

European Scrutiny Committee

Oral evidence: [EU-UK relations in preparation for Brexit](#), HC 791

Monday 20 March 2017

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Members present: Sir William Cash (Chair); Alan Brown; Steve Double; Richard Drax; Kate Green; Stephen Kinnock; Mr Jacob Rees-Mogg; Chris Stephens; Graham Stringer.

Questions 92 - 155

Witnesses

[I](#): Sir Timothy Earle Barrow KCMG, LVO, MBE, Foreign and Commonwealth Office; Rt Hon Mr David Jones MP, Minister of State, Department for Exiting the European Union.

Examination of witnesses

Witnesses: Sir Timothy Earle Barrow KCMG, LVO, MBE and Rt Hon Mr David Jones MP.

Q92 Chair: Good afternoon, Minister. Good afternoon, Sir Tim. It is a pleasure to have you here. I will ask the first question, Sir Tim. First of all, welcome to your new job. You bring extensive experience from the Foreign Office but, of course, you have the challenge of coming to UKRep not only at a time of turbulence, but only a few weeks before your experienced deputy left for a new post. What have been your priorities in the last few months, in the circumstances?

Sir Timothy Earle Barrow: Thank you very much, Mr Chairman. I am very pleased to be here and, of course, it is a great privilege and honour to for me to be returning to UKRep in Brussels for the fourth time. What are my priorities? You allude to staffing. Clearly, one of the important things has been to ensure that we have our top team fully in place. You will have seen that we have made two appointments to complete our top team in recent weeks, bringing in Katrina Williams as the new DPR and Simon Case as DG for the future relations with the EU and UK. That has been a priority for me.

The priorities have been twofold. First, there is a lot of ongoing business, which we need to continue to play our full part in. That has been taking up a lot of my time, as it rightly should, on instructions from the Minister and others. We are also establishing relationships around town and talking to people in the context of the Article 50 negotiations, which are imminent. Staffing in UKRep, having the right people in place, matters. We are taking a lot of care and attention over the continuing day-to-day business, and making sure we are fully aligned and ready, as we are, for the negotiations that are about to start.

Q93 Chair: Are you experiencing any difficulties on negotiations with the other member states through UKRep at the moment? Are you finding that they are being responsive? Do you find that they are being negative? What is your general sense of the direction from the other member states?

Sir Timothy Earle Barrow: I do not know whether it is an advantage, but a lot of my colleagues in COREPER know me pretty well from over the years, and they are not surprised to discover that I am fully engaged, fully present and active in all the debates. To be honest, the overwhelming sentiment—as we see the position, but also as others see it, including heads of institutions—is that, until we leave the EU, we play our full part. We have the obligations and rights of a member state, and we continue to exercise those, including in day-to-day business.

Q94 Chair: How do you see it, Minister, if I could ask you a question, from



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the Government's point of view?

Mr Jones: As Sir Tim has said, the important thing to remember is that, until such time as we have left the European Union, we will continue to be full members. We will have our rights and we will have our obligations, and we intend to fulfil those punctiliously. As far as UKRep is concerned, it is a hugely important resource for us.

Q95 **Chair:** To follow on the question I put to Sir Tim just now, in relation to the other 27 member states, are you finding that the atmosphere you encounter when you meet them, either individually or collectively, is reasonable?

Mr Jones: In the immediate wake of the 23 June vote, there was a certain sense of shock. It was very clear that a lot of my new counterparts had not expected the result of the referendum and were severely concerned. That has changed. The atmosphere is now extremely cordial and businesslike, and the longer I am in post, the longer I can build relationships with my counterparts, which will be very important in the negotiations.

Q96 **Alan Brown:** This is to the Minister. You now have a new Permanent Representative and a new deputy. I wonder if you could advise what level of turnover there has been at other levels within UKRep.

Mr Jones: Sir Tim is better placed to answer this, but, in the nature of things, there will be moves within government departments. UKRep is no exception.

Sir Timothy Earle Barrow: As far as I see it from my time in UKRep, I have seen some people come and go, but I do not feel this is unprecedented in terms of levels. We are staffed up. There are over 120 people in UKRep and we are fully engaged in all the committees and all the business. As I say, we have just completed the top team.

Q97 **Alan Brown:** Can you clarify just how many people from UKRep have left the Civil Service altogether?

Sir Timothy Earle Barrow: I cannot give you a number of how many people from UKRep. In what space of time do you mean?

Q98 **Alan Brown:** In effect, since June and in the period following the vote, how many people have left?

Mr Jones: I am not in a position to answer that question today. I really do not have the information.

Q99 **Alan Brown:** Can you advise how many people have transferred to other departments, particularly the Department for Exiting the EU?

Mr Jones: It is in the nature of the Civil Service that officials will move departments. There have been a number of movements in and out. Again, I do not have the precise figures. If the Committee wants an indication at some later date, Sir William, we might be able to assist.



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Q100 **Chair:** There are at least two, of course, one of whom is Sir Ivan Rogers, and the other is Shan Morgan.

Mr Jones: Shan Morgan went to take up an extremely important role as the Permanent Secretary at the Welsh Government. One would not wish her not to accept that sort of promotion. So far as Sir Ivan is concerned, this Committee has already interviewed him and, no doubt, has come to its own conclusions.

Q101 **Chair:** What lies behind that question is the issue of whether or not there is any sense, among those who have been in UKRep over the last few years, that they did not like the fact that there was a vote on 23 June and, as a result of that, they decided that they wanted to move on and do something else.

Mr Jones: I can honestly say that that is not something I have detected in all my dealings with officials from UKRep.

Sir Timothy Earle Barrow: I support that. That was certainly not my impression either, on my return. We have a hugely talented, highly motivated team, who are committed to carrying out the business of the Government.

Q102 **Richard Drax:** UKRep is a key UK output in Brussels, which now works for the Department for Exiting the EU and the Foreign Office. Minister, where does the department have a role and where does the Foreign Office lead?

Mr Jones: The role of DExEU is to support the Prime Minister in the forthcoming negotiations. It has also effectively taken over the function of the FCO in terms of relations with the European Union and, to that extent, it fulfils all the functions that were previously fulfilled by the FCO.

Q103 **Richard Drax:** The FCO no longer has any role in what it used to do, as far as the EU is concerned.

Mr Jones: No, for the purposes of continuing business, it is the function of DExEU.

Q104 **Richard Drax:** Sir Tim, how do you divide your time and loyalty between departments?

Sir Timothy Earle Barrow: I work for the Government. I have never found that to be a problem, either when I was Ambassador or, indeed, now I have the privilege of being Permanent Representative. How do I divide my time? As you know, my COREPER, COREPER II—the Committee of Permanent Representatives—looks after particular councils, including the Economic and Financial Affairs Council, the Justice and Home Affairs Council, the Foreign Affairs Council and the General Affairs Council, which the Minister has attended.

Within the context of each of those councils, one is talking to line ministries on business across the board, but I work for HMG. DExEU is



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my home department at the moment, but it is a cross-government and cross-Whitehall job.

Q105 **Chair:** I would like to ask another question about the name that is given to the department, because there has always been that joke that the Foreign and Commonwealth Office is really the Common and Foreignwealth Office. Leaving that joke aside—if it is one—there is a question of whether there should be a special department for the European dimension after Brexit. In other words, would we assume that, when Brexit actually takes place, we cease to have the same kind of relationship with Europe that we had before, by a very long way?

In those circumstances, is it within the Government's thinking at the moment that we might have a separate department to deal with the EU, as we do with DExEU at the moment in one sense, or would it revert back to the Foreign Office?

Mr Jones: Sir William, this is not really a matter for my department. It will be a matter in due course for the Prime Minister, who will be responsible for the architecture of government, just as she created DExEU, which, by the way, is the Department for Exiting the European Union and not the department—in which a constituent of mine wrote to congratulate me on becoming a Minister—for exciting the European Union. I would be overstepping the mark if I was to speculate about the future architecture of government.

Q106 **Kate Green:** Nonetheless, after Brexit, we will still need to have a relationship between the UK and the EU. What is your vision for UKRep, post Brexit? How will that relationship be managed?

Mr Jones: There is no doubt that, once we have left the European Union, there will be a need for a strong British presence in Brussels. It might not be called UKRep; it probably will not be. Nevertheless, there will be a high level of British representation there.

Q107 **Kate Green:** Do you envisage a larger team than is present at the moment, a smaller team or a different kind of team?

Mr Jones: That is a matter for the future. Much depends upon how the negotiations ultimately pan out and our continued relationship with the European Union.

Q108 **Kate Green:** I think that is exactly right, and I would be interested to know what both of you think are the core elements that might determine, post Brexit, the decisions we would make about representation. What are the main elements of negotiation that are most likely to shape post-Brexit representation requirements?

Mr Jones: For example, the issue of the degree of access we have to the single market may well be an influential factor in determining the size and shape of our representation at Brussels. One can think of a whole host of conclusions to the negotiations that will have an effect on the



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form and size of our representation. There is very little doubt that we will need to have strong representation in Brussels.

Sir Timothy Earle Barrow: This is absolutely right. You can look at a variety of areas: there is, obviously, the economic area, but there is also the question of internal and external security relations and how they operate. The truth around town, as I have heard from some of my colleagues—not just members of the EU, but also third countries—is that there are large and serious missions from the US, Canada, New Zealand, Australia, Turkey, Russia and others. I would expect to see, as the Minister said, a considerable job still for the UK in Brussels, in terms of influence and the shape of the new relationship.

Q109 **Chair:** The fact is that calling it UKRep, as is implicit in the question, could not possibly be accurate, because it will not be UKRep; it will be, as you rightly said just now, another relationship for the UK. As I have put it on other occasions, we would be less like brothers and sisters, and more like cousins.

Does that not mean you will have to have a role that is commensurate with other countries, such as the United States or, for that matter, Russia, of which you have a lot of experience? In other words, we then form a completely new relationship post Brexit, by which I mean at the end of the process altogether, but we will be looking distinctly through the prism of our own national interest, more or less as an external operation, and no longer part of the system itself.

Mr Jones: That is absolutely right. Whatever happens, the European Union will be an important trading partner of ours, and we will have other interests in common. The level of representation will depend on the outcome of negotiations. As you quite rightly say, it will be a different relationship from the one we have at the moment. We will, after all, be a third country and the relationship will have to reflect that.

Q110 **Chris Stephens:** Do you see a role for devolved Administrations as part of the new relationship? How do you see that going forward, as part of a UK-wide delegation going to the EU?

Mr Jones: The devolved Administrations may well wish to maintain a relationship in Brussels, just as they do, for example, in various cities in the United States. Again, it depends very much on the outcome of the negotiations and what sort of relationship we have with the continuing European Union after they have completed.

Sir Timothy Earle Barrow: I would support that and agree. UKRep serves the whole of the UK. That is how we operate. We have the offices of the devolved Administrations in Brussels at the moment, and they are very much part of our day-to-day business as colleagues and friends. I expect that sort of relationship to continue. I am not going to predict the future because, as the Minister says, much will depend upon negotiations.

Q111 **Stephen Kinnock:** Thank you very much, Chair. Many thanks to Sir



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Tim and the Minister for coming to discuss this with us today. We have had a lot of focus on the UK's readiness for these negotiations, but the EU 27 and the EU institutions also have to prepare. We have seen, for example, some difference of opinion about the representation of the European Parliament in the negotiations. There seems to be a slight difference of opinion between the Council and the Parliament on that. That is an example of the fact that the EU also has to get its house in order for these negotiations. How would you assess the EU's readiness and capacity as a negotiating partner?

Mr Jones: They seem to have progressed substantially. As I understand it, Michel Barnier has established his negotiating team. You are absolutely right: the institutions of the EU will have various functions. It is a matter for them to decide how those functions interact with one another. A very helpful and important moment will be when the Council issues its guidelines after the process of Article 50 has been triggered. Of course, at that particular stage, we will be able to see the choreography of the negotiations so far as the EU is concerned.

Sir Timothy Earle Barrow: I agree. It is clear, as the Minister has said, that a lot of preparation has been done. People have known the timetable for Article 50. A spokesman from one of the institutions today has underlined their readiness. The Commission has its team ready for negotiation. The Council has a structure to support that, in order to involve all 27 other member states. The European Parliament will feed into that.

I was in Strasbourg last week talking to MEPs, who are ready to prepare the resolution, which they will adopt shortly after triggering Article 50. Of course, the European Parliament has a vote of consent at the end of the process, according to the procedures. The exact articulation is not yet visible to us. It is perhaps still to be discussed and decided.

Q112 Stephen Kinnock: One area in which the EU seems to be united is around the timetable, and particularly this issue of whether it is possible to do the divorce deal and the future framework deal before the spring of 2019. There seems to be a fairly unanimous view coming out of the EU Governments and institutions that that is not going to be possible.

Could you say a little more about the actual timetable? There is the initial timetable of where we are going, when we will first hear back and when we will be able to engage with the Council. Will it effectively be after the French elections? There is then a broader point on whether it is possible to do both the divorce and the future framework within the two-year frame.

Mr Jones: In terms of timescale, it was Michel Barnier who indicated that he wanted to see the entire negotiation concluded within 18 months, to allow a six-month period leading up to the two years prescribed by Article 50 for the necessary administrative and other measures that had



to be put in place in order to complete it. Michel Barnier himself is maybe not so pessimistic as some other people you have been talking to.

Again, it depends very much on how negotiations pan out. My own view is that Article 50 is quite clear. It talks about negotiating the terms of withdrawal against the framework of our continuing relationship with the EU 27. It is rather difficult to see how one can negotiate against a framework of that sort unless one talks about what the relationship is likely to be. We do believe that a twin-track approach to the negotiation is correct, not only because it is a lot easier, but also because that is what Article 50 itself seems to contemplate.

In terms of timing, we have a huge advantage, in that we are already members of the European Union. In terms of standards and regulatory requirements, we are already in perfect alignment. That should have the effect of considerably reducing the necessary times. Again, we need to wait for the negotiations to start and see what is contemplated in the guidelines. Then we will no doubt make our own representations.

Sir Timothy Earle Barrow: As the Minister said, Article 50 is very clear in itself about taking into account the future framework. That means the future framework needs to be part of those discussions, as one works on withdrawal. There has been a lot of speculation about this, as you rightly say. The truth is that nobody has done this negotiation before. A lot of the speculation is based on a different sort of negotiation, an FTA negotiation, involving countries that are not in convergence and are seeking a way to bridge gaps.

As the Minister says, on the first day after withdrawal, there will be convergence, and therefore we are creating something different. Our mandate is clear: to get on with it. There is a timetable that everyone has bought into, including in the treaty, of two years, so that is what we will do.

Q113 **Chair:** A question that occurs is that some people are saying that Barnier already has a mandate. In relation to the preparation of the Council guidelines, which are going to be incredibly important in terms of our relationship mutually, will those guidelines—in other words, numbers 1, 2, 3, 4, 5 and 6, or whatever they are—be decided by the Council of Ministers on qualified majority voting before they are put together, published and presented to the Commission? Do you know the answer to that?

Mr Jones: No, I do not, and the terms of Article 50 are somewhat vague on that. It is a question of waiting to see how the Council addresses that. I do not whether Sir Tim has any further insight into that.

Q114 **Chair:** Have you seen a draft, because the place does leak like a sieve?

Mr Jones: No, I have not seen a draft.



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Sir Timothy Earle Barrow: In terms of the guidelines, I am sure what the Council Secretariat and others would say to you is that they need to be prepared in accordance with what we, the UK, write in our Article 50 letter. The expectation is that they would then put out draft guidelines pretty quickly. In the normal course of events, those guidelines might be by unanimity, but then there would be Commission mandates to follow. That is the sort of process we may well see.

Q115 **Chris Stephens:** As someone alluded to earlier, comments have been made about it being an unprecedented situation. Can I ask both of you if you detect any willingness at an EU level to consider special arrangements for the devolved Administrations?

Mr Jones: That is not something I have ever discussed. We have to make clear that we will be conducting these negotiations as a United Kingdom. This is a United Kingdom competence. Having said that, we will engage closely with the devolved Administrations, as, indeed, we have already. I have no doubt we will continue to do so throughout the course of negotiations.

Q116 **Chris Stephens:** It has not come up in any of your discussions, Minister.

Mr Jones: No, but, as I said, so far we have not triggered Article 50. So far the guidelines have not been issued, and we must await the triggering of Article 50 and the issue of the guidelines.

Sir Timothy Earle Barrow: You will be familiar with the EU mantra of no negotiation before notification. The ambit of my discussions in Brussels lies within that. Partners are very clear that they talk to me as the representative of the whole of the UK. It is my job to get the best deal for all parts and all citizens of the UK.

Q117 **Alan Brown:** I know, Sir Tim, you spoke there about no negotiations, but I am conscious that the UK Government have consistently said they want to maintain the common travel area for Northern Ireland and Ireland and they want as soft a border as possible, effectively an invisible border, to be maintained. Given that has been in the public domain, has there been any feedback from other member states about how they might view these arrangements?

Mr Jones: It is fair to say that everybody recognises the individual circumstances of Northern Ireland, given that it will be the only land border with a continuing member state, plus all the other historical factors that come into play when one considers Northern Ireland. It is fair to say that I have had a great deal of understanding from Ministers I have spoken to. Indeed, Michel Barnier is a Commissioner with personal experience of the Northern Ireland dimension. He has made statements that he fully understands the sensitivity of the Northern Ireland issue.

Sir Timothy Earle Barrow: I have had the same experience.



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Q118 Alan Brown: In terms of relationships within the Council, the Government's explanatory memorandum repeatedly tells us that the UK will remain a member of the EU and engage fully in negotiations until it exits. Even so, Sir Ivan Rogers was concerned that departments were not necessarily providing instructions on negotiations in good time. That was his concern. Is this still an issue?

Mr Jones: I can only repeat that we will be fully engaged in EU business right up to the moment that we depart. We are full members of the European Union. We make our contributions to the EU budget. We will certainly adhere to our obligations, but we will also insist on the rights that we have. In terms of the enthusiasm with which we will continue engaging with the EU, I can only say that it will be undiminished. We will continue to engage, just as we already have.

Q119 Alan Brown: The key bit is: are departments providing instructions on negotiations in a timely manner to allow them to proceed?

Sir Timothy Earle Barrow: I can say with complete honesty that I do not lack for instructions. We are fully engaged in Whitehall. This goes back to Sir William's first question; as I said to the Committee, ongoing business really does matter. We continue to co-ordinate functions between UKRep and Whitehall, to make sure that ongoing business is fully considered in the round.

We continue to do so under my leadership. I cannot talk for Ivan's period, because I was not there, but we have strong arrangements. DExEU has taken on some of the functions of the co-ordinating role, as well as other aspects of its business. We are fully engaged on that. We are getting the instructions we require, and we do require the instructions.

Q120 Alan Brown: In terms of what is happening now and moving forward, we have already seen the EU 27 meet quite often without the Prime Minister in attendance. How is the UK making its voice heard effectively?

Mr Jones: It is quite understandable that, as time passes, and the closer we get to our departure, the continuing 27 will want to conduct their own business, to the extent that it relates to our departure, without the United Kingdom being present. That is not unreasonable, and it is not something we would object to.

So far as business relating to all 28 members of the European Union is concerned, we have already made it very clear that we will expect to participate and, indeed, insist on participating. I have had no pushback on that. The other 27 member states fully understand that, where they are discussing business affecting the concerns of the United Kingdom as part of the continuing European Union, we must be around the table.

Q121 Alan Brown: Can you advise how robustly the UK is engaging in negotiations within working groups, where most negotiation happens, as well as COREPER and the Council?



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Sir Timothy Earle Barrow: We are engaging robustly. That is what we are there to do, and we are staffing up working groups fully, as you would expect. Our voice is being heard. That takes me back, as you rightly allude to, to the point that there is a lot of continuing business. We are giving full attention and focus to that. We are not finding that we do not have the resources or instructions to do that. It is an essential part of my leadership of UKRep that we continue to do that

Q122 **Alan Brown:** Are there any attempts to consider negotiations in the round and make trade-offs between one dossier or another, or to consider the Brexit implications? It seems to me that there has been a lot of plate-spinning going on.

Mr Jones: That certainly has not been reflected in any of the business I have been involved in so far.

Q123 **Kate Green:** May I ask a slight follow-up to Sir Tim's comment a moment ago about the nature of ongoing negotiations on existing business? Do you or your officials identify any change in attitude, given that we are negotiating with one eye on the door to leave, particularly when we are negotiating in relation to matters that will not necessarily affect us or affect us only for a brief period of time, compared to negotiating when we were fully committed to membership for the indefinite future?

Sir Timothy Earle Barrow: To be honest, colleagues in my committee—and I hear the same from working groups and the like—continue to fully engage with us. We have voting rights; we have obligations; we have the rights of a member state, and that has been set as a direction, whether by the EU institutions, the member states or, indeed, the rotating presidency. We are fully part of the conversation.

Q124 **Kate Green:** Does it not feel artificial in any way, to be in deep negotiation about something that has little bearing on us?

Sir Timothy Earle Barrow: None of the discussions we have in Brussels have little bearing on us.

Q125 **Kate Green:** The bearing may be different, in terms of the nature of the negotiation we are participating in now and the actual lived effect.

Sir Timothy Earle Barrow: In my committee, I have genuinely found that, as we put our point of view forward, it is still listened to and taken into account properly. After my first appearance in COREPER, one of my Permanent Representative colleagues came round the table, because there had been a bit of discussion and debate, which I had led one side of, and he said, "Business as usual". There is a lot of business. We still do it, and we still take it very seriously. That is what UKRep is there for, as well as well as the forthcoming negotiations.

Mr Jones: In the General Affairs Council that I attend, it is very much business as usual. To be entirely fair to the other 27, I never have any



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pushback. I have never had any objection. They fully understand that we will be engaged right up to the moment we leave.

Q126 Alan Brown: Looking at negotiations around trade-offs between one dossier and another within the internal mechanisms of government, have there been departmental red lines drawn up, where each department or Secretary of State says, "Here is what I need to get from Brexit"? Has that been collated in any way?

Mr Jones: No, various dossiers are dealt with on their own merits and given the concerns of the United Kingdom. We are not, if you like, designing our business to reflect the fact that we are leaving. It is business as usual, as Sir Tim has said.

Sir Timothy Earle Barrow: To pick up a point made by Sir William earlier, we were always guided by the national interest. We continue to be guided by that, as has been said. The way in which these things will impact us in future may be different, but they matter to us. We are going about our usual business. Of course, everyone knows the context. You are absolutely right to say that. So far, from my experience within working groups, the Committee of Permanent Representatives and councils, our voice is still heard and respected, and we are part of the full discussion.

Q127 Chair: I want to move on to a question of the manner in which we approach questions in relation to the moment when we have exited the EU. In relation to what you have just said, does our approach differ depending on whether or not a particular proposal is likely to be implemented after 2019, by which time we would expect to have Brexited?

Mr Jones: I am trying to think of an example to indicate that that is the case, Sir William. I cannot, but it may well be that, as time passes and we get closer to the point of departure, that will more frequently be the case. Having said that, we have to recognise that we will remain a full member of the EU and, therefore, our negotiating position must reflect that fact until the moment we depart.

Chair: I understand that, but at the same time the reality is that, when you know you are not going to be implementing something that is in the pipeline, you have to adopt a different position.

For the benefit of those looking at this programme, every single proposal that comes up has to be put into an explanatory memorandum, for the purposes of this Committee, to explain where the Government stand on the position, as the proposal goes through. Can you ensure that every single explanatory memorandum includes a section on Brexit, so we know exactly where the Government are coming from, which presumably you will be discussing with Sir Tim as well, in terms of how you position yourself? We believe that that will not only help us as a Committee reporting to the House of Commons, but will also ensure that officials dealing with the dossiers in question would have to take account of their



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potential effects on third countries, which is what we will be fairly soon.

Can you tell me outright that you will ensure that what I have just said will happen, because it would be hopeless if in our national interest it was clear that we were not going to take a position, and we then found that we had something going through the process of parliamentary scrutiny based on a false premise?

Mr Jones: That will probably be more valuable the closer we get to the moment of departure. That is a helpful suggestion, and I will certainly take it on board.

Q128 **Chair:** Thank you very much. In relation to this national interest, which we keep on coming back to, these explanatory memoranda are very informative. We take them into account and so, for that matter, do other people elsewhere in the European Union, because it is a matter of general knowledge.

I have mentioned this on a number of occasions, and I just want to tie it right down. I seem to remember, last time you appeared before us, Mr Jones, we were talking about the ports regulation, which is a good example. It is manifestly not in the UK's interest, and it was decided, partly as a result of representations we made in this Committee, that the Government would state unequivocally, "We are going to vote against this"; in other words, consensus is no longer the order of the day, and, furthermore, we would put down a note in the reasons that we would give, which would then be minuted, so that people would know why it was that we objected a particular proposal.

Are you going to make that into a fairly general rule, which is that, where a national interest is quite apparent—and I see Sir Tim looking at me very carefully at this point—you will not only vote against, but you will also record the fact that you have done so and make sure that that is minuted, so that the public at large know where we are as we move from pipeline to Brexit?

Mr Jones: Yes. The port regulation was an example of one which was contrary to the national interest, whether or not we had left the European Union. You are right: we voted against it and stated the reason for doing so. Your suggestion is a sensible one. If we oppose a particular measure, we should set out very clearly our reasons for doing so.

Q129 **Chair:** On some dossiers, the Government have said that, while they were against the proposals in principle, once they had realised that they could not secure a blocking minority, it was better to negotiate than vote against. Has that approach changed as well, because the same principle seems to apply?

Mr Jones: The same principle does apply, and it is more likely to apply the closer we get to the point of our departure.

Q130 **Richard Drax:** Sir Ivan Rogers told us that the structure of the UK's negotiating team and the allocation of the roles and resources needed to



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be resolved as a matter of urgency. Minister, perhaps you could start. What progress has been made in this direction?

Mr Jones: The issue of our negotiating team, to a certain extent, will have to mirror whatever arrangements are put in place by the continuing European Union. Clearly, the Minister with overall responsibility for the negotiation will be the Prime Minister. She will be supported by the Secretary of State, and this will be a whole-of-government exercise. Depending on the various issues that we are discussing, departments from across Government will be engaged in the negotiation.

Q131 **Richard Drax:** In the negotiations themselves, bearing in mind the British position, in my humble opinion, is extremely clear—we want to leave the EU in every shape or form and become an independent country again—and we are negotiating with people who do not want that and will do everything they can to stop it, what is your view, Minister? I suppose the difficulty of the negotiation is obvious. Are we going to have to compromise our very simple position, which is that we want to leave; and, if we cannot, we will inevitably fall back on WTO rules? There is no either/or. There is no room for negotiation. That is the point I am making. Would you agree with that?

Mr Jones: First of all, it is not possible for our departure from the European Union to be stopped. We have a right to leave the European Union if we trigger the Article 50 process. As you probably know, we will be triggering that process on 29 March. There are no means whereby any part or any institution of the European Union can stop our departure.

As to the terms of our departure, that will be a matter for negotiation. We want to secure the best possible deal for the United Kingdom, and the sort of deal that we are seeking has been set out by the Prime Minister in her speech at Lancaster House on 17 January, which has been fleshed out by the White Paper that we issued. By the way, that has generally been well received in the EU as giving a great deal of clarity as to our negotiating position. We have already set out what we are seeking from our departure from the EU. Negotiations will follow, but it is absolutely clear that our departure cannot be stopped, because we have the right to leave.

Q132 **Richard Drax:** I had a meeting with Siemens, which makes railway coaches in this case and has been in this country for many, many years, through two world wars. The representative from Siemens said something very interesting. Her words were, “We love you”, meaning the United Kingdom. I said, “We love you too”. We had a mutual love-in. To the more serious point, I said, “Are you speaking to business in your country”? To maintain prosperity, wealth and jobs, which is going to be crucial for all of us—quite apart from the EU—the negotiating team will aim its fire at the business community, equally if not more than the bureaucrats, who are much more dug in.



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Mr Jones: A great deal of the work that my department has done already has been engagement with various sectors of business in the UK, which of necessity has meant that we have had to deal with companies that are headquartered in the continuing European Union. You are right: the overwhelming impression I get is that businesses, wherever they are headquartered, want to continue to do business with the UK. Frankly, why would they not want to do so? It is clearly in the interests of their shareholders that they should be profitable, and they will not want to cease operation in the UK after we have left.

That is going to be an important part of the negotiation: to reflect the fact that there is a strong mutual interest in maintaining good business relations between the UK and the EU. After all, when we leave the European Union, this country will be one of the biggest export markets for EU-produced goods and services. We are quite happy that it should remain that way.

Sir Timothy Earle Barrow: I agree it is important that stakeholders, not just businesses but including businesses, make their voices heard. Many people come to see me and talk about their interests, but I know they go to see other colleagues. It is important that, across the European Union, the UK and elsewhere, businesses but also communities such as science and research, which the Prime Minister rightly highlighted in her Lancaster House speech, talk about the shared interests we have in forging a new partnership with the UK outside of the EU.

One of the advantages of having the Commission as a negotiating partner in this is that the Commission has traditionally listened very carefully to economic representations and other representations from key sectors. That is important. Those voices that you describe have an important role in how the negotiation is perceived, because we have shared interests.

Q133 **Richard Drax:** Minister, how much do you expect Ministers to lead in negotiations and how much will be first prepared at official level by Sherpas?

Mr Jones: A lot of work will be done by Sherpas, quite clearly, but, again, it depends on how the negotiations pan out. Whatever happens, Sherpas will ultimately be operating under ministerial direction and the usual arrangements will not be affected in any way.

Q134 **Chair:** On that question of Sherpas, who is going to be the government Sherpa in the negotiation, Sir Tim? Is it going to be you or Olly Robbins? Perhaps the Minister would like to answer—or both of you.

Mr Jones: It is absolutely clear that both have an extremely important role in this process. I am sure that Sir Tim would agree they will be working very much as a team.

Sir Timothy Earle Barrow: Absolutely right. Olly and I are already working as a team. Olly has the formal role of Sherpa; I have the formal role of Permanent Representative. We can be confident that there will be



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plenty for us to do together in this negotiation. The Ministers point is the salient one: we and other officials will be acting under direct ministerial guidance for this negotiation.

Q135 Chair: There is one salient fact that has not escaped some people's notice, and certainly not mine, which I observed as I went through the voting list in the House of Lords. With very few exceptions, former civil servants and former Cabinet Secretaries, I think to a man—there may be one who did not—all voted against the House of Commons, to put it in broad terms, on the amendments. That strongly suggests to anybody who has eyes to see and ears to hear that there is a very powerful sense of Sir Humphrey in the Civil Service, which quite clearly, at the very highest level, effectively did not want the House of Commons to be supreme in these matters, until they capitulated as a whole in the House of Lords.

Can you give me a sense, and I ought to direct this to the Minister, that, in light of these protestations, which I do not mean cynically, the Civil Service is doing everything in its power to assist Ministers under its instructions, which is what it has to do, as Crown servants? Is that embedded in the thinking of the Civil Service now, such that the whole of these negotiations cannot be influenced or mitigated, in any shape or form, in terms of the decision to leave? Can we be quite clear that the Civil Service is 100% behind the Government and there are no attempts whatever to get in the way?

Mr Jones: Sir William, you know my background in the Brexit debate, and I am sure that you will accept it when I tell you that I have never had any doubt whatever as to the loyalty of the Civil Service and their complete willingness and determination to follow the instructions of Ministers and to support Ministers in this regard. The British Civil Service is a huge asset to this country, and I am really glad we have it on our side in these negotiations.

Chair: That is a most encouraging answer.

Q136 Mr Rees-Mogg: Good afternoon. Sir Tim, do you think the negotiation will be primarily political or primarily legal?

Sir Timothy Earle Barrow: There will be plenty of political discussion, but there will also be a great deal of technical discussion, which is perhaps part of what you mean by legal. A lot of it will be technical work. That is conventionally how these things are done. We have to get to a level of understanding that allows the political decisions to take place.

Q137 Mr Rees-Mogg: The legal aspect is of interest partly because of the very good report from the House of Lords' counterpart to this Committee, which was written by this Committee's former legal adviser, Paul Hardy, who provided the very encouraging legal opinion that, as a matter of law, we would not owe the European Union any money at all: not a brass farthing. I wonder whether that will be an important part of your opening negotiating strategy. I want to know whether it is primarily legal or



political. Are you going to base it on a legal principle: "We owe you nothing"; or is it going to be elided into the political: "We are decent chaps".

Mr Jones: That report was certainly not unhelpful. It was also quite clear from the report that it is possible to have a range of views as to the legal position but, as a starting point, it is very helpful. There is, however, no doubt that there will be a big political element to the discussion. As the negotiations progress, it will be interesting to see how the balance develops between the political and legal or technical, and where we ultimately land with negotiations.

Q138 **Mr Rees-Mogg:** Sir Tim, what are the counterparts saying about this at the moment, if anything?

Sir Timothy Earle Barrow: You can imagine that counterparts have an interest in other legal opinions that have been forthcoming, which offer a different interpretation. There is plenty of discussion, but most counterparts would give an answer very similar to that of the Minister: that there are political and legal/technical parts to this negotiation.

Q139 **Mr Rees-Mogg:** I wonder if you might help clarify something in the legal/technical area, back to the point that came up earlier on the twin-track approach. I do not mind which of you answers this. Am I right in thinking that the great advantage of the twin-track approach is that it is under enhanced qualified majority and can encompass anything in relation to the framework of the future relationship with the European Union, but that anything that is not within the Article 50 agreement may be subject to different voting requirements and, with a trade agreement, may be required to have unanimity and may even bring the Walloons into play?

Mr Jones: The Wallonian question is more likely to be relevant to the continuing relationship. It is a question of seeing how the negotiations develop. There is no doubt that our terms of departure are far more legalistic in terms of the likely outcome. Clearly, we want a continued relationship with the EU and, therefore, you are right: the issue of national Parliaments and maybe subnational Parliaments will be relevant.

Q140 **Mr Rees-Mogg:** The framework agreement under Article 50 is covered by the same enhanced qualified majority voting as the separation agreement, correct? That would not bring in the national or subnational Parliaments.

Sir Timothy Earle Barrow: You will not be surprised to hear that there are varying legal opinions on this. One of the arguments is that anything that comes into the withdrawal treaty or accompanies the withdrawal treaty with regard to a future continuing relationship takes you into a mixed agreement territory, which brings in the different voting you discussed. Part of it depends upon content and where negotiations take us. I can see frustration.



Q141 **Mr Rees-Mogg:** Can it be a mixed treaty if it is a treaty specifically provided for under the treaties on the European Union that provide for it to be a Union competence, which I would suggest Article 50 does, or is this an argument that lawyers will have at some future point? It is not quite clear at this stage.

Sir Timothy Earle Barrow: It is an argument for lawyers, because one of the arguments will be about how much of the future can come into withdrawal. You could take a very legalistic view that, because of the nature of voting, not that much of the future could be brought into a withdrawal treaty, and therefore you would need separate arrangements, which would be mixed. If you bring more of the future into a withdrawal treaty, does that then make it a mixed agreement and demand different ratification? That is, in sum, the product of quite a lot of legal discussion I have had in the last weeks, because of exactly this question.

Q142 **Mr Rees-Mogg:** Is it, to some extent, how you define a framework: that anything that is defined as a framework is within the Article 50 provision, but anything that is not a framework might be beyond it?

Sir Timothy Earle Barrow: I would be doing the lawyers a disservice if I said it was as straightforward as that.

Q143 **Mr Rees-Mogg:** While you are here, could you give us the latest gossip? I imagine that you told your colleagues over the weekend that the date for Article 50 being given was 29 March. I am very curious to know what the initial reaction was and what they might be looking at in terms of a negotiating timetable, from the very early conversations in the fleshpots of Brussels.

Sir Timothy Earle Barrow: Thank you for that invitation. I did not tell my colleagues anything over the weekend with regard to the date. I had some conversations this morning, as you will have seen from the releases we have had. There was a welcome for the clarity of that date, which fits full square within the commitment we have given and the Prime Minister has given personally on the timetable. Insofar as that is gossip, that is the news from Brussels this morning.

Q144 **Chris Stephens:** On the negotiations going forward, with a 24/7 news cycle, someone is likely to tell someone else something as we go into these negotiations. Minister, can we get a commitment from you that, should this occur and if there are leaks in the negotiations going forward, a Minister will make a statement to the House of Commons setting the record straight?

Mr Jones: It is impossible to give a blanket assurance; it depends very much on what we are talking about. It is easy to foresee circumstances where a statement would be appropriate, certainly, but to go into it in more detail at this moment is almost impossible.

Q145 **Chair:** On this question of how much we owe, as people put it, and the views expressed by the House of Lords Committee and many others, I



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accept that some take a contrary view, but, essentially, this is not by any means just a legal question; it is also a political issue. Mr Barnier has been making some fairly extravagant statements, some would say, in going up as high as €60 billion in terms of the moneys due.

Has anybody pointed out to them, and would you make sure that they understand, that we have been net contributors for many decades to the tune of what is running at around €9 billion or €10 billion a year? The accumulated liabilities are offset by the extent to which we have made these massive contributions. Also, bear in mind that back in 1953 there was a thing called the London debt agreement, where Germany, for all its malfeasance and unprovoked aggression during the Second World War, found that, in circumstances which were quite remarkable, we remitted one-half of all German debt.

Therefore, if you compare that situation with what it is now, and given Germany's extremely dominant role in the European Union at the moment, it might be worth tactfully—not one of my strongest points—reminding people that there is a realistic position here, which is that we really do not owe anything to the European Union, whether it is legal or political.

Mr Jones: I am not entirely sure how tactful one can be when one is mentioning the London debt agreement.

Chair: Chalk that one up to me.

Mr Jones: I will probably refer our interlocutors to you, Sir William. There is a whole range of points that must emerge in the negotiations. The House of Lords Committee report was extremely helpful. I am sure that it has not gone unnoticed in Brussels and other European capitals, for that matter.

Q146 **Kate Green:** We know that the Government intend to translate European law by a great repeal Bill on the moment of Brexit. We have also understood that it is intended to use secondary legislation predominantly to make EU law operable, but where major policy changes are needed that will be done by way of primary legislation. We have seen commentary today in the Institute for Government report that that could amount to quite a substantial legislative burden for this Parliament, with suggestions of between 10 and 15 new Bills. What is the Government's plan in relation to managing that span of legislation?

Mr Jones: You are right. There will be two elements. There will be secondary legalisations, and probably quite a lot of it. There will also certainly be a need for primary legislation. Whether the figures the Institute for Government has come up with are accurate or not, I cannot say with any certainty at the moment, but there certainly will be a lot of that.

There was recently a very helpful report by the House of Lords Constitution Committee, which you very probably have read, which I



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thought was a very helpful contribution to the debate. The proposals in that report are being given careful consideration by the Government, because you are right: management will be a challenging issue. I do not think anyone expects that our withdrawal from the European Union after 44 years is going to be anything other than challenging.

Q147 Kate Green: With Parliament and Government being so preoccupied with this process, what impact do you think it will have on the remainder of the Government's ambitions and political programme?

Mr Jones: The Government fully intend to carry out their legislative programme, as indicated in their manifesto. Again, I am under no illusions: it is going to be challenging.

Q148 Kate Green: I think I would agree with that. Over what period, if any, have the Government assessed that legislation to give effect to EU law and policy consequences might need to take place?

Mr Jones: That depends on the progress of the negotiations. The legislation will, to an extent, largely have to reflect what is agreed. All that I can say is that it will be before the end of this Parliament.

Q149 Kate Green: Where our position is currently determined by the fact of some sort of reciprocal arrangement, and that falls away at the moment of Brexit, will it be a priority of Government to replace the arrangement? Otherwise, we may be in a vacuum.

Mr Jones: Ensuring that the whole of the British statute book works properly is going to be a priority. It is hard to see how anything can be more of a priority than that. We want to make sure that British law works effectively at the moment of our departure. That is what we are aiming to do.

Q150 Graham Stringer: To make it work effectively, there is obviously going to be a pipeline problem. Have you set up the Bill teams, or any Bill team?

Mr Jones: We have Bill teams, yes.

Q151 Graham Stringer: How many?

Mr Jones: We have a very active Bill team within DExEU, but a number of other departments will need to put in place their own Bill teams, because, as the Institute for Government indicated in its report, this will be a departmental exercise. I am sure that those teams are in place in other departments.

Q152 Graham Stringer: If you do not know, can you write to the Committee and tell us how many Bill teams there are at the moment?

Mr Jones: I can certainly assist to that extent.

Q153 Chair: You get through Article 50. You then get into the negotiations but, as we understand it, there is going to be a White Paper very soon.



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In that White Paper, there will be a number of guidelines as to the kind of procedures that will follow. In the Queen's Speech, it is said, or so we hear, there will be an announcement of the great repeal Bill. One might expect that to be in May or early June.

The question of dealing with the Article 50 negotiations and the repeal Bill requires a break point. In other words, you have to have a completely separate procedure and you have the Bill, which as you know I prepared back in May last year, as it were,, which seems to have been accepted by the Government as a matter of principle. No doubt parliamentary counsel will have its own way of going about it. The object, as many of us understand it, is that it ought to be short, clear and should deal with the transposition, the repeal and the withdrawal, but also the Henry VIII type clauses. I would be grateful if you could give some slight indication as to what the thinking is on that.

Completely separate from that, there is some confusion in the public mind and commentariat, as I often call it. There is a fuzziness in the boundaries. The fact is that there has to be a clear-cut point at which Brexit takes place, and only then can you bring in the Bills to deal, for example, with immigration. Could you look at that with us for a moment, and give us an indication of where you see these break points taking place and the sequence of events?

Mr Jones: The Brexit Bill, the great repeal Bill, as you rightly say, has one primary objective, and that is to cease the operation—to repeal—the European Communities Act of 1972. That is its primary function. It also has to put in place arrangements, as you rightly say, by making provision for secondary legislation, whereby inconsistencies in legislation that would otherwise arise are blocked. That means dealing with a wide range of legislation where there may, of course, be references to EU institutions or whatever. Those will all take effect at the moment of our departure from the European Union, at the conclusion of the two-year process, or earlier if, in fact, terms can be agreed for our earlier departure. That is the purpose of the repeal Bill itself.

In terms of policy, policy changes will be effected by standalone legislation. In other words, we do not anticipate that policy will be a matter that is addressed in the repeal Bill itself. The repeal Bill itself will focus primarily on practicalities. That is why we heard from the Institute for Government today that there will be a large number of Bills, to provide the primary legislative vehicle to take account of changes in policy that will have to occur at the moment of our departure or whatever later period may be agreed in the context of negotiations.

Q154 **Chair:** There is a lot of talk about congestion because we will have to deal with so many Bills. People have got it in their minds that there will be a repeal Bill and a whole lot of other parallel Bills going on at the same time. Can you make as clear as possible, in advance of the White Paper, if I could put it that way, exactly what the line will be? In other words, you get Article 50; you have the negotiations; you have the introduction



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of the great repeal Bill based on the White Paper; and then, when all that has been completed, you move on to primary legislation. Is that the intention?

Mr Jones: That is very probably the course that will be charted, yes. Having said that, the White Paper itself will provide a great deal more clarity and, of course, that is going to be published soon.

Q155 **Chair:** What preparations are being made to ensure that the United Kingdom is ready for the consequences, if there was ultimately to be no deal at all?

Mr Jones: There is quite a lot of work going on to address all sorts of eventualities. You are quite right: it is quite possible that the negotiations will turn out to be impossible to conclude, or there may well be a negotiated settlement whereby we leave on other terms. That is why my department has been carrying out a huge amount of work over the last seven or eight months, engaging with over 50 separate sectors of the economy, many of which have cross-cutting issues that need to be addressed, to ensure we are in a position to plan for whatever may eventually take place. I do not anticipate that we will be leaving without a deal because, as I have already indicated in this session today, it is manifestly in the interests not just of the UK but of the continuing European Union that there should be a sensible resolution of our withdrawal.

Chair: Thank you both for coming. It has been interesting, informative and helpful. Thank you very much.