

Select Committee on the European Union

Uncorrected oral evidence Scrutiny of Brexit negotiations

Tuesday 31 October 2017

4 pm

[Watch the meeting](#)

Members present: Lord Jay of Ewelme (The Chairman); Lord Boswell of Aynho; Baroness Brown of Cambridge; Lord Crisp; Lord Cromwell; Baroness Falkner of Margravine; Baroness Kennedy of The Shaws; Earl of Kinnoull; Lord Liddle; Baroness Neville-Rolfe; Lord Selkirk of Douglas; Baroness Suttie; Baroness Verma; Lord Whitty; Baroness Wilcox; Lord Woolmer of Leeds.

Evidence Session No. 1

Heard in Public

Questions 1 - 12

Witness

[I](#): Rt Hon David Davis MP.

USE OF THE TRANSCRIPT

1. This is an uncorrected transcript of evidence taken in public and webcast on www.parliamentlive.tv.
2. Any public use of, or reference to, the contents should make clear that neither Members nor witnesses have had the opportunity to correct the record. If in doubt as to the propriety of using the transcript, please contact the Clerk of the Committee.
3. Members and witnesses are asked to send corrections to the Clerk of the Committee within 7 days of receipt.

Examination of witness

Rt Hon David Davis MP.

Q1 **The Chairman:** Good afternoon, Mr Davis.

Rt Hon David Davis MP: Good afternoon, Chairman. I can barely see you up there.

The Chairman: I apologise for the room, but I am here, I promise you.

Rt Hon David Davis MP: This is just to test how far-sighted I am.

The Chairman: We shall have a chance to test that during the next hour and a half, I hope. Thank you very much indeed for coming to give evidence to us. You are very welcome back at this Committee. I should remind you that this is a public evidence session and that a full verbatim transcript will be taken. The meeting is being televised. I would also like formally to welcome back our Chairman, Lord Boswell. This is his first meeting since several months of leave of absence for medical reasons, and we are very glad to have him back.

Secretary of State, I think this is the third time you have appeared before us to provide an update on the Brexit negotiations, and today's session provides us with an opportunity to reflect on developments since we last met, in particular the response to the Prime Minister's Florence speech and the conclusions of the October European Council.

We also hope that you will continue to come before us at regular intervals as the Brexit negotiations progress. We know how important in particular the December European Council conclusions are to the future shape of those negotiations, and we very much hope that you will be willing to appear before us in January to talk about them. That would be a huge help to the Committee.

Rt Hon David Davis MP: I can say yes to that right now.

Q2 **The Chairman:** Thank you very much. I begin our discussions by asking you about your response to the European Council on 19 and 20 October, and its conclusions that while sufficient progress had not yet been made to progress to discussions on the future relationship, internal discussions within the EU 27 on the second phase of negotiations can begin. What was your response to those conclusions?

Rt Hon David Davis MP: While we would obviously prefer sufficient progress—that would be a tick, as it were—the simple truth is that I do not think this decision slows the process down at all. The Council, Task Force 50 and the Commission need to prepare their position before they start negotiations on the second phase—and, indeed, on the whole question of the implementation period or transition phase, whatever phrase you prefer to use. In essence, this time will be used by the European Union to get itself in a position where, if we get sufficient progress in December, we can get cracking straightaway, which has particular relevance—it is relevant to everything, of course—to the

implementation period, for which time, in terms of time of conclusion, is important to its effectiveness.

Beyond that, I was unsurprised at the outcome. There are, as you know better than most, issues inside and outside the negotiating chamber that affect those decisions, and we did not think that they were likely to favour a final round at that stage for the first phase.

The Chairman: Would you like to say a little more about the outside conditions?

Rt Hon David Davis MP: During this negotiation, there will be of the order of 15 elections, which of themselves have an impact. Particularly in European PR systems, time is taken to form Governments, so the Dutch Government are just about formed now, the Austrian Government are under way and the German Government are in the middle of formation. Those alone tend to make movement slightly more rigid. If you or I in our former incarnations were negotiating on behalf of a British Government who were not formed, we would hold the line until they had formed and formed a policy. That alone has a slowing effect.

In any event, we think that the outcome that we got keeps us to the timetable for an outcome in time for what we want.

The Chairman: I follow that up with a further question about the speed and pace of the negotiations. I think I am right in saying that the Prime Minister and President Juncker have jointly committed to accelerating the negotiations, and we would be grateful if you could say a little about what you see in practice as acceleration. There was a little in the papers over the weekend about how we were staying away from negotiations because others were not engaging in them, which seemed a little counterproductive. Perhaps you can tell us when you would hope next to be in Brussels with Michel Barnier and fully engaged.

Rt Hon David Davis MP: Yes, I can. I came off the phone just before I got here.

First, the word "accelerate", like all diplomatic language, can be interpreted in more ways than one. We want to strategically accelerate the process—we want to get on with the next phase—whereas the Union's interpretation may be to get to a conclusion on finance or something else. One can interpret it several ways. I was at the dinner that that language came out of. We take it as meaning that we both want to get on with this process. We do not want it to be unnecessarily delayed in any way.

We are not holding up the process in any way. I do not want to score any points, but it is a practical fact that I had invited Mr Barnier to come to London tomorrow but he could not; he had a prior engagement. We offered the negotiators the beginning of next week, but they could not do that, so they will engage in the latter part of next week, on Wednesday and Thursday I think, and I will be out there on Friday for the first stock

take—I am not quite sure what you call it—getting the next round under way.

Some people in the press have been reporting that the brief that Ollie Robbins was given was a continuous negotiation. The European Union does not like that phrase, it does not fit with its internal language, so we used the phrase “intensification of negotiation”. All I can tell you at the moment is that we are meeting in the second half of next week.

Q3 **Baroness Wilcox:** Following on from that to see whether we can get an even better picture of what is going on, you told the House of Commons Exiting the EU Committee last week that you thought that negotiations might continue right up until the day of withdrawal in March 2019, yet Mr Barnier has been clear that he expects the negotiations to be concluded by October 2018 to allow time for the European Parliament to consider and vote on the agreement. How do you feel about that now?

Rt Hon David Davis MP: I feel the same way I felt when I addressed this in the Commons on Thursday. I was outlining what is possible. If you want to hear our intention it is that we both want to get this negotiation concluded in a state to hand on for ratification, both internally in the UK and externally with the European Parliament and other bodies, as soon as we can. Certainly October of the coming year is what we would like to hit. The point I was making to the Commons Brexit Committee was historical: in the past, sometimes European negotiations have gone the whole distance and more than the whole distance. Again, I will leave it to the Chairman to explain the stop-the-clock procedure that they go in for, and so on. I was just explaining the practicalities.

Our intention is to do it early, for all sorts of reasons. First, it would be a nice, healthy outcome if we came to a conclusion early. Secondly, it gives business more time to prepare. Thirdly, it gives both Houses time to ratify, or at least to vote on the process and then ratify subsequently. It also gives the European Parliament time.

The significance of October from Mr Barnier’s point of view—I should not speak for him really; this is my interpretation of it—is that in the event that we get a conclusion in October, the European Parliament would vote on it in December or January, under its normal procedures, because it would have a Committee stage first before it voted, whereas we could come straight back to Parliament and put it to the vote straightaway, or pretty close to it.

That is the timetable background. If we hit October, nobody would be more pleased than me.

The Chairman: One thing that has never been entirely clear to me is the relationship between the withdrawal agreement, when it is agreed in October, and the issues for the future. How do you see those being linked together at the time of the withdrawal agreement?

Rt Hon David Davis MP: We see them as inseparable. There are three components, which are linked together. There is the withdrawal

agreement, as laid out in the original guidelines from the Council, plus the implementation period or transition phase, which I would expect to be a part of the withdrawal agreement. Those are legally and inextricably linked in my mind. Also, in the infamous—or famous—words of the European Union, nothing is agreed until everything is agreed, and we see these as being linked to each other. The withdrawal agreement on balance will probably favour the Union in terms of money and so on, whereas the future relationship will favour both sides and will be important to both of us. Article 50, as you know, says “taking account” of the ongoing relationship. It seems to us that you cannot take something into account until it exists. We see them as inseparable.

The Chairman: Do you have the impression that Michel Barnier and the EU side will agree with that interpretation?

Rt Hon David Davis MP: It is a question that you really need to put to him. My view is that, yes, he understands it. Whether he believes it will be as precise as we believe it will be I do not know at this stage. He has used words such as “scoping” and “framework”, rather than “agreement”. I take the view that it has to be an agreement. It may be a political agreement at that stage, because, as the Committee is aware, the European Union cannot sign the next stage agreement with us until we are a third country. That may be one second after midnight on 30 March but it should be agreed; otherwise, how will this House and the Commons decide whether or not the deal is acceptable?

Q4 **Baroness Falkner of Margravine:** Secretary of State, as you go around do you not encounter astonishment among business leaders, the financial services sector, large industrial groupings and so on—I believe you have been meeting all these people—

Rt Hon David Davis MP: Over and over again.

Baroness Falkner of Margravine: Indeed. Do you not encounter from them the question of why, 15 months into the process, you cannot arrive at a figure, an agreement, on a financial settlement?

Rt Hon David Davis MP: No, not at all.

Baroness Falkner of Margravine: You do not encounter that question?

Rt Hon David Davis MP: No, not at all.

Baroness Falkner of Margravine: Well, I suggest you get out a bit more in that case, because that is the only question this Committee is asked.

Rt Hon David Davis MP: Nobody has ever suggested that to me before, but there we are.

Baroness Falkner of Margravine: We take evidence about this kind of stuff every day in the Financial Affairs Sub-Committee. In fact, two hours ago we had it put to us at a senior people’s lunch. Let me go a bit

further. When the Prime Minister made the Florence speech, I think you would agree that the headline was that she announced that the UK would live up to its financial commitments and probably pay to the end of the multiannual agreement—until 2020. I see you nodding, so that means that you agree with that. If you have progressed thus far, what is the obstacle to sitting down and agreeing the broad outline of that financial settlement? Somebody has to blink. Nobody is suggesting that you lie down and say, “Tickle my tummy”, but the UK is the demandeur country. Surely it falls to the UK to tell its partners approximately where it recognises its obligations.

Rt Hon David Davis MP: First, if I found any of my negotiating team thinking of us as the demandeur country I would fire them. We are not the demandeur country. We are a country leaving the European Union at the behest of our population and we are seeking a deal that is beneficial to both sides, not to one side. That is the first thing.

Secondly, I am responsible, as is any elected Member of Parliament, to taxpayers. When we started this process, there was an assertion in the newspapers, such as the *Financial Times*, that we owed—I think that was the actual word—the European Union €100 billion. I also saw a suggestion from at least one industry group that we should pay that in order to get access. I noticed that it did not suggest that its own members pay it but that we should pay it. Now, let me take it in stages. I have to judge the right outcome; you are quite right in that respect. More importantly, the Prime Minister and the Cabinet have to make a judgment. At the end of the day Parliament has to support it.

It is worth going over how we came into this process and how it was addressed by both sides, because it was very different on both sides. On the European side, the assertion was that this was our legal responsibility, that we owed them the money. Actually, Mr Barnier talks about “debts”. If you look at the whole sweep of it, it was the MFF, right to the end; it was the RAL, in total; it was contingent liabilities; it was unfunded pension liabilities; it was even the underwriting of the EIB, without any suggestion that any of the assets would come back to us. That was the suggestion. I told Mr Barnier right at the beginning, the very first day I saw him, because I had not seen him for many years before that, “Trying to make this a legal argument does not strike me as the wisest way and I do not think that supports your point, let alone mine”. But that is what the EU wanted to do, so it was presented as a debt.

So what is the appropriate point if you are representing the British taxpayer? We went through it line by line. What happened? I hope the Committee will forgive me if I get this wrong by one, but I think it was the third or fourth round of negotiation. The Committee may remember that it was quite a sharp—even slightly sour, one might say—outcome, because we had gone through it line by line. The Commission was briefing into the press that it had been lectured by some young man for two and a half hours on the legalities. Actually, it was a very effective and

senior Treasury lawyer, who had gone through it line by line. Basically, we had made some very strong points which their arguments did not stand up to.

We came away from that and thought that the route we were going down was not going to deliver an outcome—your point, I think, in essence. In my talking to the 27, it had come across to me that what they were most concerned about was the most immediate money. Those were donors. What surprised me, by the way, was that the very first country to raise it with me was not one of the great recipient countries, it was Sweden.

Baroness Falkner of Margravine: A contributor.

Rt Hon David Davis MP: Exactly, a net contributor. Of course I suddenly remembered then that a Government fell in Europe at one point when they became the highest net contributor in the Union. It was plain that the net contributors did not want to pay any more and the net recipients did not want to receive any less.

That is the phrasing in the Florence speech; I may have got it slightly wrong but that is the thrust of the phrasing. That was our attempt to break the deadlock, if you like. But we thought that that did not necessarily cover everything because the way we had engaged had not delivered an outcome; it had delivered just a demolition of an argument, really, so we left the other part open. But it will take time.

What is going on here is something of a tussle, of course, as in many negotiations, but I put this to you: what would be acceptable to the British public? If the British public are suddenly told that—I am not going to pick a number—some enormous number is going to be paid over to the EU and we do not have a deal, they might take a slightly different view than if we find ourselves with a trade deal and a deep and special partnership, which is what we want to do. This reflects the fact that we see this as more of a political obligation than a legal one, and we are convinced that it is not a legal obligation, most of it, at least not of the size that the EU is talking about. That is the logic behind it. I am not going to do the financial negotiation through this Committee or indeed any another committee, other than the one that is negotiating the payment. That is the backdrop to it.

Baroness Falkner of Margravine: This Committee produced a report back in March, which laid out all those headings and tried to articulate what our obligations were in that regard. All of that is in the public domain. In fact, the legal issue was dealt with by our Committee in terms. I think that we were the first people to say that we did not think that there was a legal obligation.

Rt Hon David Davis MP: And the Lords Constitution Committee as well, I think.

Baroness Falkner of Margravine: When we went and saw him, Mr Barnier confirmed to us that he had read the report from cover to cover.

Rt Hon David Davis MP: I bet he did not say he agreed with it.

Baroness Falkner of Margravine: I think that we would like to know from you—as would people out there who are making business decisions all the time, every day—when you think you will be in a position to deliver an agreement on our financial obligations. Everybody knows that they will make or break progress. That is all people are concerned about.

Rt Hon David Davis MP: I do not think everybody does know that.

Baroness Falkner of Margravine: I think what I am hearing from you is that it will not be by the December Council.

Rt Hon David Davis MP: I am not going to volunteer that here. I have a round of negotiations starting next week.

May I just deal with this issue of make or break? There will be a number of fundamental issues going through this negotiation. Another one I would point out to the Committee is the question of regulatory relationship, which will, I suspect, at the end of the day, be a make or break issue. The treatment of financial services may be a make or break issue. There will be a whole series of them.

Frankly, I will not be coming before the Committee saying, “Yes, I’m going to fold on this”. Not ever—not on any one of those subjects, because we have a serious negotiation to do. Of course, people who are solely beneficiaries—like some of the businesses you may have been talking to—but are not paying in the £100 billion or £20 billion, whatever it may be, will say, “Yes, we want this done”. Of course they do. I am not surprised by that. Similarly, as they said in terms, they wanted an implementation period. We are hoping to deliver that, but it will not be free. It will not come for nothing.

Q5 **Lord Cromwell:** I would have to read back, but I think the tone of what you said much earlier in your evidence gave me the impression that you see the money as a sort of political dial that we can turn up. I think you said that the EU would emerge rather better off out of it than they thought they might, or words to that effect. Is that our negotiating approach—that we can buy our way in by keeping on turning the dial?

Rt Hon David Davis MP: No, that is not our negotiating approach and I did not quite say that either, but I will rest on *Hansard* rather than your interpretation.

Lord Cromwell: Very wise.

Rt Hon David Davis MP: Of course, that is a part of it. At the moment, we are going through four categories—I will not rank them—of negotiation: citizens’ rights, Northern Ireland, money and so-called separation issues. Citizens’ rights, Northern Ireland and money stand out as being important; separation issues are very technical and, bluntly, if we get the ongoing deal we want, most of them will be nugatory.

The idea of which one matters most has altered throughout the process. Right at the beginning, the assertion being made by the Commission was that citizens' rights was the most important issue. We happen to agree, which is why we signed up to the timetable. We think citizens' rights was, and still is, among the most important issues.

Northern Ireland is very important but it has got to a point where we cannot much advance it. You may want to ask about this later on, but that is where we are.

Money will continue to be an issue. Let us imagine for a second that I went and made some huge offer. I am not going to, but let us imagine that I did. I do not suppose that would close the deal. It will come back again later on, and again and again and again. So both sides will view money as important.

Lord Cromwell: Indeed, but if I may press you a little more, I think you are saying to us that the approach of layering out what the actual asset costs are is irrelevant and that the amount of money will be a part of the negotiation but not connected to asset value—it will just be how much we will have to pay to get what we want.

Rt Hon David Davis MP: No, no, no, it will have a foundation of rationality. After all, the original argument was about the MFF. We essentially accept the political argument that what we are doing by leaving—in this respect, on your point about demandeur—is causing a disruption to the MFF. Therefore, we are trying to correct that, if you like. Beyond that, we will have to see how the negotiation goes, but I cannot rehearse it for you at the moment, because it depends to some extent on what they do too.

The Chairman: That leads on to a question that Lady Kennedy had.

Q6 **Baroness Kennedy of The Shaws:** Secretary of State, one of the things that seems very puzzling to me is that you do not make clear to the general public what this financial settlement involves and why it might be—you say it is not a legal requirement—a moral requirement that we fulfil certain things. The general public have no idea, and the way that this is often presented in the media is not corrected by you or others—for example, when they say, "Why should we give them anything at all? They are just blackmailing us", and so forth. You are in the prime position to correct that by saying, "Listen. It would be quite wrong of us to step away and expect the rest of Europe to pick up the tab on pensions for people who are British Members of the European Parliament". Why should French taxpayers pay the pension of Nigel Farage? I personally resent paying it myself, never mind the French.

Rt Hon David Davis MP: That might be the response.

Baroness Kennedy of The Shaws: There are issues with the pensions of people who worked in the Commission on our behalf. Then there are things like the fact that we, Britain, were very strong in arguing for the creation of a high-speed rail link all the way up to the Baltics. We

supported the idea of the Baltics being on a high-speed train link that went all the way down through Europe—not just for trade purposes, but in fact it fed into our desires for NATO. We are looking at what Russia is capable of—we have seen it in relation to Ukraine—and there is a great deal of concern among the Baltic nations about that. We know there is a problem because the train gauge changes at the borders, because the Soviets built the railways for the Baltic countries. Therefore, we cannot run trains; people have to get off them. If there were any conflict, and we wanted to have supply lines and to get military personnel up there first, we would like there to be a train link. We argued in Europe very strenuously for that and it will cost a hell of a lot of money. Do you not feel that we ought to be telling the general public that? That continues to be in all our interests, therefore we have a financial obligation—not just because of a promise made in the past, or because we were primary advocates for it, but because it is in our geopolitical interests to have that. Why do you not explain that more to the general public?

Rt Hon David Davis MP: There is a natural sequence to this. My task basically falls into three major issues. One is a negotiation, which we are talking about now; one is overseeing preparation for all the contingencies and outcomes at the end; and one is getting the legislation through the House of Commons. They fall into a natural sequence. My motto these days is Wellington's comment to his generals, "Ask me for anything but time", because I am short of time. I would not start making arguments in the British public domain that gave away negotiating chips in the negotiation. I would very happily come back at the point at which we conclude each stage in the negotiation and make the argument as to why we concluded it in that way and what we did. Your arguments may be persuasive to me, but they will be persuasive in the first instance in the negotiation and only in the second instance in the public domain.

Q7 Lord Whitty: You have rightly pointed out that the Irish border is also one of the preliminary issues, which you have agreed the sequencing needs to resolve. However, you also said just now that it is difficult to get very far on that, or words to that effect. How can we move from the general expression of intent to identify practical solutions to resolve the land border and a commitment to not have a hard border and respond to the EU's call for us to commit to "flexible and imaginative solutions called for by the unique situation of Ireland"? How does that work when we do not quite know—well, we do not know at all—what the overall trade situation will be in terms of our relationship with the European Union?

Rt Hon David Davis MP: With respect to Northern Ireland, there are some fundamentals. I suppose the pre-eminent one is to preserve the basis of the peace process. That comes at the beginning and that is what we are trying to do. The preservation of an invisible order—not no border but an invisible border—is a major part of that and we have committed to that, pretty much absolutely. However, what that looks like, what that consists of, you are quite right, rests fundamentally on the final outcome on trade, particularly trade in goods.

At the moment there is a border there because there are different excise regimes north and south. I suspect some healthy smuggling goes on as well, but the simple truth is there is a border there, but it is invisible. If we achieve an outcome, as we hope to, which maintains tariff-free trade, maintaining an invisible border will be relatively easy—I nearly said “very easy”; that would be completely wrong, but it will be comparatively easy. If we end up with a tariff arrangement, then we have a real problem and dealing with that will be difficult.

One of the delicacies or the ways in which we have to tread carefully in this is that the European Union is terribly suspicious that we are trying to use the Irish border as a way of leveraging an outcome somewhere else. We are not. We are just concerned that the outcome we get somewhere else, on free trade, will have a direct impact there. If we get a free trade arrangement which is tariff-free across all goods and a regulatory arrangement on agriculture—probably the biggest single issue on that border—on phytosanitary standards and so on, this becomes a relatively straightforwardly soluble problem. If we do not have those, we have much bigger problems to deal with. So you are right: one follows from the other, not the other way round. We cannot solve the problem until we know.

Lord Whitty: But the sequence of negotiations is actually the other way round.

The Committee suspended for a Division in the Commons.

The Chairman: Right, we reconvene. Lady Suttie will ask the next question.

Baroness Suttie: Staying with the issue of the Irish land border, in the light of the complexities of finding a solution without having decided on our future relations with the EU, do you now regret agreeing to the sequence of negotiations?

Rt Hon David Davis MP: No. This is not to say that we have done nothing with respect to Northern Ireland in the interim. The principles of approach to the negotiation in that area are important, particularly with regard to the common travel area. One of the reasons for accepting the sequencing was citizens’ rights—giving confidence and comfort to the 3 million European Union citizens but also to Irish and British citizens who depend on the common travel area and the 1949 Act. In the first stage of this—forgive me, I am panting, I ran up the stairs.

The Chairman: We are very grateful to you.

Rt Hon David Davis MP: I was worried there might be another vote. The principle of the CTA was challenged at first because the Union was worried that this might have an impact on or set a wrong precedent for other elements of citizens’ rights. So, no, I do not mind it at all. I think we have made significant progress and we are starting to talk about the various north-south issues in the Belfast and Good Friday agreements as

well, although, again, we cannot move on some of them, such as the single electricity market, until we get further in.

The Chairman: The Taoiseach has said he would like greater clarity on all this. Is there anything you can do to provide that?

Rt Hon David Davis MP: We are being as clear as we can. The Irish Government have solutions that they would like which simply are not available to us. We have to keep in mind in everything we do both communities in Northern Ireland and that the stability of the peace process and the Belfast and Good Friday agreements depends on both sides being comfortable with the outcome. There is not much more we can do until we have some more facts in front of us, really. If we could, we would, I promise you.

Baroness Armstrong of Hill Top: Is not the real problem that the border in Ireland will become not just the border between north and south but the border with the European Union? It seems that in everything we hear, nobody acknowledges that. Leave Means Leave told us that the border should be in the Irish Sea. You have real problems here. Is that not at the heart of the problem? I could say a lot more.

Rt Hon David Davis MP: You are right—if not at the heart of the problem, it is certainly a significant component of the problem, because it means that we cannot unilaterally solve the problem. For example, were there a tariff arrangement, in theory we could waive all tariffs going north from the Republic of Ireland, but the Union is not likely to do it the other way round because it is an entry point into the Union. You are right that that is fundamental to the resolution of this problem, which is why the overall solution on both tariffs and the customs agreement will be material to it.

The Chairman: I think we will need to suspend while we vote.

The Committee suspended for a Division in the Lords and a Division in the Commons.

The Chairman: Although we are not fully formed as a Committee, we are quorate, so I suggest that we move on to Lord Cromwell.

Q8 **Lord Cromwell:** Thank you very much. Perhaps it would help if, while you catch your breath, I give you two questions to digest. We are on to citizens' rights. Last month, the Prime Minister told the House of Commons that we were in "touching distance"—what that means exactly, I do not know—of an agreement. My first question to you is: are you able to talk specifics on what remains to be agreed and the prospects for it? I am on the Justice Sub-Committee, and we heard this morning that there is, despite what you said earlier, a lot of uncertainty still out there as to where that is going.

My second question is: if agreement is reached on those specific issues—I think you would agree that it is vital progress if we manage to get agreement on all those things—are there any concrete proposals as to

how it would be enforced? The CJEU seems to remain a red line for the Government, so what enforcement mechanism are we looking at and how will it enforce rights in Europe if it is a UK court? Can you help us on that? Those are my two questions.

Rt Hon David Davis MP: Thank you for being kind enough to give me breathing time.

First, perhaps I could start with the substantive differences. Mutual professional qualification recognition is one. We think that the Union is being too restrictive. We think that if you have a qualification and you move, you should keep that qualification, whereas it seems to be residence-locked in the European Union. We think that we should be a little more flexible. For example, we think that students who are halfway through their course to become a lawyer, or whatever, should be allowed to conclude that and keep recognition of their qualification. So that is one. At the end of the day, I will not forecast what the outcome will be; we will keep trying on that.

The movement of UK nationals within the European Union is another one that we want for the British citizens there, and the Union does not believe that it will give. The third is voting rights for British citizens within the EU—local government voting rights, not national voting rights. There are political connotations for other third-country nationals elsewhere in Europe which affect that. Those are interesting. Not the first one, but the second two are in the recommendation of the European Parliament, so we will have to see how that plays out.

On our side, we are still reflecting on the export of benefits and the question of how many benefits are dealt with and how. I guess the most controversial is future family reunification, because the rights of UK citizens are less than the existing rights of the European citizen in the UK. We have trouble with the idea of giving 3.2 million residents of the United Kingdom a separate set of rights to those we give to British citizens. Those are the differences.

Lord Cromwell: And the last of those is the most contentious. Is that right?

Rt Hon David Davis MP: Yes, I think that is right. These will be the first things out of the box when we reconvene next week, in my view.

On the question of the European Court, it is not really about enforceability, because we expect that the rights that we give to European Union citizens and permanent residents will be enforced by the British courts, up to and including the Supreme Court. The issue from the European Union point of view is how trustworthy this is. Might some future Parliament under, I do not know, Prime Minister Nigel Farage—perhaps I should not be rude—or some other Government alter those rights?

We do not believe that that is a risk; we do not believe that any Government in this country would be likely to do that, but we will write

into the Act effectively the words of the withdrawal treaty, whichever Act we use—we have eight other bits of primary legislation, as well as what was the repeal Bill, now the withdrawal Bill going through, one of which will be an immigration Bill. We will write it in, in terms. We will also write into it that the Supreme Court can pay attention to the jurisprudence of the European Court so that, if there is any reinterpretation, it is on a level playing field. Those are the arguments.

Then, of course, there are the ideological differences. From our point of view, the idea of allowing a foreign court to have locus within the United Kingdom—a court on which we are not represented and do not have any say—is against the thrust of the referendum, which was about bringing back control.

Lord Cromwell: Would you not see a conflict between that and our Supreme Court having locus in European countries?

Rt Hon David Davis MP: We are not expecting it to have locus in European countries. How do you mean?

Lord Cromwell: Okay. Am I right to have understood what you said a moment ago as that the Supreme Court, if that is the body that it comes to, will have regard to European precedent and legislation?

Rt Hon David Davis MP: Yes, it is allowed to; it does not have to take it on board. The point here is that the Supreme Court is the ultimate legal arbiter in this. It has a strong tradition of standing up to Governments and telling them what they can and cannot do from time to time.

Lord Cromwell: Finally, just out of curiosity, would legal aid be available to people applying to it?

Rt Hon David Davis MP: I do not know the answer. I would assume yes, but I can write to the Committee to be sure.

The Chairman: That would be helpful. Are you able to tell us when the other pieces of legislation to which you referred, in particular the immigration Bill, might be published, going to the Lords or the Commons?

Rt Hon David Davis MP: I do not have the timetable in front of me. Again, if it is decided yet, I can find out, but there are eight of them. As you can imagine, Brexit is having a pretty sizeable impact on the programme and it makes it difficult to get the decisions early. If we have information, I will let you have it.

The Chairman: Thank you.

Baroness Kennedy of The Shaws: I am interested in the other side of the coin that you were describing to Lord Cromwell: that citizens here would have their rights protected by the British legal system—we are proud of the story that it tells—and to reinforce that and give confidence we would have it written into the treaty that these rights will be protected in perpetuity. But what are you saying to the people who have retired

and given up their home to live in Spain or the people who are working in Europe, who took some comfort from the fact that there was an ultimate court which had on it someone from Britain—a British judge—interacting with that? What happens to their rights? Are they just to get on with it back in Estonia or Poland or wherever they might be?

Rt Hon David Davis MP: I will say two things. I am insufficiently jingoistic to think that the existence of a British judge on a court somehow makes it a poorer court. Obviously, I think it brings something to it.

Baroness Kennedy of The Shaws: I am saying the opposite. I am saying that it makes it a better court. If you are a British person living in Spain and you end up in a conflict with the Spanish Government over your rights and they are not being protected, you might get some comfort from knowing that ultimately it is going to go to a court on which there is a British judge. That is not an offering you are making to our British citizens living abroad.

Rt Hon David Davis MP: No, no, no. When you go to live in a foreign country, you normally accept the laws and the justice of that country. If you go to live in America, you do not expect to have a British judge on the court. If you go to live in Spain, the same.

Baroness Kennedy of The Shaws: But belonging to the Community brought you extra things, and one of them was that justice was done together.

Rt Hon David Davis MP: I can see your argument, but that is the consequence of the referendum, that we leave.

Baroness Kennedy of The Shaws: In which they were not allowed to vote.

Q9

Lord Selkirk of Douglas: I will ask two questions. First, what does no deal mean in practice and what would be the consequences for the United Kingdom if there were to be no deal under Article 50? Following on from that, at what point in the negotiations, if all goes well, will you be able to confirm that no deal is no longer an option?

Rt Hon David Davis MP: The first thing to say is that no deal is not what we are seeking. I may sound like a cracked record on this but unfortunately every time you do not say it, people assume that somehow you want no deal. I am not one of those people who think that no deal is the best deal. That has to be plain from the beginning. To answer the end of your question, precisely because we are seeking a good deal—a “deep and special partnership”, to use the Prime Minister’s words—we will be trying to do that right to the end. That is where I think the answer is.

What does no deal consist of? First, I think no deal is improbable but if we end up with no deal—in my mind, that means no free trade deal and no customs arrangement to go with it; those are the primary things you lose—I do not think we will end up in a circumstance where we have no

agreement on a number of fairly fundamental issues, such as aviation. Whatever happens, we will have some sort of basic deal.

My view of no deal is a basic deal without the bits we really want. I say that because it is so patently in everybody's interests that we have, say, an aviation deal—not just for us and our holidaymakers, but what would the absence of one do to the economy of Spain or Italy or other countries that have regions heavily dependent on tourism, or what would it do to Poland if the 1 million Poles in Britain could not go back and forth between them? What is commonly thought of as no deal is not impossible, but it is very, very, very improbable. It is much more likely that if we come to that point, if we cannot get an outcome where we can agree on a free trade and customs arrangement, it will be a basic deal. Does that answer your question?

Lord Selkirk of Douglas: Yes. Thank you very much. My second question is: can you mention any specific areas where even if agreement is not reached on a financial settlement or on the long-term relationship, failure to reach agreement is inconceivable? You have already mentioned aviation. Would you also include extradition, security co-operation and the handling of nuclear materials? How would these issues be dealt with in the event that agreement under the Article 50 negotiations could not be reached?

Rt Hon David Davis MP: I reiterate that this is not what we are trying to get, but in the event that we did not get a full deal, the interest of both sides on, say, counterterrorism co-operation, justice co-operation or data exchange co-operation is so great that I find it hard to believe that we will not get some fundamental deal there. You mentioned the nuclear trade. If we do not end up with some sort of arrangement with Euratom, we would have to create, as in the Nuclear Safeguards Bill currently going through the Commons, another structure which effectively gives us the same safety arrangements, which would then allow us, under the IAEA rather than Europe, to meet trading safety requirements and so on with other countries, including in Europe. That is what we are seeking to do under those circumstances. As I say, it is a small probability that we will end up in that position.

Lord Liddle: Can I pursue what I think in the Commons you called a "bare-bones" deal?

Rt Hon David Davis MP: Bare-bones, yes. Actually, it is not a very good word. It sounds terrible.

Lord Liddle: Would you envisage such a bare-bones deal necessarily involving an implementation period in order to deal with the disruption at customs that would occur if we were to simply leave in March 2019? Would it include a financial settlement, such as for our obligations to EU pensioners? Going on from that, if that is all we reach agreement on in your negotiations, that means that we will be trading on WTO terms—in the language—once that comes into effect. Have these impact assessments, which you say you cannot disclose for negotiating reasons,

included an assessment sector by sector of what trading on WTO terms would mean? Do you not think that in the event of no agreement you would be obligated to publish that information so that the House of Commons could see what the impact of this policy was going to be?

Rt Hon David Davis MP: What a complex question.

Lord Liddle: They are all vital points.

Rt Hon David Davis MP: There is a whole series of questions in there, in some of which you invite me to pre-negotiate this improbable deal.

Lord Liddle: I am glad to know it is improbable.

Rt Hon David Davis MP: Well, yes, it is. The probable deal, I hope—more than hope, we intend—is the treaty, the free trade agreement and so on. This is the less likely outcome we are talking about here. In terms of how it would fit together with a withdrawal agreement and implementation period, that depends, frankly. The trouble is you are putting up a whole series of hypotheses which I do not want to go down.

I think there has been a certain degree of misunderstanding about the sectoral studies. You should remember that we are not releasing them because of a House of Commons vote in December last year, which said we were not required to release anything which undermined the negotiation status of the British Government—or the national interest, frankly. That is the reasoning behind it. But you should not overestimate what is in them. They are not economic models of each sector; they are looking at how much of it depends on the European Union versus other markets, what other opportunities there may be, what the regulatory structures are—all those sorts of things, which inform the negotiation but are not predictions. So I would not overestimate what they are.

Baroness Suttie: Would you agree that no deal would have a particularly negative impact on Northern Ireland?

Rt Hon David Davis MP: No deal in what sense? A basic-bones deal, or whatever you call it?

Baroness Suttie: Any level of no deal, particularly no deal at all.

Rt Hon David Davis MP: I do not want to enter into that detailed analysis here, but the Government want a free trade deal and customs agreement because they want the best outcome for the United Kingdom as a whole, and a good outcome for all the parts of the United Kingdom. That includes Northern Ireland, Scotland and Wales. We are talking to the relevant devolved Administrations—it is difficult, because Northern Ireland does not have an Executive yet, but as soon as that is back in place we will talk with it—about the components and the effects on each piece of the Kingdom.

Take Northern Ireland, for example. Off the top of my head, it has something like 10 times the average agri-food dependency of the rest of

the United Kingdom. We would look at and focus on that. The whole point of the negotiation, and the informing of the negotiation by our discussion with the DAs, will be to ensure that the outcome protects them, full stop. Whatever we do, we would have to have policy to go with it. That is about as far as I can go down that route, I am afraid.

Lord Liddle: Just a quick comeback on that. You are not telling us a great deal about what you think a bare-bones deal—

Rt Hon David Davis MP: I am relieved to hear that.

Lord Liddle: According to the well-informed press—

Rt Hon David Davis MP: Who are they?

Lord Liddle: You gave an upbeat assessment of a no-deal Brexit to the Cabinet. If you can give that to the Cabinet, why are you so reluctant to give it to us?

Rt Hon David Davis MP: Let me deal with your original premise of the well-informed press. That was an article in one of the newspapers, I think two weeks ago, which was particularly ill-informed, because they were talking about a briefing I gave today, I imagine, to the Cabinet, which was about the preparation for all the outcomes: both the bare-bones deal—the WTO outcome—and the other outcomes, with and without implementation periods as well. It was not upbeat or downbeat; it was, as far I could make it, absolutely factual, because it was important for the Cabinet to understand.

The Chairman: Did you give an indication as to which you thought was the most likely outcome?

Rt Hon David Davis MP: I have always said that the most likely outcome is a free-trade agreement. I have always said that. It is probably worth saying why: you talk not just to the Commission but to member states, and even one level down from that—regional governments. If you had in front of you today Mr Bourgeois, the President of Flanders, he would tell you that he absolutely wants a good deal for both sides. If you were talking to President Xavier Bertrand—head of Haute-de-France, in north-west France, which includes Calais and Dunkirk—he would say that he wants a good deal because the impact on them would be enormous. There have been studies that show that Belgium and Holland would suffer 3% or 4% hits on their GDP if they do not get a deal, so there is quite a lot of internal pressure. It is part of my job to increase that and to get people to understand that.

The Chairman: I must interrupt you. There is a Division in the Commons.

Rt Hon David Davis MP: What, again? Forgive me. I will be very fit by the end of this.

The Committee suspended for a Division in the Commons.

The Chairman: I am very grateful to you, Secretary of State.

Rt Hon David Davis MP: We are now in injury time. I will explain the injuries later.

The Chairman: You kindly said that you could stay until 5.45 pm. There are just two further questions that we would like to concentrate on. I will ask the noble Baroness, Lady Neville-Rolfe, to ask the first, and Lord Woolmer the second.

Q10 **Baroness Neville-Rolfe:** Secretary of State, assuming that we get a more positive outcome, as you said you were hoping, can you tell us about the key elements of the deep and special partnership with the European Union that you and the Prime Minister talked about in her Florence speech?

Rt Hon David Davis MP: Yes. At the mountain-top level, it can be divided into economic and security, primarily. On the security and foreign security front, we have written a paper—in fact, 14 papers over the summer—on foreign security. In our view, that is massively important, not just from the point of view of our interest but because it reflects to Europe that we take our global and European citizenship role very seriously. That means something. Just as a back-of-an-envelope number, the difference between the European average spend on defence, international development and foreign affairs and what we spend is more than £20 billion a year. We take this responsibility very seriously. I had dinner last week with Monsieur Le Drian, the French Foreign Secretary, who clearly takes it very seriously. The French take this incredibly seriously. That is one component.

The other component, where all the argument and controversy is, is the free-trade agreement and the things that go with it. When I say the things that go with it I mean a huge range of issues, from tariff-free access and the maximum possible access for services to all the supporting elements that I talked about in the basic deal idea: aviation, data, nuclear. All those issues fit together. That is the overarching aim. None of what I have just said to you is very new, because the Prime Minister has laid it out in the Lancaster House speech, the Article 50 letter, the two White Papers and, of course, the Florence speech last week. Thereafter, we have filled in a lot of the texture of our 14 papers. For example, on something like the thin strand of science, we have made very plain that one element is expecting ongoing scientific co-operation, perhaps even some sort of associate membership of some scientific programmes. That is the big-picture version.

Baroness Neville-Rolfe: It is good to have the big picture. Can we draw you out a little on the opportunities? Presumably, if you have an agreement or a partnership, there are joint economic and security opportunities, which you have emphasised. Is it possible to talk a little more about those?

Rt Hon David Davis MP: On the foreign security side, the joint opportunities are fairly clear. First, to take the example that is closest to the public's concern—counterterrorism and law and order—we intend to create a circumstance that gives the same counterterrorism co-operation and data exchange, as well as similar, but not the same, arrangements for extradition as we have now.

On the trade side, the opportunities are slightly separate, because we will obviously want to maintain as strong as possible an access as we can to the European single market. That liberates us to exit the common commercial policy and do our own trade deals. This, in our view, is incredibly important. The European Union itself, the Commission itself, says that 90% of future global growth comes from outside the European Union. At the moment, the latest set of numbers that have been published on our exports show that something like 57% goes to the rest of the world, not to the European Union. We are doing as a country what a business would do if it picked on the fastest growing, biggest part of its customer brief and worked to expand it.

There are very sizeable opportunities. One of the problems that we have had historically is that we have underestimated the size of those. They will be very significant.

Baroness Neville-Rolfe: I am very sympathetic to that approach. Lord Darling, the former Chancellor, talked to us earlier today and he said that he thought the third-party trade deals would take years, so you could not count on those. I think Michel Barnier himself has made comments about the EU-Canada deal. I am interested in your comments on that. I take a more optimistic view.

Rt Hon David Davis MP: There are two ways in which that is argued. One is our free trade arrangement with Europe, which will be fast because we are starting from exactly the same regulatory basis and we have strong existing vested interests, and so on. With respect to the rest of the world, I do not wish to be disobliging about the European Union, but it has a structural flaw in doing trade deals: it has 28 members, so any trade deal has to satisfy 28 members. If you are going out to buy something for 28 people it is a lot harder than if you are going out to buy something for one person. Take the extreme example of Chile—I do not hold ourselves up as being like this country—which is very aggressively pro-free trade and sometimes does its trade deals in less than a year. We would expect to have a much faster rate of doing deals. The trouble is that the British economic establishment has been used to watching the European Union doing this rather than countries such as South Korea, Chile, or even Switzerland for that matter, which are much more effective.

The other thing is that trade deals are not all of equal quality. Most of the European trade deals do not focus very much on services. We will be looking for trade deals that are much more focused on services. If you compare the effectiveness of European trade deals from our point of view and the effectiveness of Swiss trade deals from a Swiss point of view, you

find the quality of the growth of exports thereafter is greater for the Swiss-specific trade deal. So there are qualitative, quantitative and speed advantages from being a single country doing this.

Baroness Neville-Rolfe: Finally, do you think we can get round the problems that the WTO has certainly had on financial services and other services agreements?

Rt Hon David Davis MP: Oh yes, service agreements are the new, modern thing. The modern GATT round is going to be on services. I think we will find two things there. One is a greater interest in services because—this is simplistic, so forgive me—the exchange between East and West is not going to be about us buying their goods and then us borrowing their money, which were some of the fundamentals behind the 2008 crash, but about us buying their goods and them buying our services. That is the proper way to go, not the protectionist route that some countries are following. That is what we want to do. Far-sighted countries that are potential buyers of services but sellers of goods will see that as a much more stable relationship than what we have had historically.

The other thing here is symbolic but important; given the stance of the United States these days, we will probably be the most proactive protagonist of free trade in the world once we are outside the European Union.

The Chairman: I am tempted to follow that up, but I will not.

Rt Hon David Davis MP: I was not trying to provoke you, Lord Chairman.

Baroness Brown of Cambridge: Could I just ask for a very quick clarification? From what you were saying, do I presume that you do not imagine that scientific collaboration and things such as membership of Horizon 2020 would be there in the instance of a bare-bones deal?

Rt Hon David Davis MP: As I said to Lord Liddle, we are piling hypothesis on hypothesis. In those circumstances, my hunch—no more than that, frankly—is that that would not be the end of the story. We will continue to talk to each other and so on. We are close friends, allies and neighbours. From a scientific point of view, we are a jewel in Europe's crown. We are one of the reasons why it is number two in the world. If you take us out, it is a bit different. So there is massive advantage for both sides to continue the movement of people, ideas and money as science projects get bigger and bigger. So it would not be the end of the story. As I say, in my view that is an improbable outcome, but if we arrived at that improbable outcome I imagine that this would go on.

Q11 **Lord Woolmer of Leeds:** Before moving to the next question, could I just clarify one point? There is the withdrawal agreement and then there is the agreement on the future relationship. If I understood your and Mrs May's position aright, the aim is to have a political agreement on both

those issues ideally by October 2018. The withdrawal agreement will come into effect only on 29 March and the future relationship would be “a second”, in your terms. My question before turning to the detail of implementation is: do you think that realistically a full agreement on the full detail of the future relationship can be politically agreed—for Parliament to hear what it is—by October next year?

Rt Hon David Davis MP: Yes, I think it is possible; otherwise, it would be pointless having the intention. The reason why I say that goes back to the point I made before about the interests of other European countries, which will not want a hiatus at the end of this; they will also want to wrap it up. The most obvious ones are the ones that I think of as the littoral states, the North Sea states, all of which have a strong interest in this.

Lord Woolmer of Leeds: If that is the case, the Prime Minister has indicated that you cannot agree the details of an implementation period until you have the future relationship clear and agreed. If that is the case, how can you agree an implementation period by the end of the first quarter of next year when you have just said the aim is to agree the future relationship by October next year?

Rt Hon David Davis MP: The final elements of all this will be pulled together in October, or whenever the end of the negotiation is. This is one of the things about this. These things do not sequence as neatly as the Commission would like. They tend to work together. But the substantive element of the implementation period is that the Prime Minister has said that we want only one broad change for British business. She said that it will look very close to what we currently have. That has been her statement, in effect. I am paraphrasing slightly, but it is close to that.

Lord Woolmer of Leeds: But if the Government secure an agreement on an implementation period by March next year, the end of the first quarter, before the political agreement is reached on the future relationship, how do you square that? If there is an agreement on an implementation period, it is not merely an implication; it is a clear indication that there is going to be an agreement on the future relationship. It rules out no deal, for example.

Rt Hon David Davis MP: I hope you are right.

Lord Woolmer of Leeds: Well, either an assurance by both sides to business and others that there is an implementation period means something or it does not. If you are saying that it might not mean, anything because ultimately there might be no agreement on the future relationship—

Rt Hon David Davis MP: No, I was literally saying that I hope you are right. That is what we would like to see.

Lord Woolmer of Leeds: That it is meaningless?

Rt Hon David Davis MP: No. Certainly not. You are putting words in my

mouth. We would like an implementation agreement in the first quarter of next year—that being the earliest we could possibly get it—in principle. It will not be in fine detail after couple of rounds of negotiations in January. In principle, as the Prime Minister has said, it will be very similar to what we currently have, with a regulatory structure similar to what we currently have, and the fine detail of how it will conclude will come together with the trade deal later on. But basically business can see that we will have much the same arrangement as we currently have for two years or whatever we agree.

Lord Woolmer of Leeds: In order to implement the future relationship deal, which by that time will not have been agreed.

Rt Hon David Davis MP: Yes, of course. Inevitably, those are some of the things that we are going to have to do: decide what regulatory structures we have, what regulatory agreements we have with each other and what international arbitration arrangements to have. All those things may come in towards the end of an implementation period. That is possible. We are saying to business: "You will have this structure there for that period".

Lord Woolmer of Leeds: You are assuring business that by March next year there will be an agreement on the future relationship?

Rt Hon David Davis MP: No, no, no. We are saying that by March next year I hope that we will have—I intend that we will have—an implementation period. Thereafter we intend and hope that we will get a future trade relationship, but that probably will not conclude until October or thereafter.

The Chairman: A final, simple question from Lady Verma.

Rt Hon David Davis MP: It will have to be simple for me.

Q12 **Baroness Verma:** Secretary of State, it is very simple. In the *Times* today it is reported that the Brexit deal will become legal only after a vote by MPs. What are your comments on that? In addition, when do you expect the European Union (Withdrawal) Bill to complete its passage through the Commons? Very simple questions.

Rt Hon David Davis MP: Those are simple questions? Right. Let me deal with the first one first. What did the *Times* say, that it becomes legal—

Baroness Verma: After a vote by MPs.

Rt Hon David Davis MP: On what basis did it say that? We are going to bring back to the House—the Commons and the Lords, for that matter—the deal for them to vote on.

Baroness Falkner of Margravine: Primary legislation.

Rt Hon David Davis MP: Oh right. What I said at Second Reading of what is now called the withdrawal Bill—we used to call it the repeal Bill—is that we are going to listen carefully to the debate and take on board

what people say. Unlike the Article 50 Bill, which was designed broadly to be free-standing, not susceptible to much change—in fact, it did not change at all—this Bill is much more complex. It has to deliver effectively 40 years of legislation into the UK in one go, so it is not designed to be untouchable. I made that plain at Second Reading. I said that we were going to listen to what everybody said. We have not concluded that process. We have not actually started Committee yet. I will answer that question when we have got to the end of Committee, but until then I will not.

The Chairman: Secretary of State, thank you very much indeed for spending a rather energetic—in both senses of the word—afternoon with us.

Rt Hon David Davis MP: It is obviously very good for me.

The Chairman: I hope we have improved your health as well. There are one or two questions that we have not been able to cover, which I hope we can sort out in writing afterwards, but we are extremely grateful to you for having spent so much time with us. It has been very helpful to our inquiry and we greatly look forward to seeing you in the new year to talk about the latest stage of the negotiations.

Rt Hon David Davis MP: I look forward to my new year's celebration.

The Chairman: Thank you very much indeed.