

# Exiting the European Union Committee

## Oral evidence: The UK's negotiating objectives for its withdrawal from the EU, HC 1072

Wednesday 22 February 2017

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

Questions 1059-1135

### Witness

I: Sir Ivan Rogers, Former UK Permanent Representative to the EU

### Examination of witness

Witness: Sir Ivan Rogers, Former UK Permanent Representative to the EU

Q1059 **Chair:** Sir Ivan, thank you very much indeed for coming to appear before the Brexit Select Committee this morning. We are greatly looking forward to your evidence. I will begin by asking you this: there are clearly different views around the order in which the forthcoming negotiations will take place—divorce, new framework, trade deal, and so on and so forth. How do you see those being resolved, if that is possible? What do you think we will be dealing with once the negotiations start, as far as their structure is concerned?

**Sir Ivan Rogers:** Good morning, Chairman; good morning, Committee. Thank you very much for the opportunity to give my testimony today. Inevitably, I should say right at the outset that anybody who opines on exactly what will happen next in an Article 50 process is foolish. Nobody knows. We have never done one of these before. When I was there in UKREP and talking to all the key people in the Council, Secretariat, Commission and other member states on the ground, everybody was clearly struggling for what the process would be. As you say, there is a clear divergence between the UK Government view and the view of the



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27 as so far expressed, and certainly the view that is coming out of Michel Barnier and the Commission.

As I said to the Scrutiny Committee, the first argument is, "What are we going to argue about?" What do I expect to happen? I obviously do not know when the Prime Minister will send her Article 50 letter. You know the process thereafter is that the 27 will meet and agree their so-called guidelines. I do not know how much depth they will go into. It may be a function of exactly how much depth the Prime Minister puts in her letter, and I do not know how detailed they will want to be about how they see the process running thereafter. I would expect them, at that point at least, to stick to their doctrine about a difference between the Article 50 process and their interpretation of what can and should be done under Article 50, and the British Government's view.

Obviously, I am not privy to what our response will be, but I would expect our response to be, "Our reading of Article 50 is different; we want a substantive negotiation, including on the free trade agreement that we wish to strike, alongside and in parallel with a withdrawal treaty or divorce terms process. Anything else is unacceptable to us". My expectation then would be, candidly, that there would have to be some serious discussion at 28, presumably at the leaders' level. That might be or before the June European Council; it might be bilateral, with the Prime Minister with Tusk, Juncker, Merkel and the other key players in this. It is difficult to say.

I would expect us probably to take until at least the summer before there is an agreement about negotiating structures and modalities, and the coverage of what we are going to negotiate. I hope that is not too complex. None of us knows. I would have thought there will be a bit of a stand-off at the outset. They will say, "We think of this as primarily around divorce terms". I can run you through what I think they think those divorce terms are about, and what they think Article 50 is about. I am sure we will say, "That is not an acceptable ambit for the negotiation, and we want to cover the future relationship. Unless you are looking at the future relationship at the same time, how on earth can you decide the divorce terms?"

**Q1060**      **Chair:** You made reference there to the need for the 27 to decide what their negotiating mandate is. Just taking, first, the divorce arrangement issues and then the future framework, could you just indicate whether you think there are any differences of view or emphasis, or disagreements, among the 27 on the elements of the divorce arrangement? Is that going to be easier for them to agree, as opposed to the new framework?

**Sir Ivan Rogers:** That is a very good but difficult question. There are substantial divergences among the 27, as there always are. We will inevitably, I assume, want to exploit that. That is precisely why they have been so determined to go through with this "No negotiation without notification" mantra, to preserve their own solidarity, for fear that we will



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pick them apart, as it were. That much is obvious. On the divorce terms, again I think I raised this at the Scrutiny Committee. Of course, regrettably, this is one area where there is a danger that we may, by dint of having exploded a bomb under the MFF, as I think I put it, by leaving, unify the net contributors and the net recipients.

They are not unified for very long. I am a budget expert and have been involved in too many budgetary negotiations and too many MFF discussions not to know that the net contributors and the net recipients are frequently far apart. Again, as I think I said to the European Scrutiny Committee, the one thing they can all agree on is that without British dosh in 2019 and 2020, there is a gap in the budget that they all thought they had agreed from 2014 to 2020. Usually, of course, our habitual allies in the budgetary process have always been the so-called "budget disciplinarians". Those are the northern liberals, the northern member states and the major net contributors.

Those are the people with whom I was concerting the entire time, when I was in the Finance Ministry, and, around the leader's neck, we were trying to do business with in 2012 and 2013. Those people are now as agitated with and about us as the net recipients. The net recipients, as again I said at the Scrutiny Committee, think that if we leave and cease to pay our dues, as they would see them—I have no doubt we will come back to that question—they may be out of pocket. They may have to tell people to whom they had promised  $x$  in terms of structural funds that it is now  $x$  minus 12—it is 88, not 100.

The net contributors are all our old allies and friends: the Netherlands, the Finns, the Germans, and the others who are in the other camp and are substantial net contributors per capita. They now have a problem themselves. They are under pressure from the net recipients to fork out. Bear in mind, they are not looking at this in the way we are in this country. They are thinking, "This is a prelude to a very difficult budgetary negotiation that we, as a 27, will have in 2019, with the British absent from the table and potentially, therefore, a smaller budget for the net recipients and less to go around". Separately, there is Mario Monti's report on what you do on the revenue side of the budget—do you reform the revenue side of the budget?

They now know that the UK has disappeared, and with it the UK rebate, which has been a bugbear for everybody around the table for the last 33 years. They are all looking ahead to the next two years, thinking, "We have a hell of a budgetary negotiation coming up in 2019". Now, as far as they are concerned, we have lobbed a grenade into the budgetary mess, because they now have to start examining whether their funds go around for the period up until 2020 now, rather than waiting until 2019. We all have a problem.

My Dutch opposite number said to me, "If we were to sign on the dotted line to replace our part of what is missing as a result of the absence of



the UK contribution, that is €450 million to €500 million per year extra for the Dutch public". That is good news in advance of the Dutch general election, I am sure. My Finnish opposite number said, "Every Finance Ministry in the 27, and every chancellery, is doing its calculation of how far out of pocket they will be as a consequence of British exit".

**Q1061 Chair:** Therefore, British dosh—as you referred to it—is going to be important to the negotiations. To what extent do you think that can be used as a lever to try to get a better deal than might otherwise be the case on the second part of the negotiation, as regards the new framework? Is that where the two things will come together?

**Sir Ivan Rogers:** Obviously, that is a decision for the Government to make as to preparedness, and over what period and for what purposes a contribution might be made. I should make a distinction between what we might want to contribute to in terms of programmes and projects for the period from 2021 to 2027, the next MFF. You have seen what the Prime Minister said in the speech. Her speech, as far as I read it, did not say anything about any transitional period. The issue on the table now, which you will keep hearing the noise on, from Juncker before the Belgian Parliament yesterday, and from Barnier repeatedly, is the so-called exit costs. That is a different matter.

I suppose what I am saying is that for all the 27, albeit in different ways depending on whether they are net recipients or net contributors, the budgetary issue now comes to the fore. We can expect a number of them to think, "If the British want a future trade deal, and some form of transitional arrangement before a future trade deal"—all of which are big ifs—"then this will come together at some gory European Council in the autumn of 2018 and it will come together with the money equation". There will be some that will want to play hardball and say, "Absent British money over a transitional period, why the hell should we give them any trade deal?"

I am not saying that is a majority view. I would not be in a position, from my discussions before Christmas, to know exactly where people will come out on that. It was very early days there, pre-Christmas. All I was conscious of, from the discussions I was having with opposite numbers, was that there was a hell of a lot of work going on in the undergrowth to examine the implications of UK exit on the budget.

**Q1062 Chair:** You referred to the likely timetable in your first answer. What would you say are the chances of an agreement being reached that covers both the divorce arrangement and a new framework, including a trade relationship, in the period of time that it seems will be available? If the deadline of autumn 2018 to conclude the negotiations, which Michel Barnier has set out, is stuck to, what are the odds of being able to do all that work in that amount of time?

**Sir Ivan Rogers:** It crucially depends on what "all of that work" means. We will no doubt come on to the question of what I did and did not say in



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the letter that leaked out in December. What I did say, again as I said at the Scrutiny Committee, was not what I was reported as having said. What I said was that there is a view that to get a full-blown FTA—in Brussels jargon, a “deep and comprehensive” FTA—and to get it ratified, with the probability that it will be a mixed agreement, is the work of several years. This was the view from all my top contacts in the Brussels beltway, in the European Commission, around the key member states, and in the Council Secretariat, and in the Legal Services of both Council and the Commission.

I will come on to how I try to rebut the beltway wisdom, and you saw some of that from David Davis yesterday in the Baltic states as well. The beltway wisdom is that this negotiation, even if we agree a degree of parallelism—and, as I say, at the moment the formal position is that we do not—only gets under way in late 2017. There is only a year until any denouement of the Article 50 process, if you are to get the ratification through the European Parliament. That is not a viable timetable, as the others see it, for concluding a full-blown FTA with the UK.

The central estimate of the key players, officials, technocrats and theologians around Brussels would be even if we go faster than usual—unprecedentedly fast for the EU at 28, or now 27, and the EU does not habitually go very fast on free trade deals—it might take until summer or late 2020 to agree it, maybe beyond that, and another 18 months, two years or more, to ratify it. You have just seen what has happened on the CETA agreement, both in the European Parliament and in the Wallonian Parliament. “Ergo”, say my erstwhile colleagues from other key member states, from the Council and the Commission, “It may take until the early mid-2020s before there is a ratified, full, deep and comprehensive FTA, whatever the coverage of that is”.

Let us pause there. Then there is a question of whether you need to get that far or whether you could essentially have a framework agreement. Bear in mind that Article 50 talks about framework and not a full-blown agreement. Some in Brussels are saying, “Maybe we could get to a framework agreement with the UK about what a future FTA would cover, and go into some depth in that framework, and give prior notice of the issues that will subsequently be negotiated”.

The question is then what happens? Fine; that may be a useful first step. It may be an essential first step, but it does not get you legal facts on the ground. What happens on day one after exit? If you have exited the European Union and the single market, what is the legal position over an interim period, before we have the full-blown FTA in force and ratified?

Q1063      **Chair:** Therefore, in those circumstances one would need or wish to seek transitional arrangements to cover the interim.

**Sir Ivan Rogers:** That is very much others’ view, but I know that is not the view that is being expressed by Her Majesty’s Government, either in



the speech or in the White Paper, as I understand it. There is a different conception of transition.

Q1064 **Stephen Timms:** I was in a group last week meeting German parliamentarians. We said, "The British Government will want barrier-free access to the single market, but no longer to operate free movement of people in its current form". They all said to us, in response, "You cannot cherry-pick". I was just wondering, from your experience how big a difficulty for the coming negotiations is that view that you cannot cherry-pick likely to prove?

**Sir Ivan Rogers:** The Prime Minister has been trying to deal with the cherry-picking argument, both explicitly in what she said in the newspapers in France, and by saying that she does not aspire to be a member of the single market. She has tried to address that head on. Others are still, as I understand it from them, reading her speech and the White Paper as indicating that, although we accept we will not be in the single market, we would still like to have access that looks remarkably like single market membership.

Maybe it is best to step back and explain how I see what a single market is, because I think there is a lot of confusion about that. There is, after all, no mention of the single market in the treaties. The phrase does not exist. It is an internal market. The internal market is defined in the treaties—for what that is worth, but it is quite important theology in Brussels—I think in Article 26 of TFEU, as "an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties". That means what it means, as much and as little as it means. It is best, in my view, to think of a single market essentially as a regulatory union. There are very important distinctions here between a free trade area and a single market. They are not remotely the same thing. I will try to come back to your question of access to the single market.

Essentially, what is a single market or an internal market? It is a group of nations that agree to be bound by a single regulatory rulebook or code, which requires all its members to adhere to all four freedoms as defined in the treaties. None of these freedoms are full freedoms; all of them are qualified by all manner of qualifications in secondary legislation, and even inside the treaties.

For others, correctly—and I think the Prime Minister is correctly concluding that herself—single market membership means acceptance of supranational law and the role of the Commission. It means acceptance of supranational jurisdiction and the role of the ECJ. It means the Commission's right of initiative and its right to infract member states when they think they are out of line and not implementing the single market *acquis* properly. As I say, it means supranational adjudication by the European Court, which she has ruled out.



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For them, they say: "That is fine. You have now accepted that you are not in the single market, and a good thing too". Then the argument will become, "But you still may want to have large elements of your cake and eat it, by saying, 'Effectively, our access to the market in loads of areas that matter enormously to us should be unchanged regardless of us no longer accepting supranational jurisdiction and law'". I am sure you heard it; there is quite a large divergence between Berlin views, Brussels views and what you get here. People did say to me repeatedly, over months and years, "That is not on offer".

**Q1065**      **Stephen Timms:** Looking back at the negotiations that David Cameron undertook, can I ask you a couple of questions about that experience? First of all, do you think he might have got further if he had been willing to spend longer over the negotiations than he was? Given some of the growing concerns about some of the migration issues that we have been concerned about, do you think if he had given it a bit longer, he might have got further than he did? Secondly, it has been suggested that he relied too heavily on Germany to deliver his negotiating objectives. Do you think there is some truth in that?

**Sir Ivan Rogers:** Those are very difficult questions. The answer to the first is, obviously, we will never know. He did ponder that throughout the negotiation. If he had walked away from the table in February and said, "Thank you for all the wonderful work you have all done, and thank you for the nice try, but this does not get me far enough. I am prepared to quit the table at this point", we would have then had several months of recriminations and bloodletting and everything else. We would probably only now, or perhaps by the end of 2016, be coming back to the table. The question, which we will never be able to answer, is: would people have been more amenable, coming back to the table then, or, given the proximity to the French and German elections, would they have been less amenable, because they would have been even less able to find anything extra to give?

You have to then get into the substance of what the February deal did and did not cover. On the core issue of free movement of people, could he have pushed his luck and got further with it, and got something bigger and bolder than what he was eventually offered on the four-year benefit qualification period? Could he, in other words, have got quantitative limits, even for a delimited period? My honest view is no. Both Berlin and Eastern European capitals were dead set against the idea of any quantitative restrictions on free movement, for the reasons I have just given.

These are articles of faith and theology in several capitals. They are with Frau Merkel, but they are with many other leaders as well—the idea that "No, you cannot go there". Of course people were arguing inside our system, and understandably, that we did not have transitional periods at the time of the A8 accession, unlike all other member states bar Sweden and Ireland. Could you say, "Retrospectively, we would now like to



operate a transitional period for a period of years, which enables us to do the same"? That boat had sailed and that was never going to be on offer. We have to be clear as well. The negotiation to come is not remotely similar to the Cameron negotiation.

The Cameron negotiation was the last throw of trying to develop a special, *sui generis* status for the UK within the EU. I do not want to put words in the former Prime Minister's mouth, and he will describe it far better. My interpretation of what I think he was doing was saying, "I want a two-tier or multi-tier Europe. I do not want a multi-speed Europe where we are all on trains of different speed to the same destination. I want to be able to go to a different destination. I want a certain amount of common ground between my destination and other destinations"—particularly, in his view, around the single market, because he did want single market membership—"but it ought to be possible, within the European Union of 28, to have multiple different destinations".

That was what he was attempting, in my view, to do in February, in my sort of language. He got where he got, and thought that that was sufficient, and the public has decided it was not sufficient. That game is over. We are not doing that again. Not only are we not doing it again—and there is no appetite for us to do it—there is no appetite among the 27 for that game. That was the last attempt to enshrine a different status for the UK. He would ideally, as you all know, have wanted to put that in treaty changes in 2015-16. That boat also sailed. It was an opportunity that he thought was going to exist. When he first wrote and conceived of the Bloomberg speech in January 2013, he was talking to Frau Merkel and others about the possibility of surgical treaty changes to deliver all this in 2015-16. Even that became undoable for various reasons, on which I can elaborate, to do with eurozone governance.

Q1066      **Stephen Timms:** Reasons to do with what?

**Sir Ivan Rogers:** Eurozone governance. The appetite disappeared in all other capitals to have any institutional reform or institutional change. That is why we ended up with the international law decision of February 2016. I am going back to ancient history here, but my point is that I would not draw too many lessons from that negotiation. It was deliberately an attempt to say, "We can, within a Union of 28, have a very different fate and destination from the rest of you, but still remain in". That was where David Cameron was trying to get to. That has gone. February was an attempt to do that. The public has rejected it. It is finished.

Q1067      **Stephen Timms:** You talk about David Cameron's conversations with Mrs Merkel. Was he relying too much on Germany?

**Sir Ivan Rogers:** Oh, sorry. Yes—

Q1068      **Stephen Timms:** A final point, if I may, as well. I take the point that the coming negotiations are very different from the ones that you



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have just been talking about. How do you think EU experience of those previous negotiations will affect their approach to the coming negotiations? The Germany point first, perhaps.

**Sir Ivan Rogers:** He always thought, correctly if we are honest, that the most powerful single voice and player around the European Council table was Berlin. Berlin had driven the two previous eurozone-related treaty changes, in 2011 and 2012. Berlin had also driven through the so-called fiscal compact treaty in late 2011. You may remember the blow-up at the December European Council in 2011, where the French and Germans agreed at the EPP meeting, before that European Council, essentially to go around us, and say, "You may want treaty change alongside our treaty change, but we are going to do our treaty change via a different device at 17 in the eurozone".

He concluded, not unreasonably, that you could not go around the Germans, and if you were going to do a deal that would stick and deliver either treaty change or some other form of permanent legally binding change, Berlin would have to be on board and pushing in the same direction. I can go through multiple examples of negotiations I ran or was a major part of, in terms of the centrality of Germany. The MFF negotiation, in the end, came down to an awful lot of traffic between London and Berlin about where the deal would be. Obviously it involved Brussels, Paris and others, but again, from his point of view, and rightly, on the money, the central player there was Germany.

Getting the Germans on board was necessary for what was, in the end, the tightest budget settlement. Whether it was good enough or not, it was the tightest budget settlement we managed to achieve over the last 30 years. He tried, as you know, on the presidency of the European Commission and on other things, to do deals with sundry players, but again concluded that Berlin was nearly always central in where the game came out. He never did overly rely on the reliability of Berlin, if I can put it like that. I do not think that he was as naive as he is sometimes painted now in the media about Berlin.

Berlin always puts Berlin's interests first, and there is no reason why it should not. We put London's interests first. We were always very sober, behind the scenes, about where Frau Merkel and her people would come out, and we made our own judgments as to what Berlin's self-interest would be.

Q1069 **Seema Malhotra:** Just very briefly, I understand what you are saying about articles of faith and theology, particularly around the four pillars. I am wondering whether you have sensed, since the vote in the UK, that there is any question or, in some areas, any appetite for reform around the free movement of people rules. Are they maybe concerned about what could happen in terms of movements in other nation states? It would not be about a special arrangement for the UK, but is there any appetite for greater flexibility for member states, depending on their circumstances?



**Sir Ivan Rogers:** Maybe to a degree. I would not overstate it. It is a shibboleth and an article of faith. The real migration issues are external migration issues, for the rest of the European Union. There has been a poisonous debate between Germans, Swedes and others on the resettlement issue of refugees, and the burden-sharing around the Union. It really has been a poisonous debate, but the debate is much less about the free movement of people inside the European Union than it is about the migration of people from outside it.

If I think back to our renegotiation last February, nomenclature was a huge issue for people. They genuinely do not understand a UK debate in which the two are conflated at all. They do not understand why a Government would have a migration target covering migration from within the European Union, which for other people is not migration. They do not call it migration; they do not call it immigration. They call it free movement. I spent a large amount of time with my opposite numbers, both the Sherpas and Permanent Representatives, over many years, trying to explain why our nomenclature and our whole debate was different, and why we called both these things essentially the same.

For all my other colleagues, they said, "But one is migration, which is external to the European Union, and the other is free movement of people, which is not at all the same thing". On free movement of people, there are anxieties about free movement of people in various member states. We tried to capitalise on some of these things in the February deal, and the then Home Secretary, now Prime Minister, tried to capitalise on them. There are some anxieties about how it is operating and the abuse of it, but people kept on coming back to us and saying, "There is fraud and abuse and illegitimate uses of free movement, and we could tackle those with you via legislative and other means, but we cannot tackle the central principle of free movement and change the treaties on it, because it is an article of faith.

**Chair:** That is very clear. Thank you very much.

Q1070 **Alistair Burt:** There has sometimes been a view expressed in the UK that this is all a very straightforward matter, and a supplicant EU that trades more with us than we do with them needs us more than we need them. This view suggests that this can all be done very simply and straightforwardly. I heard a speech to that effect in the House of Lords yesterday. But many of us feel that that is rather simplistic, and it is much more complicated than that.

From your experience, could you give us a sense of the dynamics between the various member states and the EU Commission as a body? At the end of this, member states, the Commission and the European Parliament all have to be lined up together to approve what we are doing. I would have thought there were some complexities in that. When push comes to shove, what do you think are the relative powers between the member states and the Commission? Who will drive whom, when we come to getting a deal done?



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**Sir Ivan Rogers:** You are right; it is immensely complex and there is no easy answer. There is no answer to that question, in a way, and we do not know until we have started. The formal negotiator will be the Commission, and the technical and legal expertise will come from the Commission. Our interlocutors across the table from David Davis, or Olly Robbins and Tim Barrow, or whoever is conducting the negotiations at both political and technical level, will be primarily the Commission, but there will be some Council Secretariat bods in the room, to be able to inform the 27 of what is happening between the Commission and the Brits.

I could probably write the book on lots of aspects of the European Commission. What it does for a living, and does quite well, is negotiation with and against the member states. That is, by and large, the thing in which it is very proficient. Maybe it is also proficient in trade negotiations with third country partners. They have a lot of experience and a lot of knowledge. One of the issues facing the UK, if we are honest, is the asymmetry of knowledge around the table. By definition, they know quite well the positions of the other 27. They have a very complex game behind the scenes to make sure that they can achieve unity of the 27, and achieve the compromises among the 27 to get to a position to plonk on the table as against the Brits.

But they have vastly more information at their disposal about where the 27 are coming from than we do, because they are talking to all these people all the time, and they are frequently negotiating with them all the time. The negotiating heft and strength is really with the Commission, but this is not any old trade negotiation. This is not like dealing with South Korea, or even—with respect—dealing with Canada or even the US. This is dealing with us. The leaders will not allow the Commission to simply go off on their own and negotiate as they think fit, and freelance. The leaders will want close tabs on this, which is why the Council Secretariat people will be there, and why this issue will constantly come back to leaders at 27.

Then, ultimately, the 27 will as one come back to the discussion with us. This is leader-level stuff. This is the Prime Minister's negotiation and it is leader-level negotiation. The key, core stumbling block issues will all go to leaders. They cannot be settled by technocrats or at the Barnier-Davis level either. The Parliament is always—how can I put this politely?—quite a rogue factor. In the end, they can either say yes or no, and you would think that, given they can only say yes or no, and it only comes to them at the end of the day, they would be incredibly brave to say no, so they will say yes. Regrettably it is not as simple as that. Obviously, they try to use their leverage and power during the process. They also have any manner of routes into the Commission and into Council players.

In most member states, if I can be candid, many European parliamentarians have many better routes into their national administration, and are much closer to their national administration, than



is the case in the UK. There are multiple different ways in which the European Parliament ideology can play into the starting point and the negotiating position of the 27. We cannot ignore the European Parliament. As Permanent Representative, I probably spent more time in the European Parliament than any previous UK Permanent Representative, essentially because the Parliament has become more important in the whole game—both in the legislative game and in these kinds of games—over the last 10 to 15 years.

I will not go much further on that theme. There are a lot of issues with post-Lisbon, the trilogues process, the role and power of the Parliament, the parliamentarisation of the EU, with which many of you, and all of the Government, I think, feel very uncomfortable. I might feel very uncomfortable, but my job, as Permanent Representative, was to get across lots of different players in the European Parliament, know what they were doing, where they might be coming from, and where they might be devilling in things that might make our lives more difficult.

As I said, I think, to the Scrutiny Committee on the legislative process, one thing that preoccupied me a lot about Whitehall's conduct of legislation was the fact that everybody invests heavily in getting to the right general approach in the Council. Ministers focus on that because they are in the Council, and they reach the general approach, and you think you have achieved a 2-0 win at the general approach. But it is a half-time score, because the Parliament then comes in in the trilogues process, and can score a couple of goals without ministerial or senior official attention in Whitehall on what is going on.

What I have been trying to do, for the last three or four years, is improve the UK's game inside the European Parliament, often in pretty difficult circumstances, to achieve better legislative outcomes.

**Q1071**      **Alistair Burt:** Going back to the member states themselves, do we have sufficient capacity in our embassies at present to gather the information we will need about individual member positions, before the negotiations start, and through the negotiations? Do member states tend to trail their coats a little, to give an indication in a negotiation, about what their sticking points really are? Would we know them? For instance, how important will continued migration be to, say, some of the Eastern European states, before they are willing to sign up to an agreement that benefits the United Kingdom?

**Sir Ivan Rogers:** It is a difficult question to generalise on. Let us be candid: some member states will matter vastly more than other member states in this issue. All member states will have some red lines that they bring to the negotiation with the UK. They did it with Canada and with South Korea. They do it with any negotiation. If you are a minnow member state, to put it bluntly, you do not have either the capacity or the desire to have multiple different red lines, but there will be some things that really matter to you in the UK relationship.



What our embassies will need to do—and are, I am sure, doing—and what our system will need to do is to understand what four things most matter to Slovenia, or whoever. They will not be major players or major arbiters of the EU 27's position vis-à-vis us. Let us be honest, that will be the Brussels beltway and key people in the institutions, and it will be the Germans and the French. One or two others will play a major role, either for historical reasons or proximity reasons, like the Irish, who will be major players in this. Some will matter enormously and will have a whole army of people already on the Brexit question.

For others, it is not an enormously important existential question for them, and they will not spend a huge amount of bureaucratic or ministerial time thinking about it. But they will come with stuff. Canada not only nearly fell apart on Wallonia and Belgium; it nearly fell apart on Romania and Bulgaria on visas. What our system will have to be really intelligent about and understand is what are the neuralgic points running in every capital that might imperil member state X or Y signing on the dotted line and agreeing a deal.

**Q1072**      **Alistair Burt:** I am sure many would agree that, among the problems facing the EU at the moment, Brexit is not necessarily top of the agenda for everyone. We recognise that there are a number of different issues facing the EU, some of which are of their own making. Is there any sense that the negotiation process, and what the United Kingdom has done, might spark in the conversations some changes in the EU that will be to the general benefit of the EU? Do you think they will use the opportunity created by the United Kingdom to make some changes that they might secretly have wanted to make, but did not want to make as a concession to the UK, but can now see would help the further development of the EU? Or is that a bit fanciful?

**Sir Ivan Rogers:** It is probably too early to tell on many of these things. We have unleashed a new dynamic inside the Union, on multiple different fronts. When I was talking to my former opposite numbers, people from the capitals and around the penumbra of this about what was happening as a consequence of exit, people were already starting, as you would, on 24 June to think about what the world without the British would look like: "What are we going to have to do? Where do we have to step up? Where does that change the terms of trade?"

For example, the Northern Lights group that I would always convene or be involved in as a Sherpa and a Permanent Representative—the Netherlands, the Swedes, the Danes and the Finns—would always meet in advance of European Councils. That has been going on for years. I am not saying that that group is defunct; they are meeting with us, but obviously meeting without us as well and reflecting on what other groups they need, and who else they need to pull in, and who else are their real allies. The UK Treasury were always absolutely central players to the budget disciplinarian group. We are not going to be now, because we are



not relevant, and indeed we might be the enemy, as regards this budgetary negotiation.

What I am saying is it is too early to tell. You are seeing the Rome issue bubble up, and what they do or do not say on 25 March. Candidly, I would not hold my breath on what the 27 will say on 25 March, because at the moment, Europe is mired in all manner of other difficulties and general elections. They are not going to be able to say anything important and programmatic or new.

I may be wrong, and I am not privy to anything that is going on, but we will have unleashed a sense that things now have to change. They will not necessarily change, if I can be blunt, in a massively congenial direction for the UK. They might. It may be that now others have to step up more who are reformists, free traders, liberals and pro-competition, and who think, "If we do not take this fight on, this will all drift the wrong way". But it might be too sanguine a view that the European Union will evolve in a better direction at 27.

**Q1073**      **Alistair Burt:** A last question, if I may: again, it is occasionally put to us that, when push comes to shove, the German car manufacturers will go to Mrs Merkel and say, "We do a lot of trade with the United Kingdom. These are our terms that you must agree in order to get the deal with Britain that suits us". The other point of view is that, as far as the Chancellor of Germany is concerned, the cohesion of Europe and the EU matters more than anything else in the world. What is your view of that dynamic? If the German car manufacturers want something different from Chancellor Merkel, who is likely to win that discussion?

**Sir Ivan Rogers:** Clearly their self-interest is in doing a proper preferential trade deal with us. I say that, but it is quite complex what your self-interest is, as a German car manufacturer or as other car manufacturers. Obviously, companies think as companies and not as member states. They will judge what their economics are. We may come on to the question of tariff on cars or car parts. Companies take their decisions on the basis of profit margins, revenues and earnings. A number of them have come to see me in the last few months, both British and non-British car manufacturers. This is quite a fine margins business.

**Q1074**      **Alistair Burt:** Are they Germans first and car manufacturers second?

**Sir Ivan Rogers:** No, not necessarily. They are quite powerful in the chancellery and in Germany, but you have heard her say, and we have seen her say repeatedly, that no sectoral interest will be put above the general interest. Now you would say that, would you not, so who knows? There will be pressure on her to reach a tariff-free deal; I am not denying that. That is clearly pressure that we will want to see.



Equally, we have to be a little bit careful there, if I may say so. Where is the imbalance? We have a major deficit in goods, and a major surplus in services, above all in financial and professional services, but also in various other ancillary services in which we are world-class and competitive, and have comparative advantage. If you were the German car manufacturers, or indeed large parts of the German goods manufacturing industry, you might think that the perfect outcome here would be a rather minimal FTA that covered goods but did nothing on services.

You would end up with a tariff-free world still in 2019, you banked that, and then the Brits were jumping up and down after 2019 saying, "But where are we on financial and professional services?" and they would say, "Oh well, we have an FTA". This gets into some of the stuff on which I know the Committee had far more expert testimony than mine yesterday, regarding what is substantially all trade under GATT Article XXIV and GATS Article V.

**Chair:** We have many others who want to come in.

**Sir Ivan Rogers:** Sorry, I am talking for too long. Apologies.

Q1075 **Chair:** Very specifically, the question was which do you think in the end will win out: the desire to maintain unity, which you referred to earlier, or the particular economic interests, in the case of Germany?

**Sir Ivan Rogers:** With Merkel, if she is still there, it will be the unity, because the unity of the 27 will win out. I think she and others will agree that there will be no sectoral deals in either the single market or the customs union. I expect that to appear in either the guidelines or the negotiating mandate.

**Chair:** That is very clear, and very helpful. Thank you.

Q1076 **Mr Whittingdale:** I want to follow up on the questions Alistair has been raising. It seems to be the case that, for a lot of sectors in this country, one of their concerns is that at the moment they are able to trade across Europe, because the British regulatory regime in their particular sector complies with European standards. We have heard from the creative industries, with Ofcom, with the Food Standards Agency, and particularly the general data protection regulations.

None of those things are going to change the day we leave the European Union. Therefore surely it should be very simple to say, "We already comply with your requirements. You recognise Ofcom, for instance, as being a competent regulator. Will you accept therefore that you should continue to do so?" That mutual recognition, which addresses a lot of the concerns, should be relatively simple to obtain.

**Sir Ivan Rogers:** Roderick Abbott yesterday was referring to the continuity thesis, as he put it. I understand that. Of course, in the last several months, I have been arguing it. Let me say what the problem



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with it is, or could be, because you alluded to it, which is “on day one”. The thesis, I know, is that we start off in full conformity: “You know us, EU 27. We have been a member for the last 45 years. You know we are in conformity. You know we converge with you. What is the problem? Why is day plus-one, after exit, any different from day minus one, before exit? By dint of what we have imported in the Great Repeal Bill, we have imported large chunks of the acquis. What is the problem? Can we not just act as sane, sensible human beings?”

I have a lot of sympathy for that view, and therefore we could just have untrammelled trade, on exactly the same terms, on day one as we had on day minus one. The problem is the EU does not really work like that. You may say, “That is part of the problem with the EU and a good reason to get out of it”. The EU will say, “You are now a third country. You are not a member, you are not in the single market and you are not respecting supranational jurisdiction or law. You are not adhering to it and you are not paying your dues, so you are no longer a member. We are going to treat you as a third country”. They will say, “That is your choice. You deliberately chose to do it. You have taken yourselves out of supranational jurisdiction and recognised that you are not in the single market, so you cannot complain about it”.

This, I know, is a tortuous and controversial debate, but it is the reality of what I faced on a daily basis in Brussels. They will say, “Automatically, by becoming a third country as opposed to a member, it is not that we deliberately bugger you up by erecting new barriers against you. That may come, but we do not do that to generally irritate you. Those barriers exist for any third country, and you have now become a third country. We have not erected new barriers; they are just the barriers that exist for anybody who has third country status vis-à-vis our jurisdiction”.

How do they deal then with third countries? This is the core of the problem. The core of the problem is not day one. What my good colleagues, and good friends, and the people with whom I debated this endlessly for many months, including before the referendum, said to me was: “The problem is not day one. It is day two, or day 200, or day 2,000. What have you recaptured your sovereignty and autonomy for, if you are now saying that you will line up via the Great Repeal Bill”—which they might say is more like the Great Cut and Paste Bill—“to repeat exactly what you had when you were in the European Union?”

If you are a third country in EU jargon and doctrine, first of all you have to be on the list of countries permitted to export into the EU market. Secondly, individual firms then have to be approved, and thirdly individual consignments have to be cleared before the goods or services are allowed on the EU market. That applies to all non-member states. That is my point in response to what I perceive to be the argument, “Why is not WTO-only fine? We have moved to a world outside, but they all know that we are the same beast the day after as we were the day before”.



They would say, "No, the world does not work like that and our legal order does not work like that. If there is no agreement with us, you move into a legal void. It is not that you are a once-member state; you have become a third country, and unless and until you have a preferential agreement enabling you to trade on preferential terms, you cannot trade on preferential terms". This is where I part company with some of what I am reading on WTO-only. No other major player trades with the EU on pure WTO-only terms. It is not true that the Americans, Australians, Canadians, Israelis or Swiss do.

They strike preferential trade deals where they can, but they also strike more minor equivalence agreements: financial services equivalence agreements, veterinary equivalence agreements, mutual conformity of assessment agreements. The EU has mutual conformity of assessment agreements with the US, Canada, Israel, Switzerland, Australia and New Zealand, and more. I was part of negotiating some with the US in 1998. It is not true to say that EU-US trade is governed solely by the WTO.

Q1077 **Mr Whittingdale:** Indeed, and you bring me on to the point I wanted to pursue. You say that on day plus-one we become a third country. The EU has established trading agreements with a number of third countries. In some cases, it allows barrier-free access without being covered by the jurisdiction of the European Court of Justice, and also without requiring freedom of movement of people. Canada at one end, and Ukraine at the other end, are examples of two countries that have exactly that. When you said earlier that the Germans have said, "Sorry, it is not a possibility to have that kind of barrier-free access without those things", they have already conceded it to other countries.

**Sir Ivan Rogers:** I agree with the first bit, but the second is a slightly different point. I am sure I should not be revealing to the Committee what I have essentially been arguing for the last several months, but a deep and comprehensive FTA, or whatever you want to call it, is a perfectly viable destination for us ultimately; it obviously depends how long it takes. An FTA is not at all like single market membership. It does not involve the jurisdiction of the Court, and it does involve complete control of your own borders.

Candidly I have been saying within: "If control of your own borders and no jurisdiction by the ECJ are your desiderata, the answer to that is to leave the customs union, leave the single market and strike as comprehensive an FTA with the EU as you can get". It would have to cover services. What is the problem with the WTO, of which I am a huge fan? I am a multilateral trade person, and an extreme trade liberal, as anybody in Whitehall would tell you, but I am a multilateralist. The problem with the WTO is that it has not got very far on services. GATS, as Roderick Abbott, who pretty much wrote the book on this, told you yesterday, has not delivered an enormous amount, other than generic commitments.



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To get services liberalisation across borders has been very difficult to do multilaterally. You do not get very far on market access in services. My proposition, whether on financial, professional or other services, is that what the UK ideally may want with the EU, and I hope vice versa, is the biggest free trade agreement ever struck. It should cover not only goods and tariffs but also services, and services in a way that goes far deeper than has happened for EU-Canada or EU-South Korea. It has to be an unprecedentedly good and bespoke deal. I am in favour of it.

If I may, then, I will give you some examples of the difference between being in a single market and a free trade area, because there is some difference. It is not true to say you get everything you want from an FTA and it is just the same as the single market. This is the crucial difference between access to the market and membership of it. For example, on aeroplanes, access to the single market means planes can land at EU airports and return from them. Membership of the single market means you get slot, gate and lounge allocation on the same terms as local airlines—that is, not 3.00 am slots a mile away from the terminal, and the airlines can fly within the EU, not just to and from the EU.

Access means that your banks can only lend via a local subsidiary. Membership means there is no need for your banks to be separately supervised, regulated, managed and capitalised subsidiaries in other countries. One can operate through branches, and home state rules and supervision suffice. Access means that Scotch can be sold into France or Germany; membership of the single market means that all taxes and duties for comparable products to Scotch must be the same as for Scotch, and if they are not, we can take them to the ECJ and say, “Why are they not?” We will not be able to take them to the ECJ. When we only have access, it is not the same as membership. I am agreeing with you violently, I think, that the right answer is an FTA.

**Q1078 Mr Whittingdale:** At the moment FTAs do not provide the same degree of access, as you have been outlining in those particular areas, as membership of the single market. Whilst this is the case, you also talked about obtaining the deepest and most detailed FTA ever achieved. You do not see any fundamental reason why any of those things that you have been describing could not be covered in an agreement of that kind. It may be going further than ever before and may take longer, but in principle, we could aim to still have those things as part of an FTA, rather than being a third country.

**Sir Ivan Rogers:** My proposition is that it is massively in both sides’ interests, ultimately, for that to happen. That is why I alerted you to the danger. The slight danger for us is that, given the goods surplus for them is so great and the services surplus is so great, they would pocket the goods agreement and say, “Good; we have tariff-free access; we do not really need to bother about your services”. I would not buy that pig in a poke; I would want a full and comprehensive FTA that covered goods and services. In principle, both sides should want the freest possible



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trade. You will ask me difficult questions about whether they will, but in principle they should.

**Q1079**      **Mr McFadden:** John Whittingdale was asking you about the nature of a deal; I want to come on to the nature of no deal. Before I do, I want to pick up on something you said in response to the question about 10 minutes ago about no sectoral deals. Certain sectors have been talked about more than others, so far. We think of automotive, financial services, perhaps agriculture. Why are you so certain that every sector will be treated the same in a FTA, and there will not be any special access that our Government wants for sectors that are particularly important to us?

**Sir Ivan Rogers:** I do not think they will be treated the same in an FTA. Ultimately, when you have an FTA, there will have to be a sector-by-sector agreement, and this is one hell of an agreement, if we could get a comprehensive FTA. I do not think it would be the same. What I am saying is their version of cherry-picking will be that they will be very loath to have individual sectoral deals done legally and ratified, unless it is all agreed. It is the age-old Brussels mantra of “Nothing is agreed until everything is agreed”. They will think, rightly or wrongly, that we will care most passionately about financial services and maybe about automotive.

Therefore, unless and until they have got other things they want out of us on various other areas, which may include money, they will not sign on the dotted line on a full-blown equivalency agreement on financial services that gives us what we want. They will maximise their leverage. Part of it is also the fear of their own weakness, or the fear of their own lack of solidarity. That is one of the reasons why I would expect them probably to lash themselves to the mast a bit—“Why is this activity going on? Has it been going on? No negotiation without notification”—because they are scared that we will pick them off.

Therefore, they are likely, in print, to commit to no sectoral deals in a way that makes it impossible for anybody to break the solidarity. I may be wrong, and if sectoral deals are what we really need on aviation, automotive and whatever, it is up to the Prime Minister to judge whether that is worth trying and whether deals are doable. All my instincts tell me that people will shy away from doing individual sectoral deals on either single market or customs union.

**Q1080**      **Mr McFadden:** Let me ask you about “deal or no deal”. The Prime Minister said in her Lancaster House speech that no deal was better than a bad deal. In your evidence to the European Scrutiny Committee a couple of weeks ago, you said that the view from the EU 27 on this prospect would be that no deal would be—I think I am quoting—“so unpalatable that we would not do it”. Why do you think no FTA is so unpalatable? Tell us what that would look like for the UK.



**Sir Ivan Rogers:** Why do they think that? They may be right; they may be wrong—it may be a gross misreading or a gross miscalculation—but their reading of it is the one I have just given. They think that when the UK examines what WTO-only means, what happens the day after as opposed to the day before, and realise that they become a third country as opposed to a member, they would be stepping into a legal void in areas that would do them—the UK—massive damage from day one afterwards, because things would cease to happen on the ground that did happen the day before exit.

I have lived this for about the last 25 years. They have a much more legalistic view of the world than we do. The European Union is not a common-sense arrangement. It is a legal order and a legal discipline, as is a single market. They say, “The day after exit is radically different from the day before, because you become a third country like any other third country. If you strike a preferential agreement with us, whether temporary or permanent, that can cover a whole multitude of things. But if you walk away from the table and have nothing with us, then nothing is what you have, and you are in a legal void”.

Q1081 **Mr McFadden:** Let me explore what that means a bit. It relates in a way to where we began this morning’s evidence session, with the argument about money. I am not saying this is likely, but it is possible to see a scenario where the argument about money becomes quite bitter and voices in this Parliament start to say, “We do not want this two years of negotiation on an FTA. We are already being treated badly over money. Let us just forget all this and we resign and that is it”. I want you to spell out what the idea that we really do not need this FTA, and trading under WTO rules would not be too bad, means for the UK.

**Sir Ivan Rogers:** I agree with the assessment that it could get pretty bitter and twisted on money. Nothing gets more bitter and twisted than EU negotiations on money, and I have lived a few of them. Sometimes it can be over beans rather than large sums, and these are very large sums, if you were to believe the rhetoric from the other side. The problem, as I say, and the reason why they calculate, rightly or wrongly, is they think the consequences of lurching without any agreement to a WTO-only world are really rather grim for any state that does it. You are not starting from a WTO-only world, as you may be with other, more distant third countries. You are starting from a deep and integrated relationship inside the single market, and moving into a legal void.

We are saying—and I entirely understand John Whittingdale’s point on that—“Come on guys. You know the day before you used to take our accreditation and inspection regimes. They were perfectly fine the day before; why the hell are they not the day after? Do not be ridiculous”. The EU is perfectly capable of saying, “It is not a matter of being ridiculous; it is a matter of the law. In the absence of any law, given that you have now left the Union and left the single market, there is nothing. You have not signed any other agreement with us, and unless there is a



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legal agreement between the two of us, we no longer recognise your accreditation, conformity assessment bodies, abattoirs or slaughterhouses. We do not recognise any of it”.

You may think this is ludicrous. Of course, there is an element of me that thinks, “This is a ludicrous state of affairs. What has changed from 31 March to 1 April?” But they will say, “The law has changed. You have left the European Union. You have left the single market. You are now a third country officially, and that is your status. We do not have to give you anything”.

**Mr Lilley:** Unless they want something in return.

**Sir Ivan Rogers:** Absolutely.

Q1082 **Mr McFadden:** Can I just end with this? A number of third countries do not have FTAs with the European Union, for example the United States, as you mentioned. You also said that no major country deals with the EU solely on the basis of WTO terms. Could you say a bit more about that? I do not think that is widely understood.

**Sir Ivan Rogers:** The point is that even though we have failed to get an EU-US FTA—not for want of trying from some of us who have had about four goes, so if we can get a UK-US FTA, there will be nobody more delighted as I am great transatlantic free trade supporter—that has not meant there are not agreements struck between the EU and the US all the time, which affect the trade flows and trade volumes. They are struck all the time. As I say, I have been part of striking them all the time, back in the 1990s, and there have been subsequent ones. A very significant proportion of EU-US trade, which is now \$3 billion a day, is governed by technical agreements. They are not a full-blown overarching FTA, which covers substantially all trade, but there are loads of agreements.

There is a financial services equivalence agreement. You could talk to either Michel Barnier or Jonathan Hill about the pain of negotiating it. Even that took four years, with jurisdictions that know each other and ought to trust each other, and are both in the G20. There is a veterinary equivalence agreement. There are mutual recognition agreements in multiple different industrial sectors on conformity assessments. What do both sides want to do, and what do businesses on both sides want to do? Mutual recognition, when you get it right, is deregulatory.

Businesses want to say, “With one authentication and certification process, we can go to our own conformity assessment body, and they have approval that enables us to market straight into the European market”. That is what you want to get to. A lot of these things already exist. They are not overarching agreements. I think there are 20-plus EU-US agreements. There is a data protection agreement. It fell apart because it was challenged in the Schrems judgment, but there has been another one, because it is so important to both sides.



I have talked to my former American opposite number repeatedly about the difficulties of dealing with the EU from the outside. But they have to do it, and the EU has to deal with the US from the outside, so they have had to strike a data protection agreement, and the stuff that was done there over the last year to repair the damage done. These things do govern EU-US trade. Before we get to any deal with Australia, a significant proportion of EU-Australian trade is governed not just by WTO rules.

**Q1083 Mr McFadden:** The point to understand is that, strictly speaking, no deal is not a parallel with the US-EU arrangement at the moment. No deal is something different from the way that other third countries are currently trading with the EU, precisely because of these.

**Sir Ivan Rogers:** Yes. When we leave the single market, we lose access. Again, I know you were discussing this yesterday. Then the question becomes EU-South Korea. Why do you want any new trade deals and preferential deals? Personally, I am a multilateralist and would rather there were no bilateral or multi-regional spaghetti bowl agreements, or whatever they are called. I do not like them. I would rather everything was done multilaterally. The reality, in services, public procurement, intellectual property and all the rest, is that it is very difficult to get much done multilaterally, especially with the Brazilians, Chinese, Indians and others. To get agreement of 168 member states to do anything on anything really difficult, beyond tariffs, is very difficult.

My point would be—and I do not want to labour it or make it excessively alarmist—that if you are ever contemplating a WTO-only world, you need to go through in micro detail, sector by sector, exactly what that might entail and how the other side would behave. I do not know enough about it. I know quite a lot about quite a lot on trade, and about how the Union functions, and how it views third countries and trade deals. I cannot possibly, in front of this Committee, give you a detailed, sector by sector view of every implication. If I were the Government, or this Committee or other committees, over the coming months I would be working through, area by area, exactly what a WTO-only, no deal solution would look like, and whether it is really palatable. That is what we have to know.

**Q1084 Michael Gove:** Thank you very much, Sir Ivan, for coming in front of us and being so helpful. One of the things that was mentioned in the email that you sent to your colleagues when you left, and which was then leaked, was that you asked your colleagues to challenge ill-founded arguments or muddled thinking on the part of Ministers. A clear inference is that there were some ill-founded arguments and muddled thinking in their minds at that time. Could you say a little about what you felt was ill-founded or muddled at that time? Could you say a little about whether you think some of the muddle has been cleared up, and some of the ill-founded positions are no longer held? Or has the situation actually got worse?



**Sir Ivan Rogers:** It is important, in explaining the email, to say who it was directed at: namely, my own staff or my own former staff, to explain why I had chosen to go then, and what I thought their role was. That is a generic argument on muddled thinking. What is UKREP there for, at its best? I hope it was at or close to its best when I was running it. It is there as a negotiating arm of the Government, and as an intelligence-gathering arm. I said our job was to be the best single intelligence-gathering arm of any member state or non-member state in Brussels. It is also there to challenge thinking that we think is sloppy, coming from the centre or from Departments.

It was a generic point, and not, incidentally, directed at Ministers but at the system. The system is under overload at the moment, as I explained to the European Scrutiny Committee. It is very difficult at the moment for my excellent former colleagues in UKREP to get enough instructions in the more bog-standard areas, because everyone is completely consumed by Brexit and Brexitology, and everything they are trying to do to create the new world. I totally understand that; it is the most important single thing. It is connected with the handling of immediate legislative dossiers by people in UKREP who have to go into the room and negotiate while we are still in the 28.

Obviously you have to get this right, but UKREP at its best is fairly trenchant back to base, saying, "You say you want that, but that surely does not work with this. It is not compatible with this. What do you mean by that?" I was exhorting people to do what I always thought they did do under my leadership, and did brilliantly, which was to speak truth unto power, including to me. I tried to encourage that culture in UKREP, and I said to them, "Tell me when I am talking rubbish", which is frequently, I am sure.

Q1085 **Michael Gove:** It is a very good principle. It strikes me as a good principle of any leader in the Civil Service to instil in his staff. What many people inferred at the time, though, was that there were some particular examples of muddled thinking or ill-founded reasoning among Ministers at that time that you had in mind. Did you? If you did, what were they, and has the situation got worse or better?

**Sir Ivan Rogers:** No. What I had in mind was the fact that we have completely redesigned the centre to cope with what is the biggest single peacetime challenge that the Government have ever faced. If we get the kind of negotiation I am talking about, it will probably also be the single biggest negotiation we will ever have conducted, across Government. When I was at the centre, and then dealing with Tom Scholar when he was at the centre, it was relatively modest, pretty circumscribed and small. It had grown a bit, but it was the old European and Global Issues Secretariat inside the Cabinet Office, which was 40 or 45 people.

DExEU is now 300-something people and still growing, and probably still needs to grow. An awful lot of those people are extremely good and it is brilliant to see so many people who are motivated and want to go into



this, because it is a career-defining thing to go and do. With all respect to them, they do not know an awful lot about the other end, including the UKREP end. There is no reason why they should. A lot of them do not know what UKREP is, what it is there for, what its habitual role has been, or what the past looked like. Nor do I want them to spend their time examining what the past looked like, because what they have to do is examine what the future ought to look like.

However, in UKREP, the constant message I was giving to my troops was, "You have to get back and talk to all these new people on a regular basis, educate them about what you do and what you are getting from the other 27. Inform their thinking". I am not accusing anybody of anything, but there is a danger, in London, of solipsistic thinking. People sit in their own cocoons in London and think, "Here is a brilliant wheeze for what we want to do in aviation or automotive or a customs union". There are very brilliant people in UKREP who would be able to say, "I am sorry, but that is not going to pass muster at all". I wanted them to say it, not sit there and complain after they put it into a paper that goes to the Cabinet Committee.

I have had some of that from people, understandably, saying, "Why the bloody hell did they say that? That is not true", to which the answer is, "Get in there at the start line, wherever you can. If you do not think that makes sense, you have to be robust about saying it does not make sense".

Q1086 **Michael Gove:** In a way, it is a bit like the battle-hardened veterans at the front saying to the new recruits in an expanding army, "This is what it is really like". It is as much about the Civil Service as it is anything else.

**Sir Ivan Rogers:** Yes.

Q1087 **Michael Gove:** In that context, what is your assessment now about how DExEU is operating? What additional, if any, advice or resources do you think it needs?

**Sir Ivan Rogers:** As I say, it has grown remarkably well, from a very low base, even after the summer, to now 300-plus people. It is getting increasing volumes of the right sort of expertise. As ever, in a system like ours, there is always that tension between what the appropriate role of the centre is and what the appropriate role of Departments is. I have talked repeatedly to the Cabinet Secretary and others about that. In the end, as I have said, the Prime Minister has to be the arbiter of the deal, and has to make the key judgments and be in a position to make them—obviously, in close collaboration with all her secretaries of state.

Therefore, the people who are out in Departments, who may be chief negotiators for a chunk of whatever deal we are trying to put together, should have not only a line to their own Secretary of State and working up in their silo, but a line into the centre. That could be via David Davis, Olly Robbins or however it works, but it has to be a structure where they



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have two reporting lines. You cannot just sit in the world of phytosanitary and say, "Sorry, I am in charge of phytosanitary, and I will make all the judgments here". The Prime Minister may at some stage say, "I am much more interested in what I get on financial services or on that, and I am prepared to give that up in order to get this". That is her decision.

One point is the architecture. I do not know where the system has got to. It is not my business, but what I was saying, very repeatedly, through the autumn is that we have to sort that out. We have to be able to nominate significant numbers of people who know which way is up, to do the negotiation. Negotiating is a difficult thing to do in the European Union, or with the European Union from the outside.

I was saying in my email to people not to run us down but to say, "We are up against a class act in the European Commission on negotiating". There may be lots of things at which the European Commission is not a class act, but they are really pretty good at negotiating against people. They have lots of experience, lots of grey hairs, and lots of people who have been doing it for 30 or 35 years. In DG Trade, they have one of the world-class trade authorities in the world, along with USTR. My proposition, again to Jeremy Heywood and others, and I have said this for years about the possibility of UK exit, is: "We would have within a very short space of time to build one of the best three trade negotiating authorities in the world". That will require probably several hundred people: class negotiators, people who know what they are doing, and you learn by doing.

You would have to pull in people, no doubt, from Commonwealth countries and elsewhere, to start. We have gone from a standing start. Ministerial ambitions are very high on third country FTAs, very reasonably in my view, because it will be a very key thing to do. DIT has to be one of the best three in the world within the next five years.

**Q1088**      **Michael Gove:** Related to that, you make the point about the need to strengthen capacity in negotiation. We were discussing earlier the quality network of embassies and diplomats that we have. Let us say that you were advising the Foreign Secretary or David Davis now. Would you say it was important for our ambassadors to find out, for the sake of argument, the particular view of the Hungarians, Italians or Spaniards about the nature of the bilateral relationship that they subsequently wanted to have with Britain? As well as what is going to be negotiated on their behalf by the EU, it will also be the case that Hungary will have commercial interests, Estonia will have defence interests and Spain will have cultural interests. Our embassies, presumably, are doing a good job at the moment of assessing how these bilateral relationships will work in the future.

**Sir Ivan Rogers:** That is absolutely critical; I completely agree with that. The message I tried to give around the network to bilateral colleagues, who often, understandably, felt rather in the dark about what



was going on in the world of DExEU or UKREP and the negotiation, was: "The more you can tell us at a granular level, and with economic content, what matters to people in your capital or your country about the relationship with the UK, the better. We want to know where they will come from in the negotiation, why they will come from there, and what really matters to them about the future relationship with the UK and the EU". I also said to them, "Tell me the unvarnished truth. If you think it is going really badly in the Hungarian Parliament, do not rely on me reading the Hungarian press. I am not going to, so you need to tell me".

**Q1089 Michael Gove:** Finally, obviously the EU 27 have a shared interest in a particular outcome to the negotiation. But it is the case, presumably, that within that there will be different priorities and different red lines, as you have pointed out. It may well be that the balance on the scale shifts slightly, and that, for the sake of argument, the Visegrád Four want a particular approach that might be in Britain's interest, and they are a balancing item on the scales against some other countries when it comes to securing the best deal.

**Sir Ivan Rogers:** Yes, absolutely. There is a huge amount of bilateral work here to be done, country by country and grouping by grouping, examining where people are and where the divisions are between them. The Commission and Council will always try to give you that sense that there is complete solidarity behind this. Obviously, there will not be. To a degree, ultimately, we then have to be realistic that the 27 will have to cohere around some position. They often cohere around positions that are not the centre of gravity of their real position, because the big boys have sat on the small boys.

You need to know from the small boys exactly where they have been sat on, and why, and whether there is something you can do about it. There are all manner of things. You need a very detailed, bilateral, country-by-country analysis of where people are coming from and why, while recognising that in the end, the 27 will have to agree negotiating directives for their negotiator, and will have to agree what the position of the 27 is. There, obviously, the weight of Germany is greater than that of Slovenia.

**Q1090 Sammy Wilson:** Thank you, Sir Ivan. The figure for exit from the EU has been described as anything from £20 billion to £60 billion. You yourself have described it as the Commission thinking of a number, whatever number they think of on a particular day. The former head of the EU Council's Legal Service has said that it will be like buying a carpet in Morocco: whatever you can negotiate, that will be the price. How seriously can we take such a figure, given what you have said, the variation that has been given already, and what the former head of the EU Council's Legal Service has said?

**Sir Ivan Rogers:** You have to take it seriously in that it is going to be a political part of the negotiation. The science or law behind the numbers I would not take excessively seriously. I would not want to sound



excessively cynical, but I am well aware of what Commission or Council Legal Service lawyers might be capable of producing by way of justifications for a large number. I would hope that Treasury solicitors will be capable of producing justifications for either a low number or no number. That does not, in the end, solve anything, because it is a power dynamic and a power game, and a negotiation with political realities.

I am not saying those political realities are not in any way influenced by the strength or otherwise of the legal judgment, because behind the scenes, people will be thinking, "What would happen if this ever went to court? Which court would it go to, and what would happen if we did not pay?" In the end, if there is to be a deal around this, let us not overestimate the degree of science behind the law on the side of the Commission. I would not overestimate it. I can see there is a very good piece by Alex Barker on the CER website, which quite closely accords with the kinds of things that were being said to me before Christmas, in terms of the kinds of figures the Commission might be considering.

There is a gap in it in terms of assets, and there are other papers around, I think from the Bruegel think tank in Brussels, on the assets issue, which is possibly even more complex than the liabilities issue. I suppose I am saying that there is a legal question, or a set of legal questions, and there will definitely be quite ferocious legal disputes. Then there is a political reality and a negotiating question. The Commission will try it on for a large number and try to corral the member states. Why would you not, in their shoes? They will say to some of the small member states, "If you do not want to be out of pocket with your structural funds in 2019 and 2020, rally to our banner on a large number for the Brits".

I do not think all the big member states, even the net contributors, will be there. But as I was saying earlier on, there is a danger here that even the net contributors, who have been our habitual friends and allies for the last 30 or 40 years on budgetary issues, at least up to a point, are not really our allies now. The more they can stick us for, the better it is for them.

Q1091 **Sammy Wilson:** All the running of this seems to have been made currently by the Commission, and by those who have quite openly indicated that they are angry at the UK having decided to leave the EU. How committed do you think the other 27 states are to this kind of figure and this kind of imposition?

**Sir Ivan Rogers:** Too early to tell. They were all running their numbers, and running their spreadsheets and models on it, working out what it means for them. I do not want to repeat myself too often, but the danger for us is that both net recipients and net contributors can rally to the view that they are both out of pocket, and the best answer is to get the UK to pay the maximum amount they can get out of us. It minimises either the potential hit, if you are the Finns, the Netherlands or the Germans, or the potential damage to your structural funds receipts if you are the Romanians, the Slovaks or the Italians.



The one thing that could consolidate the 27 is the budget issue. They disagree violently on the budget issue, and they will do so when it comes to the MFF round in 2019. It will be fascinating to watch the MFF without the British, because we have always been to blame for everything that went wrong on the budget. It was all blamed on the British, the rebate and Fontainebleau. We are not there to blame anymore, and there will not be the British rebate. Now they will have a real bunfight on the budget in 2019 without us. Their interests and incentives are radically different. What I am saying is that that budgetary fight, which was coming anyway in 2019, is now even more on people's minds, because this presages that budgetary fight.

**Q1092**      **Sammy Wilson:** The elements of it have been outlined, such as our commitments on pensions and whether that should be for simply UK individuals or for the general pension budget. Given the gap between the payments that have been promised, and the commitments that have been made on spending on cohesion, are there any parts of that that you feel are totally unreasonable and easily challengeable?

**Sir Ivan Rogers:** I suspect all the elements of it, either the quantum or whether, in principle, we are on the hook for it, are challengeable. I do not know. I am now not close enough to it. If I were sitting in either the Sherpa or Permrep jobs, I would be looking at what our legal justification is for saying that we are not on the hook for anything. That is your starting point, is it not? Then I would be having a sober examination behind the scenes of what I think the strength of my position is. Then I would also be saying, inevitably, to politicians, "Yes, there is the law, and we may think we are on unimpeachably strong ground on the law, and here is the evidence from our own lawyers or external counsel on that. But bear in mind that that is quite unlikely to be the view in Berlin and Brussels, and this is a negotiation, guys".

**Q1093**      **Sammy Wilson:** The biggest element of this is the difference between what we have agreed to pay in the budget, and the commitments that the Commission has made to future spending, where they have agreed to spend beyond the means that are available to them at present.

**Sir Ivan Rogers:** I am an ex-Treasury official, and we have always taken the payments line rather than the commitments line. The commitment payments stuff is a bizarre way in which to account for public money anyway, but that is the way the Union has done it since its inception. We have always accounted in payments, because that is the money out of the Exchequer. We were looking at the state of our net contribution. Now, people are coming back to using the commitments and saying, "You are on the hook for stuff that has been legally committed to, even if it has not yet been transformed into payments".

That is the RAL issue—the *reste à liquider*—which is now running at 240 billion. It is a totally bizarre, bonkers world in which you can have a



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gap between commitments and payments of 240 million, built up over a 20-year period. It is a ridiculous way to deal with it.

**Q1094**      **Sammy Wilson:** Is it reasonable, therefore, for the UK to be responsible for what you have described as the “bonkers” decisions for future commitments?

**Sir Ivan Rogers:** These will be political judgments, in the light of all the evidence that officials will give the Prime Minister and other senior Ministers on what we really think. Then, as I say, there may be a political judgment, given the pressures on others and what this means for them, and the probably inevitable connection between this budgetary issue and preparedness to go fast on a future economic arrangement. What might we be prepared to do?

**Q1095**      **Sammy Wilson:** Some of the EU negotiators, Mr Barnier in particular, have suggested that until this issue is settled, there cannot be any negotiations on future arrangements between the UK and the EU. Is that a position that you feel, first of all, is defensible in the long run? Will other member states accept that? Indeed, from the point of view of the UK, is that a position we should even contemplate?

**Sir Ivan Rogers:** No, we should not contemplate it. We are not contemplating it—or we were not when I was there, and I am sure we are not now. It is not the position either in the Prime Minister’s speech, the White Paper, or what David Davis has been saying in recent days. We have said all along that the framework for the future deal is discussed alongside the withdrawal treaty issues, and we have always accepted the budgetary liabilities and the liabilities and assets question is one issue to be solved in the withdrawal treaty. But we have never accepted that this has to be settled first, and that we have to sign on the dotted line, either for money or for an agreement to a set of principles as to what the numbers should consist of.

We shall see in the coming weeks whether people put a number on the table. My slight gut instinct is they probably will not, but they might. They might try to put out a set of principles about what the number ought to be composed of, and how the UK ought to recognise where its liabilities are. I do not know, but my instinct is they will say something about it in their response to their Prime Minister’s Article 50 letter.

**Q1096**      **Sammy Wilson:** Ultimately, if the EU Commission sticks to this unrealistic and unacceptable figure, the UK could simply say, “We are not paying. We are walking away. We will have no deal”. Now, you have described graphically what the implications of that might be for the UK. Can you describe in equally graphic terms what the implications of such an arrangement, apart from the hole in the budget, would be for the EU states?

**Sir Ivan Rogers:** It cannot be a good state of the world for them, either. One would hope it is not. There are really severe losses from just cutting off. You have seen what Mark Carney has been saying about the financial



stability risk to the eurozone of an abrupt cliff edge. There are other consequences in other sectors that would make it an insane thing to do. All I was pointing out is that this is a very legalistic body we are dealing with, and they will say, "You have transformed yourselves overnight from being a member of this body to a third country outside the body, and in the absence of a new legal agreement, everything falls away".

We all know that that is nuts in the real world, because why would you want to stop UK planes flying into European airports on date certain? We know that this is insanity. We know that stopping carcasses and consignments and saying, "Your slaughterhouses are no longer approved", is a nonsense in the real world. Sadly, that does not stop it necessarily happening.

Q1097 **Sammy Wilson:** Yes, but what are the consequences on the other side for the EU?

**Sir Ivan Rogers:** That is economically damaging for them. They will obviously assert and insist that it is less economically damaging, but we will be, when outside the European Union, their single biggest trading partner, so why would you want an abrupt stoppage of flows of goods and services. Unless you are nuts, you ought not to want to do that. There is an incentive on them to agree, as well.

Q1098 **Mr Lilley:** There are remarkably few people who argue that no deal is quite likely. I am one of them. There are two different reasons for thinking no deal is quite likely. There are those, like me, who think that politics may trump economics, and there are those who think it is all just too difficult. You, in your evidence to the European Scrutiny Committee, quoted the problems of negotiating free trade agreements with Canada. Surely, that is a totally different thing from negotiating a free trade agreement when you start off with free trade. Canada had 5,000 different tariff lines and the EU 12,500, behind each of which protected interests had grown up, and you were having to say, "We will reduce this over three years if you reduce that over two years", and so on. It takes a long time. If you start from zero tariffs and go to zero tariffs, why does it take more than 10 minutes? This is only about tariffs; we will deal with non-tariff barriers later.

**Sir Ivan Rogers:** Yes, on tariffs, in principle that is right. The problem is non-tariffs.

Q1099 **Mr Lilley:** No, that is fine. Let us move on to non-tariff barriers.

**Sir Ivan Rogers:** The problem is divergence. They think that we have deliberately left the European Union for a purpose and therefore, although we may be convergent on day one, we are not going to be convergent on day 201.

Q1100 **Mr Lilley:** That is right. We are now moving on to the question I have not yet asked but am about to, on non-tariff barriers. There, too, we start with identity, and the issue, as you say, is divergence. You



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mention that there is a whole network of arrangements that exist between all sorts of different countries. Precisely the same problem of divergence exists, potentially. They agree that their veterinary arrangements are identical on day one, but they may change between the EU and Iran or the EU and Brazil subsequently. All such agreements have built in dispute resolution agreements for if there is divergence. Is not the one thing you have to agree a dispute resolution agreement for subsequent divergence? That is what all of the negotiation will be about, because you start with identity, whereas on any other arrangement you would start with differences and a huge amount of the negotiation is reconciling those differences, and only a small part is the subsequent divergence. We only have that small part, the subsequent divergence, to negotiate. Is that correct?

**Sir Ivan Rogers:** I agree it is an absolutely key and central part. I do not think it is the view of the world that they have. I agree with you on dispute resolution and adjudication, what the organ for doing that is, and whether it is political or judicial, and what it looks like. There are multiple different things in multiple different FTAs agreed by both the EU and US. This is not insoluble, with goodwill on both sides to solve it.

Most FTAs, though, are agreed by people who are converging towards each other, from a low base. This would be an unparalleled FTA. Nobody has ever concluded an FTA having had deeper integration from which they are disentangling from each other. In the jargon of Brussels—and apologies for the jargon—it is often referred to as a de-accession process. They have an accession process, as you know, for acceding member states, where they have to accede over 35 chapters of the acquis, and gradually gravitate towards the acquis and get each of those chapters ticked off. They see this—and maybe erroneously; I have argued that some of it is true and some of it is not true—as a de-accession process, where progressively we are likely to diverge from existing elements of the acquis. The Nigel Lawson point in the House of Lords yesterday was accepting that we might have a status quo or just replicate what they have on labour rights, but he said that 90% of the rest of the acquis and the burden of EU regulation was outside the area of labour rights. “Okay”, say foreigners to me, “so that means environmental law and that means multiple other things, where you intend deliberately to do something different that diverges from the single market”, which presumably we would, and presumably this House and the other House will over the next several years. We will start from a position of convergence, but we have not done this in order to leave the European Union and then keep in aspic the EU acquis in British law. It does not make any sense to do so.

If you were a foreign counterpart to me, you are saying, “Hang on, you are likely over time to diverge really quite substantially from the acquis, because otherwise you would not have done this, and you must think that you can reap material advantage from divergence from the acquis. However, then you are asking us to sign up to a deal where everything is



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enshrined in UK law, but you are no longer subject to supranational jurisdiction. We need a governance process to know how far you are going to diverge, and on what, and then what happens when you do diverge”.

Q1101 **Mr Lilley:** You are assuming that all of our subsequent divergences may be of relevance to them.

**Sir Ivan Rogers:** No, not all of it will.

Q1102 **Mr Lilley:** Mostly it will apply to the 85% countries—

**Sir Ivan Rogers:** Take phytosanitary for example. If we say we want to liberalise the world of agriculture, and operate a different agricultural regime and a BAP that looks different and much better, I hope, than the CAP, then others will say, “Hang on—you want full and untrammelled market access in agriculture for your sheep meat, but you are not applying the rules”.

Q1103 **Mr Lilley:** What we have to negotiate is a process for dealing with divergence, as exists, for example, with the Americans. If they have an agreement on automotive standards, they have to have some system for resolution if Congress subsequently changes automotive standards. Is it going to be substantive, or is it not? We have precisely the sort of problem that exists in every other international agreement, but that is the issue we have to negotiate.

**Sir Ivan Rogers:** We have an enormously valuable and competitive services sector with a huge surplus, where we risk being screwed if we do not get this right. The point I was making at the European Scrutiny Committee on equivalence arrangements was, “Okay, we lose passporting because we are leaving the single market. That is quite clear. Can you devise a set of equivalence arrangements that really work for us? What is wrong with equivalence at the moment?”

You will all talk to loads of people around the City, as I do, and they will say that it is capricious, it is politicised, it is short-notice, it does not give us the time to plan, and it can rapidly be withdrawn. It is also a patchwork, because in various directives, CRD IV, MiFID and whatever, there are not proper equivalence arrangements. This is a very serious problem, unless we get a bespoke financial services deal with equivalence that really works for us. I agree with you—then that comes to the governance arrangement, but this would be something the EU 27 have not done for any other partner. It did not do that for the States, and it has not been prepared to do it for any other partner.

We would have to say, on financial services, “We are big, and you need access to us. There is a massive interest to you in still having London as a kind of centre in our time zone, but we need a totally different type of agreement with you from any that has previously been negotiated”.

Q1104 **Mr Lilley:** That is still one that starts from an identity, and we have



only got to deal with subsequent divergence.

**Sir Ivan Rogers:** Yes.

Q1105 **Mr Lilley:** In all other agreements, which have taken a long time, you had first to reach identity, before you had to deal with a subsequent divergence problem. It is less complex, in that respect, than any other deep free trade agreement.

**Sir Ivan Rogers:** That is exactly the argument I have been mounting for about the last six months, in Brussels.

Q1106 **Mr Lilley:** Could I just ask—with your indulgence, Chairman—a couple of questions about money? You say—I am sure you are right—that money is the crunch, and that the loss of our net contribution is a very serious matter to them. We were told that our net contribution was so small that it was trivial to us. If it is trivial to us, how can it be major to an economy that is collectively six times as large as us? Either it is a big number, in which case it is very important to us to get it back, or it is a small number, in which case it is trivial to them to lose it. You cannot have it both ways. I am not suggesting you were trying to have it both ways. Those in the Remain campaign said it.

**Sir Ivan Rogers:** I was going to say, I do not know who told you it was trivial. It does not feel trivial to me as an ex-Treasury official who used to negotiate it. It felt like quite a substantial number. The net contribution was—well, you can argue it a number of different ways, but it is quite a large number, and became a much larger number after enlargement, as you know. It is a significant sum. It is not a mega sum, in terms of the UK public finances, but it is not a small one.

Q1107 **Mr Lilley:** It is bigger than any of the major austerity measures we have introduced. Then this *reste à liquider* figure means that, if we accept, as it were, that is the true figure rather than the actual cash figure—from their point of view, it is the true figure—we were understating our net contribution, not overstating it. We should, from that point of view, if we are liable for these things, have said that the gross figure was not £350 million and the net figure £200 million per week, but the gross figure was bigger than £350 million and the net figure was bigger than £200 million per week, should we not?

**Sir Ivan Rogers:** By definition, if you end up paying for something that is effectively for a period that has already been covered—a big question, because some of it is for a figure that has not yet been covered—that must be true, yes.

Q1108 **Mr Lilley:** One final question, if I may. You mention they are very legalistic. Should we not start from a legalistic position, and say, "Article 50 says that 'the Union shall negotiate and conclude an agreement with that State...taking account of the framework for its future relationship with the Union'". Now, I would have thought any lawyer would say that necessarily implies that you must have an agreement, at least in outline,



of what the framework of the future relationship must be, before you can even start negotiating other things. It is not a question of dealing in parallel. You have to agree the outline framework: are we going to aim for a free trade agreement, or are we going to go to a WTO system of most favoured nation? We ought to be saying, "That is what your article says. You have to adhere to it. We have to agree roughly what that framework is before we can negotiate anything else. It is not money first and everything else afterwards, but framework first and everything else afterwards".

**Sir Ivan Rogers:** I do not have much to add to that. That is essentially the argument I have been making for the last several months, which is essentially, "What is the meaning of framework, unless it is that, and how could you possibly draw up divorce terms unless you know where you are going?" I have also said to the Prime Minister from the outset—again, this is a very different negotiation from the one David Cameron had— "Start with where you want to end up, and start with your desiderata. Your desiderata are control of borders and end of supranational jurisdiction and law, ergo you are going over there. That is the framework. Then the question becomes the complex question of how rapidly you can get there and whether others are on board".

I think others will be on board in principle. I am less pessimistic than you. They are, in principle, persuadable that an FTA with the UK is a good thing. They might regret that it was not a closer relationship than an FTA, but they would be up for negotiating an FTA. As to whether they are then persuadable that that can be done on your continuity and convergence argument and can all be done and dusted by October 2018, we can only see when it starts.

That is not the doctrine in Brussels or in the key capitals I dealt with, but if you say, "Look, we are up for a really quick process. We start convergent; we are able to give you a very good account of where we shall remain convergent. We want a governance process for what happens when we cease to be convergent. We recognise your sovereignty such that in those areas where you argue we are not convergent enough there will be market-access consequences for us. You will have to accept that if that is what you choose to do to us, there will be market access consequences for you in return". Your proposition, if you are the Prime Minister, will undoubtedly be, "We could all do this much more rapidly than you all say".

Q1109 **Craig Mackinlay:** Sorry to have missed you at the European Scrutiny Committee. I am a member of that, but I missed that day. I know at that Committee you said, "I am a bit of a budget bore—an expert—so I think I could guess where they are coming from". This is the €40 billion, €50 billion, €60 billion—heaven knows what. You then said, "Or whatever think-of-a-number is coming out of the Commission circles". Have you had any time to consider where these figures are coming from?



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I have done a bit of work on this, and looked at the accounts of the Commission. Obviously, the last ones that are available as audited are 31 December 2015. I would imagine the 2016 accounts will be out fairly shortly. We have this hangover liability in the *reste à liquider* that I think you have identified as €200 billion, but getting bigger, possibly up to €240 billion by 2018. We have the issues of the multi-annual financial framework, and what bits are left in there. The 31 December 2015 accounts show a net liability of €72 billion, of which €63 billion is the pension liability.

Now, given that these extra amounts seem to have been building through time, which Peter Lilley talked about, particularly the *reste à liquider*, under international financial reporting standards, should these not have been within the accounts and considered as contingent liabilities, or have for years the EU accounts been wholly deficient in showing up the true liabilities of the institution? You could proselytise about how dreadful a pension system it has got. It should have been putting away proper money today to properly match its liabilities for the future, which it clearly has not done. However, what has been wrong with the EU's accounts for all these years such that they are just showing up these huge potential black holes that the Commission are now trying to point the finger at us to try to settle? What has been wrong? Where have the auditors been? Where have the internal accounts of the EU been all these years, in not picking up these liabilities? You could argue, if it were a plc, "Well, it is not there; let us sue someone". What has gone wrong all these years?

**Sir Ivan Rogers:** I am not sure I can answer your question in any detail, and I certainly could not answer your IFRS point. As I say, the Community from the outset, which then became the Union, has had this really extraordinarily arcane way of managing its money and its accounts, and its division between commitments and payments, and it has bedevilled every budgetary round I have been engaged in, because most member states ascribe most importance to commitments and legal commitments, and we have always taken the view that what really matters is payments. We ended up with a gap of the order of 5% between commitments and payments in the 2013 budget round that David Cameron agreed in February 2013, which was unprecedented. It has always been previously 3% or 4%, so it was unprecedentedly high.

It is an absurd thing to do. I have just said it is absurd to end up with a *reste à liquider* that constantly grows, and in fairness to Kristalina Georgieva, who is really one of the best Commissioners, though has sadly just left, as a vice-president, she was trying to address budgetary discipline and budgetary process very much more in the college than any previous budget Commissioner I have come across. Sadly, she has now disappeared and gone back to the World Bank.

It is not a great accounting system, and you have seen that from the error rates and the fraud rates, and all the issues that have bedevilled us in Ecofin and budget councils for the last 20 years. I feel like I have



attended most of them. There have been incremental, insufficient improvements under pressure from us and the budget disciplinarians, but—

**Q1110**      **Craig Mackinlay:** On one point, which is really relevant and has come out of discussions in the European Scrutiny Committee, how are we going to deal, as a country, with this hangover legislation? There will be meetings progressing while we are still full members of the EU, and there could be regulations that are coming through that under QMV we have been wholly against. In the ideal world, we would not want this to impact the UK, but if it comes into force post-Brexit because we are outvoted on QMV or we think, "If the others want it, we will not stand in their way", how should we be dealing with those complex issues in this interim period? I can see a lot of these coming up.

**Sir Ivan Rogers:** That was my message to the Scrutiny Committee, and as I say, with no disrespect to any Ministers or officials around Whitehall, the danger is that we take our eye off the ball on current legislation, which I know obsesses the chairman of the European Scrutiny Committee, but rightly so. We are still there; we are still members of the 28; we are still members of the Council until the day we leave. We still have a voice, we still have a vote, and how do we ensure that that counts?

There is, obviously, a danger, particularly after the invocation of Article 50, that people around the table will start to act differently. They are, as I said earlier, starting to behave a bit differently and starting now to cabal with each other without us. It is more difficult, sometimes, to get your way, and for my former colleagues and staff in UKREP, it is a more complex environment. We have to be completely on the ball for anything that might impact us after exit. That was a constant mantra back from me to Whitehall, saying that you cannot afford to neglect this stuff, because people will slip things into bits of legislation that will have an impact on us after exit. Departments cannot say, "We are just too busy on Brexit; we cannot cope with this".

**Q1111**      **Craig Mackinlay:** What was your advice to Ministers in this specific case of something wholly unacceptable to the UK, where we are trying to play the game and be nice to people as we leave and say, "You all want it; we would never want this, but it is going to impact us post-Brexit"? How should we cope with one of those particular regulations?

**Sir Ivan Rogers:** There you should fight your corner in the same way as ever, and say, "It does impact us post-Brexit". You do have to make a differentiation between things that you can let go and to which you can say, "In 18 months' time or two years' time we will be gone, so this will not impact us". You will get further if there is a behavioural difference between those points on which people will say, "You are gone, so why are you mobilising your 29 votes in that direction?" if you say, "Yes, but this really will still impact us afterwards". You are going to have to, in



Whitehall, have a sharper differentiation between things that pertain afterwards and things that do not.

**Q1112**      **Joanna Cherry:** Thank you, Sir Ivan, for giving us your time this morning and the benefit of your expertise. I have been reading your evidence to the European Scrutiny Committee, and I wanted to ask you about something you said about the Article 50 process—the process once the UK triggers Article 50. You said, “The Article 50 process is not really a balanced process between the one and the 27. The 27 are rather in charge of the process, set the parameters for the process and set their own guidelines”. Can you expand upon what you meant there, for us, please?

**Sir Ivan Rogers:** I am not sure I can expand on it very much. I do not want to say it is a rigged playing field, but the problem with this process is that it is designed by the 27 in the interests of the 27. There seem to be any number of fathers of Article 50 who come out saying that they drafted this text, but it is in the interests of the 27, rather than the one. They basically run the process. They meet as 27. They determine their guidelines. Ultimately, they will determine their negotiating objectives. It is a process that is slightly done to you as the one. It is not parity, really, between the one and the 27.

We have real negotiating weight, we have real leverage, and we have to decide where that leverage is and how to deploy it. However, the clock is more ticking against us than then, and you need unanimity. If you wanted a rollover—which I do not personally think we or the other side will—beyond the end of the two years, you do have to get unanimity of the 28. The instincts of the theologians and the technocrats in the system are that we are more up against it than they are.

**Q1113**      **Joanna Cherry:** Looking at the other end of the process—when the United Kingdom is no longer a member of the European Union—you talked before the European Scrutiny Committee about that, and you talked about the notion of negotiating heft, and you explained that the negotiating heft we would have at the table would have to be compared with being part of a wider bloc, and the advantage of being in the European Union is not speed or nimbleness, but rather the size of the market they have. That is why the Canadians, the South Koreans and other partners are so interested in the EU markets. You were there contrasting the negotiating heft that the UK on its own would have, as opposed to the negotiating heft the UK has as part of the European Union. Is that correct?

**Sir Ivan Rogers:** Yes. I mean, my point was we are leaving; we will have to have our own trade policy and our own trade negotiators. Our advantage in that is that we can put things on the table we have always been prevented from putting on the table before by mostly agricultural protectionists in other parts of Europe. We are now able to choose those instruments and issues we can deploy and put on the table, when we are opening free trade negotiations with Mercosur, or Japan, or South Korea,



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or whatever. That is now our choice. It may be that we can put significantly more on the table in certain areas than the EU 27 can agree among themselves.

By definition, if you are Mercosur, the EU market as a whole is one of your biggest markets. It is probably more dominated by Spain, Italy, Iberia than by us. Its market opening in the EU 27's market is a bigger economic prize if you are Mercosur than if you are the UK. The UK may be easier to do a deal with—and I hope we will be easier to do a deal with on that—and we may be more nimble and agile and better at it. They may also think, which we have to try to encourage, "If we did a deal with the UK in that direction, maybe that will force the hands of the EU 27 to move a bit faster in order to be able to match that deal".

We have to try to create the incentives elsewhere in the globe to go faster with us, but their market is larger than ours. It is obvious. As I think Rod Abbott said yesterday to you all, they are about 100 and we are about 15, broadly. If you are the South Koreans, they have an immediate choice. When we exit the EU, we exit the EU FTA. Can we do an immediate deal with the South Koreans that says, "Let us just grandfather everything that you already have in the UK market by dint of the EU deal, and incidentally, guys, we will be back to you with a better offer and a new deal as soon as we can, because we want more market opening with you"? That is the issue. Or will the South Koreans turn around and say, "Actually, you are only 15, and the other 85 is still the 85, and we are not prepared to do the same deal with you as the 15 as when you were part of the 100". We cannot know until we do it. That is DIT's job in the next couple of years.

Q1114 **Joanna Cherry:** You have mentioned the example of South Korea, there. The EU trade deal with South Korea has reduced the tariff on Scotch whisky to zero, while whisky imported to Korea from the rest of the world carries a tariff of 20%. That is correct, is it not?

**Sir Ivan Rogers:** Yes.

Q1115 **Joanna Cherry:** Now, David Frost, who is currently an adviser to the Foreign Secretary but was the previous chief executive of the Scotch Whisky Association, said that we in the UK "are much more likely to get" deals like the deal on Scotch "with the weight of the whole of the EU behind us than we are in a negotiation nationally". Would you agree with that statement?

**Sir Ivan Rogers:** I was not aware he said that, and I am not sure when he said that.

Q1116 **Joanna Cherry:** Some time ago—about a year and a half ago. It might not surprise you to hear that.

**Sir Ivan Rogers:** I do not think we can know that and know either way. You can argue it either way, in my view. You can argue that, as part of a composite and as part of the EU 28 we have more weight in opening up



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markets where there has been deliberate protectionism against our products. Or you can argue that as the UK only, we will invest more effort and a higher quantum, a higher proportion of our effort, in doing stuff for Scotch whisky exports than the EU 28, where by definition it is one of multiple different negotiation objectives for different countries. What I am saying is the proof of the pudding will be the eating. In some areas we will do better from being the UK alone and saying, "We can now focus on the few things that really matter to us in that market". You can argue it either way.

**Q1117**      **Joanna Cherry:** Can you give us the benefit of your experience about what the view in Brussels is of the debate taking place in the UK leading up to the referendum on membership and thereafter? What sort of impression has it left on people in Brussels?

**Sir Ivan Rogers:** Are you asking about the debate during the referendum?

**Q1118**      **Joanna Cherry:** The nature of the debate—the things that have been said about the European Union and about the other member states. What kind of effect has that had on people's attitudes in Brussels towards the United Kingdom?

**Sir Ivan Rogers:** It has gone through multiple stages. There was a lot of regret and angst, and some anger, in the immediate aftermath of the referendum. That is totally understandable. It tends to blow away after a while. There were then some harbouring illusions that maybe one could have another go, or the British would repent at their leisure, and something else would happen. All that has gone away now.

Whatever one thinks of Brussels, and it is obviously a peculiar operating environment and a very enclosed world, it moves on quite rapidly. People are now in "Let us get on with it" mode, and they are now about to invoke and believe we are about to invoke, and therefore there is a new negotiation to be had, and it is a difficult negotiation. We will now have this very testy negotiation about what we are negotiating about, but people are quite pragmatic.

I am wary of overestimating the degree of bad blood. Of course there was bad blood during the referendum campaign and then immediately afterwards. People move on, and the sensible people at least think, "Okay, we are in a new relationship with the Brits. We still want a close relationship with the Brits in multiple different areas. They appear to want a close relationship with us. How do we make it work?"

There are some who are obviously less benign than that—let us be candid. Of course, there are some people around some of the institutions who think, "Bloody good riddance. They have had their foot on the brake of history for the last 40 years, and now they are gone we shall be able to get on with our integration fantasies". They will find out that that is not true, and that we have not been the obstacle to the further



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integration of the 27, but of course there are some who think, "Good riddance". Not many, and most I think ultimately, if we get the temperature of the negotiations right, will think, "Right, let us start talking turkey about what the new relationship looks like, and if that is an FTA, let us start negotiating an FTA".

**Q1119**      **Joanna Cherry:** Can I ask you a little bit about UKREP? To what extent are the devolved Administrations' views represented within UKREP?

**Sir Ivan Rogers:** We have a very close relationship with the other offices, or we certainly did in my time, with the Scottish, Welsh and Northern Irish counterparts. We have individuals inside UKREP. It works very well on the ground between the offices, and very close, very trusting relations. We had very good relations with devolved Ministers and I used to see devolved Ministers and the First Minister and Deputy First Minister whenever they were in town. At the operational level, it works extremely well.

**Q1120**      **Joanna Cherry:** Would we be right in understanding that, if the devolved Administrations are to have an input into negotiations, as Theresa May previously promised, the mechanics exist on the ground for there to be input from the devolved Administrations into UKREP?

**Sir Ivan Rogers:** Yes, there is always input for sectoral councils into UKREP, and it works, to the best of my knowledge, across multiple different councils, both for my deputy and me. It worked extremely well.

In terms of how Brussels and the other member states view the negotiation, of course they view the negotiation as with us, as the member state, and they view the negotiation as therefore with the UK and expect a unified UK position. They are all attentively reading Scottish Government papers and other papers, but they think the negotiator is the UK Government, and the people they are dealing with is the UK Government.

**Q1121**      **Joanna Cherry:** You said that they are attentively reading Scottish Government papers. Do you mean by that the paper produced by the Scottish Government before Christmas, "Scotland's Place in Europe"?

**Sir Ivan Rogers:** Yes. People do not think it is appropriate—it is not that they will not see Scottish Ministers, but the negotiation is not with Scottish Ministers, so they will not engage with a differentiation argument. They will say, "Let us wait and see what the UK puts in its letter". The only people with whom they would deal would be me, or now Sir Tim Barrow, or the Sherpa or UK Ministers.

**Q1122**      **Joanna Cherry:** Would we be right in understanding that the only way that Brussels will look at a differentiated agreement for Scotland is if the United Kingdom Government put that in the Article 50 letter?

**Sir Ivan Rogers:** That is my view, yes.



Q1123 **Chair:** Following up on Joanna Cherry's point, and a very brief answer will suffice, do you see any prospect in relation to the Scottish Government's proposal that Scotland should be able to remain in the single market even though the rest of the UK would be leaving the single market? Do you think there is any prospect of the 27 member states being willing to entertain that?

**Sir Ivan Rogers:** I confess I have not read the document and gone through it, and seen exactly how the proposition works. It seems to me legally creative, shall we say? I would think that the usual suspects in some of the usual member states will be extremely worried about the precedent. You can start with Spain, but you would probably also have Belgium and Italy worried about the implications for their jurisdictions and the unity of their jurisdictions if you ever get into differentiation. That is my instinct, but I have not been through the proposal.

Q1124 **Dominic Raab:** Thank you for your evidence, and for coming today. I am almost trying to recap so I have understood the headline advice, warnings and counsel from your evidence here today. If I have understood, it is that the mutual self-interest leading to a comprehensive deal is impossible to predict with precision or finality, but pretty strong. The issue is the timing within which the negotiation can get to the final point on the comprehensive nature of the deal. Is that correct?

**Sir Ivan Rogers:** I think so, broadly. Yes.

Q1125 **Dominic Raab:** As I read the wider debate, there is a question then if, within two years, in your view, it is a challenge to get all of the whistles and bells of the different agreements, not just the comprehensive FTA but the other stuff we have talked about, including the context and the precedence with America. I wondered what you thought was the optimum timeframe we would need for it, because I am mindful of Peter Lilley and other people's concerns about us ending up in the long grass, and therefore whether politically or otherwise not getting the deal done in a reasonable timeframe and therefore having no finality.

My question is this: is there a timeframe bell curve within which two years is not enough, but beyond a certain stage is too much, because you will never get minds to be focused? In your view—just for the negotiation, not for the ratification nationally—would we need maybe three or four years to get this done? I am just trying to get a sense, because of course it makes the question of phased implementation or transitional arrangements so much more important, but I want to begin with the end in mind. What is the timeframe that you think is optimum for getting negotiation on the comprehensive aspects that you set out? Is it three years, four years? I do not want to put words in your mouth.

**Sir Ivan Rogers:** It is a very good and fair question. I am not sure I can answer it. It obviously depends on the ambit of the FTA, and how wide you go, and how difficult it is—it will be much more difficult on financial services, because it is unprecedented, than it is on aviation, where the answer is fairly obvious and ought to be in everyone's interest but it



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might be quite difficult to do it by a date, certainly, in October 2018. Then in some areas, what happens on energy or agriculture and phytosanitary, or competition law etc., is very hard to judge. You would have to open, as I say, like an accession process, chapters.

If it is any comfort—I do not know if it would be—I think the other side of the table is worried about cut-offs as well, and does not want this to hang on forever, because they are slightly worried we would just sit in an antechamber and never bloody exit, and they do not want that. Certainly the European Parliament and the European Commission do not want that. If your question is, could you in principle agree with them that by date certain there would have to be an agreement, and that is a definitive cut-off, you probably could. The question is, as ever for negotiators like me, what is the reality of that, or would you just reach that cut-off point and find you were not quite there and have to have another cut-off point? How do you avoid that situation? How do you make it a definitive cut-off point that everybody does sign in blood? It is very hard to judge.

I think, consistent with what I think Peter Lilley was saying, we should not accept and do not have to accept that there is this stately round of FTA negotiations, and with the Americans we reached round 15 of TTIP—I assume it has now bitten the dust—and they were happening at a regular rhythm of about four or five a year. We would presumably be saying, “We do not have to do four or five a year. We could do two a month, and we get all our negotiators across all the sectors”. You have to be realistic; a lot of work emerges during a negotiation that you had never thought of before the negotiation, and then people have to go away and do their homework, and they have to consult their Ministers and their Commissioners, and they have to consult the 27, and it all takes longer than you think possible.

**Q1126**      **Dominic Raab:** What I am getting at really, Sir Ivan, is this: I think that our negotiating leverage in the areas we want, after a certain point, will get weaker if we have not resolved it. Take, for example, financial services. You have rightly pointed out it is a sensitive issue; it has not been done before quite to the same extent. I can imagine if you said two years, and then sunset after a year or whatever it may be after that, that might focus minds and technically there would be enough time to do the deal. If the EU has not given us the kind of compromise we would need before then, it gets much easier for them to pocket what they want to pocket, and for us to get kicked into the long grass, or to remain in the transitional period that you have said no one wants.

**Sir Ivan Rogers:** No one does want that.

**Q1127**      **Dominic Raab:** How do you deal with that? How do you give yourself the flexibility that some people are arguing for, without risking the sense of finality that I think the public would expect but also, for good negotiating commercial business reasons, both sides would expect? How do you get around that?



**Sir Ivan Rogers:** You have to commit at the top political level and commit publicly to a date certain, do you not? You have to get that signed in blood by the leaders, who say, "We have agreed solemnly here today that the deal will be comprehensive and cover the following items and areas, and we are politically committed to delivering it by x".

Q1128 **Dominic Raab:** If I have understood correctly, you think a sunset clause might be a good idea, but the question is quite what that would be.

**Sir Ivan Rogers:** Yes, and exactly how do you make it stick, rather than find you lurch towards it and you have not quite done the deal?

Q1129 **Dominic Raab:** Thank you. I wanted to raise one other point, which was in your email to staff. There is a point at which—and I want to quote it—some sunshine comes out of your view—

**Sir Ivan Rogers:** There is quite a lot of sunshine in my email.

**Dominic Raab:** There is, and I am Mr Sunshine on this Committee. Let me quote: "As I have argued consistently at every level since June, many opportunities for the UK in the future will derive from the mere fact of having left and being free to take a different path. But others will depend entirely on the precise shape of deals we can negotiate". Without getting into the detail of this and arguing the pros and cons of it, if you were going to highlight three of those opportunities for the UK, whether it is from the mere fact of having left or the subsequent deals, what would they be in headline terms?

**Sir Ivan Rogers:** They are probably different types. There are a number of policy areas that are very heavily infused with the EU, where you want some degree of convergence, or you may do if you are going to strike an FTA. There are others that have been infused by the EU where they do not have to be anymore, and we can take sovereign decisions that go in a radically different direction.

Q1130 **Dominic Raab:** So I have understood for me, as a crude layman, in taking back democratic control over some regulatory aspects, notwithstanding the equivalence issues, there is an opportunity there to be exploited.

**Sir Ivan Rogers:** Yes.

**Dominic Raab:** Okay, that is the first one.

**Sir Ivan Rogers:** Then there are other areas. One area very dear to my heart, not least because I used to work on it in the Treasury many moons ago, including for both Ken Clarke and Michael Portillo, is the common agricultural policy, which you do not need me to tell you is not a wonderful agricultural policy. It is highly protectionist and damaging for the consumer, and damaging for the developing world etc. We have an opportunity—I would hope we would take it—to do something different. Now, I am not naive, and I know a number of you who have rural



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constituencies will be jumping up and down about the prospect of agricultural trade liberalisation and what it means for your farmers, sheep farmers and beef farmers. Nevertheless, you would hope over a 10 to 15-year period we could have a British agricultural policy, or maybe different regional or national agricultural policies. That is one area where the whole of the developed world in the OECD has a shameful record on agricultural protectionism.

**Q1131**      **Dominic Raab:** Sorry, that is really helpful, but I am just conscious of time and getting in trouble with the Chair, rather than you. Regulatory control, CAP, and would I be right to surmise that one of the other opportunities from what you have said previously about multilateral trade would be the global trading opportunities as well?

**Sir Ivan Rogers:** Yes, and you have there got the opportunity, but you have to take it, and we have to build a machine capable of taking it, and we are going to have to do multiple different agreements at once, which will be very difficult to do. You have to build a world-class trade authority, but then as I said you are at least negotiating in your own interests. You are not having to meld your own interests with the other 27, so you can negotiate on what you think matters most.

On the other point about sovereignty, I am rather looking forward—it may be I regret looking forward to it in a few years' time—to what the debates in this House and the other House will be on trade policy once we have sovereignty over it. Some of what has gone wrong in Brussels and Strasbourg, in my view—this is me as a punter and a citizen, not as a bureaucrat—is we have rendered too many of these immensely important areas technical and regulatory and without democratic control, oversight and surveillance. Trade policy—I am a real trade policy bore, as opposed to a halfway budget bore—matters enormously, and now having this open to public scrutiny and making our own decisions about the direction of our trade policy and what we are prepared to do in trade is a big plus in my view, in democratic terms. I think it strengthens democracy.

I hope, then, as a citizen, we do not go in the wrong direction on agricultural liberalisation and flunk it. I would go for much greater liberalisation in agriculture. I am not saying the New Zealand model is applicable here, but I am also acutely aware—not least from having talked to the NFU for all four countries—that they are very worried about the pace of liberalisation driven by external trade agreements. However, I would hope as a country we could have a serious reflection on having a different agricultural policy that is radically different from the common agricultural policy, and benefit from it.

**Q1132**      **Chair:** In view of what you have just said, can I just ask you—and a very short answer will suffice—do you think it will be possible to agree at the early part of the negotiations that there will be a transitional period, picking up Dominic Raab's point, to cover whatever the gap is between the end of the two years, if that is what happens, and the final conclusion? Surely, by definition, if you are going to accept that it is



going to take a little bit longer and come up with a date, there will need to be some kind of transition to cover the gap between us leaving and the final negotiation of the deal. Will it be possible to get that clear at the start of the negotiation—that that will be what is being looked at?

**Sir Ivan Rogers:** That is an immensely difficult question. I was hoping to get it, if I am candid, agreed before we even started the Article 50 process. That is obviously not going to happen, and they have stuck firm on their “No negotiation without notification” mantra. It matters enormously, as you say, to the private sector. The danger that we have is that they use it as leverage and think that we are demanders for a transitional period, and say, “There is a big price for this, and the price is either money or other things in terms of the final deal struck”.

Lots of people, even since I left the office, from various sectors have been contacting me on that question, because they are very worried about the absence of certainty and clarity about where we are going. My worry, in dealing with the 27, is why would you give that before you had to?

Q1133 **Jonathan Edwards:** Just a very short question, in terms of the next major set piece: this would be the Article 50 letter, which Joanna Cherry talked about. If you were still advising the Prime Minister, would you be advising for that letter to be a very short note, just outlining our wish to trigger Article 50, or would you be making the case for a more comprehensive letter outlining our negotiating positions, and why would you be advising the more comprehensive letter or a short note? Do you think that letter should be published for public scrutiny?

**Sir Ivan Rogers:** I think it will have to be the latter. As I said at the Scrutiny Committee, an awful lot of this negotiation will basically be conducted in public. That may make it very difficult, I appreciate, and I know Ministers will not want it to be, but the European Parliament, like you, will want heavy scrutiny of it. The 27 processes will leak; it will be extremely difficult for papers tabled by the 27 not to get out within about 15 minutes. You should assume that quite a lot of this negotiation will be conducted in public. That may make it more difficult.

On the letter, I am a little bit wary, if I may, even in front of the Committee, in saying what I would do, because I am conscious that people elsewhere will draw conclusions from what I say, however erroneously, because I have nothing to do with the process. I suppose my answer would be it very much depends on what answer you want. What do you want to see in the others’ guidelines, and how do you want them to react?

You could keep it very superficial and quite grandiose, and general direction, and say very little. However, then you can expect a certain type of reply. Is that healthy and helpful for us, or does it give too much room for manoeuvre to people we do not want to have room to manoeuvre? You could go more detailed, more specific, and set out with



rather greater detail what you think the destination could be. You might want to cover some of the points that we have covered here today; you might want to take head on, and the Prime Minister might well want to do that, and say, "I believe that all of this can and should be done in relatively short order, because we are different from any previous negotiating partner". The danger, of course, is you may trigger a reaction with other people saying, "You may think that, but we do not". If they put that in print, it is rather game over.

**Chair:** We have two, final, very quick questions. You have been very generous with your time. Emma Reynolds.

Q1134 **Emma Reynolds:** Very briefly—and thank you for your time, Sir Ivan—the Government seems to have suggested on a number of occasions that the question of the customs union is a non-binary choice and there is some sort of middle way. What is your view of that? The Government seem to want to retain many of the benefits that are key to supply chains in automotive and aerospace, but at the same time leave common commercial policy, leave the external tariff, in order to be able to strike free trade deals. Is there not a trade-off here between the current circumstances for some of those big industries that I have just talked about, which benefit from the customs union, and striking free trade deals with third countries? Is this middle way a runner, or not?

**Sir Ivan Rogers:** It depends what middle way one is talking about. I have said my view on where I think others will be, whether we like it or not, on sectoral deals within a customs union. Could you have an automotive carve out and say these arrangements do not pertain or do pertain. I do not think that is very likely. Can I envisage some sort of customs co-operation agreement formally as part of an FTA? Yes, I am sure there could. I do not think any customs co-operation agreement when you are outside the customs union can exactly replicate the benefits of the customs union.

Turkey has a customs union with the EU; it is not the customs union, and my understanding, for example, is that for Turkish trucks any driver from Turkey has to have a permit from the relevant member states' transport ministry or equivalent body, in order to be able to drive through that country. That is quite onerous. That is much more onerous than being inside the customs union, and those permits for the Turks—I am not saying we are the Turks, but I am just giving you an analogue, and they do have a customs union with the EU, not covering all products—are limited at member state level by quotas. It is a serious problem.

The EU can and does agree open access road deals, and it has deals with individual EEA countries. We have ruled out being an EEA country. However, that requires a freestanding legal agreement. Nothing will happen that we benefit from once we have left the customs union, unless there is a legal agreement giving it effect.

Q1135 **Stephen Timms:** You recalled earlier a deal in the EPP leading to



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an unexpected outcome. Did withdrawal of UK members from the EPP make it harder for the UK to get its way in Brussels?

**Sir Ivan Rogers:** That is an extremely good, complex and almost impossible question to answer. You can obviously argue it both ways. The former Prime Minister would and did argue that, one, he was not enamoured of the EPP's ambitions and its commitment to ever closer union and the direction of travel, and therefore one needed a new pan-European party dedicated to the right model of Europe, closer to his instincts. The difficulty with the way Strasbourg runs and the European Parliament runs, as you know, even though it has broken down a bit recently, is that it runs in the politics of grand coalitions, and it is sometimes cosy, sometimes smoke-filled room deals between the major parties, and there is a risk that really that is an EPP-S&D-ALDE stitch up, and the ECR sometimes, but often does not, get in the room. That is not a very healthy way to run the Strasbourg politics, but it is a reality of life.

I have addressed many times down in Strasbourg the German EPP members, and others, including on Brexit questions, including on the renegotiation. Yes, their perception would be we had limited our ability to influence matters by taking ourselves out of the EPP, but you could say, "They would say that, would they not?" They wanted an Anglo-German phalanx of EPP likeminded people, and we are not very likeminded. British conservative thinking over recent years, probably decades, is not really very close in terms of its philosophy on European integration to German EPP thinking. The former Prime Minister was very clear he did not want to be in the EPP, because they did not subscribe to the values and beliefs he had.

**Chair:** Sir Ivan, thank you very much indeed for giving so generously of your time today. Can I also, on behalf of the Committee, thank you for your service at UKREP? It has been very evident here today that we have been the beneficiaries of your expertise and your counsel, and we wish you all the best in what you go on to do, and thank you very much for coming today.