of what the article 50 negotiations are going to be about. It is quite obvious—I have already cited Ireland several times—that Ireland has a set of very particular concerns because of its geography, its history, the north, the common travel area and so on. That, of course, is not the same in Slovakia, to take another example. You have to treat the Slovaks differently from the way you treat the Irish, because the concerns will be different. You don't treat France exactly the same way as you treat Germany. But you have to do them all, and you have to do them all with the same intensity, courtesy, understanding of their interests and so on.

Q393 **Nadhim Zahawi:** But there must be ones where the trading relationship is such a priority—take the issues around Ireland, or a particular region, such as the automotive manufacturing region in Germany.

Jonathan Faull: All that is very important, but again, with respect, you cannot think of it only in trade terms—you could make a league table, of course. You could look at services and break it down by type of service—financial or non-financial. But you must not neglect countries that have political interests that may not be easily translated into trading statistics.

Q394 **Nadhim Zahawi:** That is very useful, because it brings me on to a supplementary question about political interests. Do you believe that it is a priority for the EU that the UK ends up worse off than it is today? The EU is not a single country, so which countries within it would push for a political price, or a combination of prices? Obviously everything is linked to the economy in that sense, but which countries would say that there must be a price to pay for exiting the organisation, otherwise the message to others would be, "Well, you can also leave and do well"?

Jonathan Faull: I am not sure better or worse is the right way to think about it. It will be a very different relationship—no longer in the single market, no longer in the customs union—so the way in which goods, services, people and capital move around and operate in Europe, and the way investment takes place in Europe, will necessarily be different. The relationships with the rest of the world will be different. We do not know to what extent, because we have not had the negotiation yet. I do not hear people talking about punishment, but it will certainly be a very different relationship.

Q395 **Nadhim Zahawi:** So there is no evidence that there is a political move that is about demonstrating that there is a heavy price to pay for exiting.

Jonathan Faull: No, particularly since we had the clarification that the United Kingdom does not want to be in the single market or the customs union. That has clarified matters quite considerably, because it is no longer a question of having some bits of the single market and not others.



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Having cake and eating it doesn't arise there. To that extent, I think the clarification has been considerable. But I don't hear people talking about punishment; it is just going to be a very different relationship—far less integrated and a far less intense set of relationships than those that prevail among the other member states. That is obviously going to happen.

Q396 Mr Hendrick: Clearly you did not wish to name countries and say, "Such-and-such a country is a priority," because as you say, there are very different issues, whether they are to do with the automotive industry or customs problems in terms of administering the border between Northern Ireland and the Republic of Ireland, but you illustrated the problems that there will be when the negotiations are taking place. You seemed to give a very measured, professional assessment of what I am sure is the way the Commission officials will look at it, but when it comes to the European Parliament or Ministers, there is clearly a price to be extracted for us leaving.

For example, if the benefits of access to the single market were almost as good as those from being a member of the single market, if we were not subject to the jurisdiction of the European Court of Justice and if all the Government's what I regard as fairly ambitious targets were looked at—clearly, anything that seemed to benefit Britain in a way that previously only full membership benefited Britain would be ruled out. Therefore, while you would not describe it as punishment, there must be Ministers, Prime Ministers and Members of the European Parliament who feel that there has to be a price extracted purely and simply for fairness—nothing else—and that price may be too much for this country to pay. I think we have been living in a dream world about what is on offer when it comes to our relationship with Europe following the very nasty and bitter campaign that has gone on in this country.

Jonathan Faull: It is going to be very different. We do not know how much, because we have not seen the negotiation, but what we know already of the British Government's position shows that it is going to be a very different relationship. The details of all that remain to be worked out. One should not underestimate—I think you implied this, if I may say so—the degree of emotion and passion in politics. You are all politicians, and you have emotions and passions. You probably would not be here without them. I am a cool, calm, dispassionate civil servant—no emotions at all. We, you, the British, underestimate at our peril—always have, it seems to me—the commitment of the European Governments to the European Union as a political project and not simply as an economic arrangement. That commitment has been shown in many different ways. In this negotiation, I expect one of the paramount concerns of the Commission, Michel Barnier, the Brussels institutions and the member states more widely will be to maintain the unity and integrity of the European Union and its political and legal systems.

Trade in cars is very important. Customs arrangements are very important—I was about to say who knows how you rank these things—but what is also very important for every other member state, for different



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reasons that derive from the history of those countries, is the membership of the European Union and the integrity of its legal arrangements and its treaties and so on. That must not be ignored or underestimated.

Q397 Daniel Kawczynski: In terms of the EU negotiators who will be negotiating on behalf of Brussels, how hard are they going to work to ensure there is an agreement of some kind in place with the United Kingdom within the framework outlined?

Jonathan Faull: Extremely hard. Michel Barnier, as you know, a former Minister and former Commissioner, has been put in charge of this. He has a dedicated team working on it—solely on it—and he will draw on people from across the European civil service and the Council of Ministers as well. They will work day and night. This is of the utmost importance to the future of our continent. I can leave you in absolutely no doubt at all that every effort will be made and put into this negotiation.

Q398 Daniel Kawczynski: So they will strain every sinew to ensure there is an agreement in place. You outlined, interestingly, that there was a difference of approach and different priorities among the countries. You have referred to Ireland on a number of occasions, but, in terms of the EU negotiators themselves, just as a matter of interest, how will they be appointed from the different countries? There could be a difference of approach, depending on what nationality they have, in how they negotiate.

Jonathan Faull: On the way it will work, my understanding is as follows: the UK will make the article 50 notification in March. The European Council, so the Prime Ministers and Presidents, will meet—I don't know when exactly—and will issue guidelines for the negotiation. Then the Commission will seek and obtain what is loosely called a mandate: a set of negotiating directives decided on by the Council of Ministers. So far, we are talking about Prime Ministers, Presidents and Ministers. Then the negotiations will get under way. There will be lots and lots of meetings, no doubt, and regular reporting to capitals.

I imagine—this is how it was done when I was doing the negotiations before the referendum—it will be done through a combination of the ambassadors, or the permanent representatives, of each country in Brussels and the so-called sherpas, who are each Prime Minister's diplomatic adviser on European affairs. You would typically have those two people from each member state—that is already 28 times 2, so 56—regularly attending meetings and hearing reports from the negotiators about how things are going and how they are complying with the negotiating directives they have been given.

Q399 Daniel Kawczynski: You referred to the sherpas, who are obviously very important in this scenario. Forgive my naivety, but the United Kingdom's ability to influence that is negligible, isn't it? We just have to negotiate with the people they select. We don't have any influence over that process.



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Jonathan Faull: Certainly the British sherpa, the British ambassador and the ambassadors in each of the countries concerned will be doing their jobs, trying to follow what is going on, tracking positions and, no doubt, bringing to bear whatever influence they can. But of course, the negotiations will be between the European Union minus the United Kingdom on the one hand and the United Kingdom on the other hand, so there will be all sorts of reporting and discussions that will not include British representatives, because the negotiation is with the United Kingdom.

Q400 **Daniel Kawczynski:** You are giving us a positive outlining of how hard they are going to work to secure a deal, but in the worst-case scenario, if there wasn't a deal—if that was impossible—how worried would the Commission be? In fact, is there a worse scenario than that?

Jonathan Faull: Well, that's a pretty bad scenario. We have never been there before, but it can't be ruled out. Everybody has to contemplate all possible outcomes, as we did before the referendum. Everybody should go into this negotiation with the objective of succeeding, but you don't always succeed. We know what happens legally if there is no agreement within two years and no unanimous agreement to prolong that two-year period: the United Kingdom ceases to be a member state and becomes a foreign country like any other foreign country vis-à-vis the European Union, with no agreements, unless agreements are very quickly put in place to deal with specific matters. It will be just another foreign country. That has all sorts of implications for the politics and the economies of Europe, which have to be thought about.

Q401 **Daniel Kawczynski:** In terms of the EU itself and thinking about for whom the scenario of no deal is worse, is it worse for the European Union or for the United Kingdom? What is your experience telling you?

Jonathan Faull: My personal view is that it would be a bad outcome for everybody. The European Union countries would continue to trade with each other and deal with each other in the framework of the European Union, as they have before. All relationships with the UK would be dealt with under a completely different legal regime. It is not for me to say who would suffer most, but I think there would be considerable disquiet.

Q402 **Daniel Kawczynski:** You said this is unprecedented. Obviously, no country has attempted this. In you 38 years' experience of being there, has anything akin to this taken place? Is there anything that springs to mind that could be used as a prototype?

Jonathan Faull: Frankly, no. The only things that are remotely akin to it—you will see very quickly that they are extremely different—are Greenland's leaving the European Union when it had a new relationship with the kingdom of Denmark, and, if you want to go way back in time, when the original EEC was set up France included Algeria, which became independent. Neither of those had anything like the likely impact that this will have. Looking at it the other way round, the unification of Germany was a massive undertaking with considerable political and economic consequences—for Germany, of course, but for the rest of Europe as



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well—and a lot of time was devoted to getting the law and the politics lined up for that exercise: it included NATO and lots of other things. But it is not really a direct parallel. A member state leaving the European Union after decades of membership; obviously that has never happened.

- Q403 **Daniel Kawczynski:** There are huge differences, obviously, and it would be wrong to equate the United Kingdom leaving with Greenland leaving, but is there a prototype there? I have not studied Greenland leaving, I admit. It is not a prototype that could be followed?

Jonathan Faull: No, not really.

- Q404 **Chair:** To follow up Mr Kawczynski's point about the relative and absolute impact of no deal, this inquiry is focused on drawing attention and making sense of what the impact of no deal would be in order to enable the wider community to have some sense of what they would need to prepare for in the event of no deal. We accept that it would damage both sides if there were no deal; would I be right in characterising it that in absolute terms, the impact on the 27 would be greater than on the United Kingdom, given the balance of trade in goods and services and the fact that the United Kingdom is a significant net contributor to the budget? Would those things say that the impact on the 27 would be greater than on the United Kingdom but the relative impact on the UK, given the amount of trade that there is with the United Kingdom would be greater than on the 27? Is that a characterisation that you would agree with?

Jonathan Faull: It is very hard to make that sort of analysis in such macro terms. It will vary very much from country to country. Obviously, given the amount of trade, investment and movement of people between Ireland and the UK, the impact on Ireland would be very considerable if we go off the cliff, as it is always called, without legal arrangements being in place on the following day. If you are in Slovenia and most of your trade is with your immediate neighbours, obviously it is a very different situation. For most European countries, most other member states, their trade with member states other than the UK is more important than their trade with the UK and trade with the other member states, of course, would carry on unaffected. I do not want to speculate about who will suffer more. I understand the characterisation you have made. I think it is simply too early to tell and one has to be more granular in looking at the impact on different countries across Europe as well.

- Q405 **Chair:** What comfort should we take from the fact that, for Ireland, no deal would be a relative disaster, given the implications? How strong a card has the Irish Taoiseach, facing his 26 colleagues and the Commission, in saying "You have got to secure a deal here because our interests are so engaged in this, to a much greater extent even than those of the United Kingdom"?

Jonathan Faull: I think there is huge sympathy for the predicament of Ireland. There is a great deal of admiration for what Ireland has done in recent years. It is a member of the eurozone and a good, loyal member state and people will understand the impact of Brexit on that country, but



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it is only one of 27 other countries. Yes, of course the Taoiseach will be given a sympathetic hearing by his colleagues in the circumstances you have described, but there will be many other factors that they will be taking into consideration as well.

Q406 **Mike Gapes:** How long did it take to negotiate the deal with Greenland?

Jonathan Faull: I cannot remember.

Q407 **Mike Gapes:** It was several years.

Jonathan Faull: Several years.

Q408 **Mike Gapes:** I have seen seven. I just want to check whether that is right or not.

Jonathan Faull: I will come back to you on that. It was certainly a number of years and the major issue was fish. I was not involved personally and I do not have the facts at my fingertips, but it took quite a long time.

Q409 **Mike Gapes:** Considerably longer than two years.

Jonathan Faull: I tend to think it was longer than two years.

Q410 **Mike Gapes:** In terms of the process, we have got a Commission chief negotiator, Michel Barnier; we have a Council of Ministers negotiator, a Belgian diplomat, Didier Seeuws; and we have a Belgian politician from the European Parliament, Guy Verhofstadt. Who is the most important of those three in this negotiating process? Is it correct to say that Michel Barnier is in the lead role at this moment, but that as time goes on national Parliaments and the European Parliament, and therefore their negotiators, will become more important?

Jonathan Faull: Yes. Broadly, different institutions come to the fore at different times in the process. My guess is that the day-to-day negotiations will be handled by Michel Barnier and his Commission team.

Q411 **Mike Gapes:** Because they have more staff and more resources.

Jonathan Faull: It is also the Commission's role. The treaty provisions that govern the negotiations—article 50 and by reference article 218 of the other treaty, confusingly—give the Commission the main institutional role in the negotiation. That has been confirmed already politically. But that role is under a set of negotiating directives that are handed down by the Council of Ministers and guidelines that will have been set by the leaders themselves in the European Council at the beginning of the process. At the beginning of the process you have this framework created at the highest level; then you have the detailed negotiations; then at the end of it you need the consent of the European Parliament and whatever needs to be done here, of course. That means that at different times, different institutions play different roles, but it also means that unless you want a mess—I don't think anybody does—these people all have to work together throughout. What I would expect is that Michel Barnier, Didier Seeuws and



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Guy Verhofstadt will stay in close contact with each other and will make sure that nobody is surprised by what is happening.

Q412 **Mike Gapes:** Michel Barnier, as well as having been a French Europe Minister—

Jonathan Faull: And Foreign Minister.

Q413 **Mike Gapes:** Foreign Minister. He was also in the Commission and you worked with him from 2010 to 2014 on the internal market and financial services. What is he like as a negotiator?

Jonathan Faull: He is thorough, fair-minded and tough. He works very hard at it. He is fully dedicated to whatever he is doing. He is a true politician in the sense that he has a good feeling for the way a debate is going. He understands the issues. He is pretty familiar with the concerns, or at least some of the concerns of the UK, because he was the Financial Services Commissioner in the aftermath of the financial crisis, so he spent a lot of time here. He has lots of contacts with British Ministers and with the City as well. Plus, in his single market work, which at the time was very much a priority of the British Government, he also worked very closely with people here. So he knows the UK. He speaks pretty good English and will be very fair-minded. He is a true European. He believes in the importance of the European Union. Therefore, he will be sensitive to what I described earlier: the need to keep the European Union without the UK united and dedicated to its objectives. By the way, he is also particularly interested—he has done a lot of work on this recently—in military and defence issues. This may be the French Gaullist side of his politics coming through. And he is a great believer in the importance of co-operation with the United Kingdom in that field as well.

Q414 **Mike Gapes:** Can I deal with the timetable? Assuming that article 50 is triggered in the next month or around about then, Michel Barnier has said that the negotiations would have to conclude by October 2018 if there is to be a timetable that allows for the process of the national Parliaments and the European Parliaments agreeing to the terms. That means that we will have a very limited process. Given the uncertainties of the German election, with potentially a victory for Martin Schulz, and the French election, which might see Mr Macron win—I do not want you to speculate on that; I will do that and that is sufficient—is it realistic to think that we can get an agreement in one year from autumn this year to October 2018?

Jonathan Faull: It depends on the scope of the agreement and it depends on the level of ambition in the negotiations. There are several things that need to be sorted out. There are the terms of the divorce, to use the obvious metaphor and the withdrawal itself, and then there is the question of the long-term future relationship—close, I think everybody hopes—between the United Kingdom, once it has left, and the European Union. To do all of that in a year, 18 months or even the full two years is a very ambitious undertaking indeed.



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Leaving aside Greenland, we all know that fully comprehensive trade agreements covering all sectors of the economy, investment and so on take a long time. In the European Union they require in most cases approval by national—and in some countries regional—Parliaments. We have had the recent experience of the agreement with Canada, which has taken a very long time.

Q415 **Mike Gapes:** Can you remind us how long the Canadian agreement took?

Jonathan Faull: Took? It is still not yet fully in force and it started at least seven years ago. I do not have the exact dates to hand, but it has taken a very long time. I was responsible for a small part of it—the financial services chapter—four or five years ago. These things can take a very long time indeed, and Canada is not the most controversial, difficult country that we have had to deal with.

Q416 **Mike Gapes:** So in the situation we face, the timetable might not be met. We are then really facing the prospect of going off the cliff, aren't we?

Jonathan Faull: It depends what is done within the timetable. We go off the cliff if there is failure. If there is an agreement on the divorce arrangements and complete agreement on the future relationship, of course there is no cliff—there is a fork in the road, but there is no cliff. The treaty itself talks about the framework of principles of the future relationship. There are various other ways in which it can be done, which brings with it the problem of what you do between the end of the article 50 period and the end of the final comprehensive negotiations for the long-term relationship, which would come at a later stage. That is why people talk about transition or implementation phases.

Q417 **Mike Gapes:** Does that mean in practice, even if not legally, we would still be in the European Union for all intents and purposes almost as much as we are now for many years after we have actually left?

Jonathan Faull: No. I don't think that is the case. Once we leave, we leave. Whatever arrangements are put in place will be a matter for negotiation between the EU and the UK. I don't want to speculate about it because we just don't know.

Q418 **Mike Gapes:** But there are a whole number of institutions that are linked in to our membership—even institutions that we joined separately such as Euratom, for example. Will there have to be a transitional arrangement that lasts for several years to cope with all those different organisations?

Jonathan Faull: I do not know but you point to a set of very difficult issues, there is no doubt about. There are all sorts of relationships in the very closely intertwined set of legal and political arrangements we have today, which have to be either abandoned when we leave or replaced by something else as a result of negotiation.

Q419 **Mike Gapes:** Going back to what was said about the influence and importance of particular countries, how significant a role is Spain likely to play, given the Popular party Government's attitude towards Gibraltar



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and the recurrent difficulties that arise? Gibraltar is also part of the EU and votes in the European Parliament elections. It voted massively to remain within the EU, and Spain does not accept that Gibraltar is British.

Jonathan Faull: That will no doubt be one of the issues present in the mind of the Spanish Government when it determines its position. As I said earlier, other member states will have other considerations. There is perhaps nothing quite like Gibraltar, but other member states will have other political, geographical, commercial, historical relationships with the UK. The common law countries, Cyprus and Malta, our relationships with the countries in northern and eastern Europe, our relationships with France and Germany—all are different and have different histories behind them, but every member state will have a democratic process in its Governments and Parliaments when it decides what line it is going to take when it turns up to meetings in Brussels.

Q420 **Mike Gapes:** And potentially could block an agreement.

Jonathan Faull: You are saying that.

Q421 **Mike Gapes:** I'm not saying Spain necessarily.

Jonathan Faull: I am saying that every country will have its particular concerns present in mind when it comes to the negotiating table. I hope that everybody starts out saying, "This is of huge importance for Europe as a whole and we go into this meaning to find a satisfactory agreement," but it is going to be difficult; there is no doubt about it.

Q422 **Mr Hendrick:** If we cast our minds back to what was being called the European constitution and then morphed into a constitutional treaty, you may recall that the debate in this country was around, "This is turning into a United States of Europe and we don't want to be part of that." This get-out clause of article 50 materialised to give the impression that you were not being dragged into something that you did not really want to be in, and if you wanted to you could get out at some stage in future. That was used very much by many of us, such as myself, who were pro-European and obviously wanted to see the Lisbon treaty go through. After a lot of debate and many votes in this place, it did get through.

If I were a conspiracy theorist, I might say that, given the fact that there is a two-year time span and, as you said, negotiations on trade deals tend to take many years—not just two—would I be correct in saying that maybe the article was devised with the intention that either it should never be used, or if it was used it would cause such a mess that it would deter any country from wanting to leave the European Union in the first place?

Jonathan Faull: It clearly has not had that effect, has it? I do not know what was in the minds of the people who devised it. I have read speculation about that, but the fact of the matter is that it is the law—it is there, and we have to live with it. It is going to be used and it has to be applied. It is the mechanism laid down for withdrawing from the European Union.



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I do not think that it is the only thing that can be pointed to in order to make the argument that it was never the case that the European Union was lurching towards something like the United States of America. Perhaps the constitutional treaty should not have been called a constitutional treaty. As everybody points out, golf clubs have constitutions and so do all sorts of people, but that may have alarmed people. The fact of the matter is that even the famous expression “ever closer union” was for many years completely compatible and consistent with different member states doing different things. That was said again by the European Council in 2014 and was recorded in the so-called international law agreement reached by the European Council last February, a year ago now.

It was not only article 50 that gave some reassurance to people who were concerned about the overall direction of the European Union. There were already many other arrangements of that sort in place.

Q423 Mr Hendrick: That was the bait in the Lisbon treaty.

Jonathan Faull: Perhaps. Anyway, it is there. No doubt it is a difficult provision to apply because of the timetable that is set in stone in it, but we are where we are and we will have to live with it.

Q424 Ann Clwyd: Since 1979, the European Parliament has continually worked to increase its powers, as you would expect.

Jonathan Faull: That is what Parliaments do.

Ann Clwyd: Yes, exactly—every elected Parliament does that. But do you think it might use Brexit as an opportunity to flex its muscles even further?

Jonathan Faull: Frankly, I have no idea. I have never worked in the Parliament, let alone been a Member of it as you have. This process is of such grave importance that everybody, I am sure, will behave with the utmost responsibility in the way the negotiations are handled. Of course the European Parliament has an important role; it is the elected body of the Union and it is perfectly proper that it should agree to an international agreement of this sort. What happens by the time we get to that—what the agreement looks like—is a process that we are about to embark on but that we know very little about at the moment.

Q425 Ann Clwyd: Is it possible that it might reject the final agreement?

Jonathan Faull: It has to give consent. That is what the law says.

Q426 Ann Clwyd: So what do you think is the best way to get the UK engaging more positively with the European Parliament? For example, would you think it a good idea for the Prime Minister to address the European Parliament and answer some of the concerns?

Jonathan Faull: It is not for me to say. It is for the President of the European Parliament to invite and it is for the person invited to consider the invitation. I read yesterday the testimony that Sir Ivan Rogers gave to another Committee of this House, in which he described the efforts made



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by himself and his colleagues in the UK permanent representation to engage constantly with the European Parliament. With respect, I think it is also a matter for the Members who are members of British political parties to talk to their colleagues and to explain what we are doing and why. Many British political parties are represented, of course, in the European Parliament. You know how the place works with the political families; it is sometimes complicated, but that is the way it is, and that is the way it has to be done. But the European Parliament is neglected at the peril of those who neglect it. It would be a big mistake to do that; but it is not a mistake that I see being made. British Ministers, in the areas that I have worked in, have made a considerable effort to work with the European Parliament on legislative issues; and British diplomats and British civil servants spend a lot of time talking to the European Parliament as well.

Ann Clwyd: I don't remember that.

Jonathan Faull: Maybe it's improved.

Ann Clwyd: I know it is a long time ago—but I don't remember that.

Q427 **Ian Murray:** Mr Faull, a lot of these negotiations are around trade, EU nationals and the outlook for the economy; but one of the key issues will be security and defence and, indeed, wider foreign policy. How high up the agenda do you think that should be in terms of a negotiating position in the EU?

Jonathan Faull: I think it will be quite high, if only because, as I said, Michel Barnier is particularly interested in those areas, and I guess the Prime Minister is too—given her past as Home Secretary, her European experience was very much in that area. The European Union, of course, does not have so integrated a system of laws in those areas as it does in trade and customs, which we were talking about earlier; but in the last decade or so—some years ago, I worked in the area of what is called in Brussels justice and home affairs—there have been considerable developments in devising European solutions to what are challenges facing all Europeans, both in the security field and, with the advent of the European External Action Service, in the foreign affairs field as well. So there is a lot that is done with—through—the European systems today; and the UK has been a very prominent participant in those processes.

Q428 **Ian Murray:** You are right to talk about the UK's prominence, which means the negotiating stance in the UK is pretty powerful; but how do you see the UK being dealt with post-Brexit in this field, given its relative importance to the European Union? Will they just be treated as any non-member state, or will they have privileged access to some of the EU institutions?

Jonathan Faull: We will have to look at the detail as it emerges, but the UK is a European country. It faces most of the same challenges in this area—the same challenges, I would say—as other European countries. We—the UK—have a land border with Ireland. We have a tunnel, through which I came this morning—I hope nobody is suggesting that it be closed, by the way—linking us to the continent.

Daniel Kawczynski: Good point.

Ian Murray: Don't give him ideas.

Jonathan Faull: I remember the days when it was quite an expedition.

There is a very considerable shared interest in success in this area, as I think there is across the rest of the piece as well; but this will all have to be negotiated.

Q429 **Ian Murray:** Given that there is a high chance of success because of the close linkages with the UK and the UK's prominence, would you advise the Government on this issue to say "This is far too important for us to be negotiating on this. Set out our stall. Let's get this sorted out and parked"? Or should they use it as a bargaining chip, as perhaps the Prime Minister has suggested?

Jonathan Faull: Again, it is not for me to advise. I think that a matter of life or death, which it can be—and certainly a matter of crime and law enforcement—are matters of such overwhelming importance to the public in all our countries that I hope very much that it will be treated on its merits as an area where European co-operation is very necessary.

Q430 **Ian Murray:** So you would advise against the Government—in the words we have been using in this Committee—jumping off the cliff with their defence and security capabilities under their arm?

Jonathan Faull: If by jumping off the cliff you mean breaking off all co-operation arrangements currently conducted through the European Union in the home affairs areas, that would be an awful mistake from which we would all suffer.

Q431 **Ian Murray:** Could that threaten the UK's security if it decided to use it as a bargaining chip and set itself aside.

Jonathan Faull: Let me give an example: if the European arrest warrant were suddenly suspended in relations between the UK and the other member states, that would be a very serious blow to the fight against crime and terrorism, yes. It has proved its worth many times.

Q432 **Mr Hendrick:** Before, we touched on the impact of the referendum on British officials working out there. Do you feel that not only are their futures or possible careers affected by this, but also the influence they may have in their current roles might wane to the detriment of the UK?

Jonathan Faull: There is no sign of that happening yet, but of course we have not even begun the process. As our leaving the European Union comes closer, the date of actual withdrawal, British officials will continue to be employed by the European Union with all their skills, expertise and intelligence included, but on the relationship with the UK, how a particular directive will be implemented in Britain, is this a matter for devolved Administrations or Westminster and so on—all of those issues will simply cease to be of interest, because the UK will not be a member state. The detailed knowledge of the country will no longer be as useful as it was



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when we were a member state. As people see that date coming, it is bound to have some impact.

Let me stress that Jean-Claude Junker, the President of the Commission, has been very clear that Commission officials are Commission officials. They have been loyal to the institution and the institution will be loyal to them. I expect them, my former colleagues, to operate as they have done until now, and certainly not to be discriminated against in any way.

Q433 Mr Hendrick: Is there any evidence that they are trying to make their way back to the UK?

Jonathan Faull: Not that I am aware of.

Q434 Mr Hendrick: Is there a possibility that directives will emerge—becoming laws when we eventually pass what we are calling the great repeal Bill, which will be coming over the next two years—that may not be in Britain's interest as a result of our indicating that we wish to leave?

Jonathan Faull: Today we are part of the legislative process at all levels. There are British Ministers in the Council, British Members in the Parliament, a British commissioner and British officials throughout. Frankly, it is, and has been for many years, a mistake to think that we are somehow unique in most of our positions. Where the United Kingdom has flourished in the EU is where it has built coalitions of like-minded countries. I have rarely seen a UK ambassador isolated in the Committee of Permanent Representatives, or British Members of the European Parliament isolated in the Parliament, let alone among my colleagues in the Commission. We have friends and allies, depending on the subject in different places, for most of our positions really all the time.

Q435 Mr Hendrick: I would agree with that. My experience was that unlike this place it is very much based on consensus and getting experiences and compromises. It is not adversarial in nature.

Finally, on the procedure, Mr Guy Verhofstadt will be conducting the discussions on behalf of the Parliament. I hear stories that there will be regular reports back to the European Parliament. The attitude to date of this Government is that Parliament is likely to get some say in the final deal, if there is a deal that is a take it or leave it thing. The European Parliament seems to be getting regular reports. Members of this House would like to be kept up to date more often. How often will the European Parliament get reports and how much say do you think they will have in the outcome?

Jonathan Faull: I don't know what arrangements, if any, have been put in place for that reporting. I have certainly heard and read statements by Michel Barnier about how he intends to conduct the work. He will be in regular contact with the European Parliament, but I cannot tell you how many times a month or week that will be. Since the European Parliament has to give its consent at the end of the process, it makes very good sense to ensure that they are kept abreast of developments as they occur. That does not mean being present in every negotiation and every meeting, but it certainly means a regular reporting system.

Q436 Mr Hendrick: Do you think the Parliament will have sessions where there are votes taken as reports arrive?

Jonathan Faull: I don't know. That is a matter for the Parliament. As far as I know, they have not yet made any decision on that.

Q437 Mike Gapes: I have two questions. Following on from what Mr Hendrick has just said, if, as it appears from something that has been said in the Chamber this afternoon, the British Government are prepared to give some kind of consultation to Parliament before they put their final proposal to the European Parliament, how much time does the European Parliament really need to come to a decision?

Jonathan Faull: It can act very quickly, but unlike this Parliament—no doubt this Parliament has its complications, too—don't forget that it has 24 languages. It can be slower to react because of the need to get documents to people in a language they understand, but all that can be done very quickly, if the political will is there. Michel Barnier rightly has said that the topping and tailing of the process of the negotiation—the setting of the parameters at the beginning by the European Council and the Council and the final consent from the Parliament and the conclusion by the Council of the agreement—will take some time. The politics may take some time. People need to be persuaded. It needs to be explained to people.

In our Parliament—the European Parliament; now I am doing “we” over there—you have got to factor in the different structures and languages. It can take a little more time. How you dovetail your processes with what is going on in Strasbourg—I imagine that is what you are thinking about—I don't know. We will have to see.

Q438 Mike Gapes: May I just clarify that there will be two agreements, not just one? There is the article 218 process as well as the article 50 process, in a sense. Is the European Parliament going to be making a decision on them after all the 27 national Parliaments and presumably the regional Parliaments in Belgium and so on have approved, or will it do so before they have all approved?

Jonathan Faull: I am looking for the text of article 50. I have got it here somewhere—oh no, I won't bother. No, it is not quite like that. Article 50 refers to article 218(3) in order to borrow its procedure. Article 218(3) is sort of read into article 50. Let's assume for the sake of this discussion that there is one agreement and it is the article 50 agreement. The negotiators, Mr Barnier and Mr Davis, have said, “Okay. We agree that this document is what we want to do.” Under the European Council guidelines, under the Council of Ministers' mandate from the Brussels side, and under whatever arrangements you have for your negotiators here, Davis and Barnier will say at the end of, no doubt, a very long night, “We can shake hands. We have concluded our agreement.” Then it is ready for conclusion by the two parties.

Q439 Chair: But that agreement would be the divorce terms, the transition and the future relationship, wouldn't it?

Jonathan Faull: It is whatever has been agreed.

Q440 **Chair:** But if it's those, it's got to be under article 218, and then the Walloons get their say.

Jonathan Faull: If it includes the long-term trade agreement, which includes areas not under exclusive EU jurisdiction, then it goes to the Walloon Parliament in Namur, for example, unless the law is clarified. There is a Court of Justice opinion pending on the EU agreement with Singapore, which might clarify the law in some respects.

Q441 **Mike Gapes:** I am trying to think through this. At what point does the European Parliament actually make a decision? Does it do so before or after the Walloon Parliament has decided that it is not going to accept it—hypothetically, given that we are talking about Belgians and Mr Verhofstadt?

Jonathan Faull: Except he is Flemish, not Walloon. It sounds almost the same. The Flemish Parliament no doubt has the same powers under the Belgian constitution as the Walloon one.

Let's stick with the pure article 50. Whatever the article 50 agreement says, article 50 provides that it is negotiated. Let's assume that the negotiators agree. It is then concluded by the Council of Ministers by qualified majority with the consent of the European Parliament, so it has to get the consent of the European Parliament first. So Davis and Barnier sign off as negotiators.

Q442 **Mike Gapes:** That is qualified majority?

Jonathan Faull: Yes.

Mr Hendrick: It's not unanimity, then?

Q443 **Mike Gapes:** Is there qualified majority on all aspects of the agreement, or on only some of them? I thought there were some things that had to be agreed unanimously.

Jonathan Faull: I am going to find the text, because I want to be as precise as I can. Is this allowed?

Chair: Yes, of course.

Jonathan Faull: Some places would take away your computer, which is very awkward. I made a point of copying these things, because I thought this might happen.

Q444 **Chair:** I don't know whether it is easier if you try to knock over my understanding, which is from the evidence that the Brexit Committee took and its report. Once you get beyond the divorce terms under article 50, you then enter the terms of article 218, and it becomes a requirement of unanimity. The point we were putting to witnesses this morning was that the divorce terms are likely to be unattractive to the United Kingdom, in terms of the liability for picking up institutions, while the forward terms about the future agreement with the EU are likely to be quite attractive to the United Kingdom. So if we were offered only one and not the other, we would want to take it as a package. We would be



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prepared to pay the divorce terms if we have got the settlement deal and the transition.

Jonathan Faull: That is on the assumption that all that is done within the two years.

Q445 **Chair:** Yes. We are looking at no deal because the construction of this and the way the Commission is approaching it—it is saying, “We are doing the divorce terms first, and then we will get on to the free trade agreement and the transition to it”—is setting the thing up to fail, because the British are going to find the divorce terms extremely difficult if they are invited to sign up to them in the absence of the future relationship arrangements.

Jonathan Faull: I now have the text in front of me. Article 50, once the UK triggers it, provides for an agreement setting out the arrangements for withdrawal, taking account of the framework for its future relationship with the European Union. We have the terms of withdrawal—the divorce—and we have a framework for future relations. That assumes that those future relations can be reduced to a framework but may take longer than the two-year period. That is why the Commission has indicated what you have said. That agreement for withdrawal, taking account of the framework, is concluded by a qualified majority of the Council of Ministers after obtaining the consent of the Parliament. So before the Ministers agree, which they can do by qualified majority, they have to have the consent of the Parliament. If they don’t have the consent, they can’t conclude it. That is the Parliament’s power.

Q446 **Mike Gapes:** So the Parliament process is before—

Jonathan Faull: Yes. It is before the Council of Ministers.

Q447 **Mike Gapes:** So potentially, if Parliament could agree a package and then there might be one or more member states—

Jonathan Faull: It will need more than one, but a blocking minority could prevent a qualified majority being obtained, which would mean that the agreement would not be concluded. Yes, that is perfectly possible. It is equally possible that this country, in accordance with its constitutional requirements, would not either.

Q448 **Mike Gapes:** If a state had not completed the process—it hadn’t actually rejected it, but for internal reasons, let’s say there was a political crisis, an election, they hadn’t formed a Government—how would that affect this decision?

Jonathan Faull: This decision is solely in the hands of the Council of Ministers. There is no requirement for national parliamentary ratification of an agreement on the terms of withdrawal and a framework for the future relations. The fully comprehensive agreement on the detail of those future relations is a separate matter, which may extend to areas that are not governed by the exclusive jurisdiction of the EU and therefore fall under national jurisdiction. That would trigger the need for national approval, which in some member states would be parliamentary and in a further



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subset of member states could be sub-national Parliaments. Some countries can trigger referendums. Nobody has said that they would on this issue, but member states decide what constitutional arrangements they want to have to approve treaties.

Q449 **Mr Hendrick:** It seems to me that what you are saying is that, even if member states not in favour of the settlement cannot get a blocking minority to scupper a deal, because of the provisions that may require national consents, individual member states might actually be able to cause the UK a lot of problems in terms of its implementation at a later stage.

Jonathan Faull: That is possible. Again, I have no reason to believe that anybody is contemplating that, but the fully comprehensive trade agreement to which the Prime Minister referred in her Lancaster House speech could well include issues that would require approval by each of the member states. But the article 50 agreement itself has its own specific dedicated procedure that requires—I was going to say “only”, but it is a big requirement—a qualified majority in the Council of Ministers and the consent of the European Parliament. That is for the article 50 agreement, which I repeat would set out arrangements for withdrawal from the European Union, taking account of the framework for the future relationship between the leaving member state and the European Union.

Q450 **Mr Hendrick:** You are saying that the details and implementation of the future framework could be nation state specific?

Jonathan Faull: Some of them could be. I know there is speculation about how long all this might take; I have read about that. A Committee of this House was talking about it the other day. I do not want to speculate about that, but it is a major endeavour.

Q451 **Chair:** Finally, may I bottom out an area where I think you are in slight divergence from Sir Ivan Rogers in your analysis of what might happen over the next couple of years? He posited at the European Scrutiny Committee that there is now a chance that because UK attention is on the negotiations rather than our deep involvement in the shaping of directives and regulations, our European partners may take the opportunity to frame directives in a way that would be antithetical to British interests while our attention is elsewhere or it is even more difficult to line up with the British in order to block various directives. He suggested that with the great repeal Bill, which will effect a net transfer of regulations into UK law, we might then find ourselves transferring regulations into UK law that were definitively not in our interest because we had not been paying attention over the last two years of our membership of the EU. I get the sense that you think that is not really realistic and the UK can adequately continue to defend its position—

Jonathan Faull: It has to work very hard at it. It has to be attentive to several balls in the air at the same time, of course, but there are very few issues where the UK does not have friends and allies. That should mean that it is never isolated, but it has to keep working hard on maintaining relationships and following every single issue that comes up on the



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European agenda. I do not think there is anyone inside the European institutions deliberately introducing diabolical provisions into directives because they think they will catch the UK unawares and somehow, through the great repeal Bill, we will infect British law for ever more. No one is that—

Mr Hendrick: Malicious.

Jonathan Faull: Exactly. Perfidious, to use a word much heard at the moment. It would not work anyway, because anything antithetical to the UK is likely to be antithetical to some others, so every issue has to be debated on its merits.

Q452 **Mr Hendrick:** The other point is that it would have to be transposed into UK law as well, which we just wouldn't do.

Jonathan Faull: It is quite true to say that EU business continues. Lord knows we all have big issues on our agenda, and the UK will remain a member state until the very last day, with the full powers and obligations of a member state, apart from the article 50 framework itself.

Chair: Mr Faull, thank you very much indeed for your time and insight this afternoon. It has been very helpful to the Committee. If I may express a personal view, I rather hope your knowledge is taken advantage of by Her Majesty's Government in the course of the next two years, but that is obviously entirely a matter for them and whether you are willing to be of service. You have been of immense service to our Committee and to Parliament this afternoon, so thank you very much indeed.