

European Scrutiny Committee

Oral evidence: EU Withdrawal, HC 763

Thursday 22 February 2018

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Members present: Sir William Cash (Chair); Geraint Davies; Mr Marcus Fysh; Kate Hoey; Kelvin Hopkins; Darren Jones; Mr David Jones; Andrew Lewer.

Questions 102-182

Witnesses

I: Robin Walker MP, Parliamentary Under-Secretary of State for Exiting the European Union, and Sir Tim Barrow, UK Permanent Representative to the European Union.

Examination of witnesses

Witnesses: Robin Walker MP and Sir Tim Barrow.

Q102 Chair: Good morning. I will ask the first question, which is to do with the money and is connected with what we have discovered relating to the multi-annual financial framework, on which we are putting out a press release today.

It is our adviser's view that, under the arrangements in prospect, although the Government and European Commission reached agreement on the principle and the amount of money in the first place in December 2017, that only covers the period up to the end of 2020. If the transition lasts beyond 2020, that could require the UK to make payments into the EU budget for 2021 as well. From January 2021, we would then be paying into the EU's new long-term budget.

The net result is that the additional costs could run into billions of pounds—the estimate is between £4 billion and £5 billion. I don't know whether you would like to comment on that. Rather like Roald Dahl's "Tales of the Unexpected", this is something that has suddenly appeared. We are going to put out a press release, but I thought I would invite you to comment in the first place. You have a central estimate of £35 billion to £39 billion at the moment. What we really need to know is, what is the full range of estimates of the total financial settlement, bearing in mind what I have just said about the prospect of our having to handle the situation after 2020? Would you like to comment on that?

Mr Walker: As you know, the position that we took in negotiations over the withdrawal agreement is that we accepted that commitments we made during our period as a member state should be met, and therefore that our commitments to the multi-annual financial framework, which we had already made, should be met, and that that should be balanced with the UK's share of assets and a range of other issues in reaching a full and final settlement for withdrawal. That is something we agreed as part of the December element. As you say, based on publicly available information, the estimate of £35 billion to £39 billion was reached on that as the central estimate of the Government's position.

With regard to the implementation period, we are clearly in a negotiation. We have set out that the UK Government believe that a period of around two years is the right period to make sure that the right arrangements can be put into place. As you know, the Commission's current position is a period of 21 months, leading up to December 2020. I think it is important that we are both aligned on the rough duration of the period, although there are clearly negotiations still to come on exactly where we draw it to a close.

Q103 Chair: I was informed this morning that a meeting took place yesterday and that one of the Dutch Ministers—was it the Dutch Prime Minister?—was with the Prime Minister yesterday. It appears that he said afterwards



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that he anticipated that there would be an extension beyond December 2020. I do not know whether that is true or not. Perhaps you can comment.

Mr Walker: As I have already said, the UK's position has consistently been that we believe that the length of the implementation period should be determined by what is practical, in terms of putting the new arrangements in place. At the moment, our central estimate of that is a period of around two years. That is obviously different currently to the position the Commission set out on December, but not very different. Tim, do you want to expand on that?

Sir Tim Barrow: That is right, Minister. You are right that there was a meeting yesterday between the Prime Minister and Prime Minister Rutte of the Netherlands. I was not at the meeting so I cannot comment on it; I was at COREPER.

While there has been some discussion in Brussels among the 27 about the duration, the negotiating directives point to the end of 2020. That is the basis on which we are talking to the Commission about the logic of how they derived that figure.

As the Minister says, it is absolutely in the same scope of what we have said of around two years. There is no sense on either side of any unlimited duration for this implementation period. Indeed, the EU's own documents, both in the Council's conclusions of the European Council and also in the negotiating directives, are very clear that there needs to be a specific, time-limited duration.

Q104 **Chair:** That is exactly what we understood, but it begins to look, according to some of the noises off, that there is a suggestion that it could be as long as a piece of string and that we will go on. I see that you, Minister, are shaking your head, which I am glad to see, but I am concerned that we are getting mixed messages.

Mr Walker: I draw your attention to and repeat what my colleague, Steve Baker, said yesterday, which is that both sides want a clear definition of this period. We want to ensure that, when we agree the detail of the implementation period, people will know exactly when it will come to an end. That is important, in terms of creating the certainty for people and businesses that we have always set out to create through this process.

Q105 **Chair:** I have a paper here that was published by the Government. I am not quite sure about the word "published", because I am told that it was first made available to the BBC and was then leaked. Let us leave that for the moment. It says that the UK believes that the period's duration should be determined, as you have said, by the question of practicalities.

However, it says: "The UK agrees this points to a period of around two years, but wishes to discuss with the EU the assessment that supports its proposed end date." It then says: "There shall be an implementation period which shall start on the date of entry into force of this agreement and end on"—in square brackets—"31 December 2020".



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It is quite clear that this is a serious point of discussion. Of course, that impinges on what we are putting out in our press release about the additional money that might be made available. I just want to put that on the record and ask you to comment on it once more.

Mr Walker: The reason for those square brackets, as you say, is that it is a point of discussion. We want to make sure that both sides have given proper consideration to the practical arrangements that need to be put in place, which is, after all, the point of the implementation period—to make sure that the necessary arrangements can be undertaken, whether by nation states or companies, to make sure that we have a smooth shift to the new relationship at the end of that period.

We want to have that discussion, but as we set out in our preamble and in the Secretary of State's letter to you, Chairman, we believe that the positions are quite close to each other. We absolutely believe that the implementation period will be time-limited and that there will be an agreed end date to it. I do not see anyone suggesting, and I do not think that it would be practical to suggest, that that would be significantly beyond the two years that the Prime Minister has repeatedly referred to as the Government's central estimate.

Sir Tim Barrow: Just to refer to the EU's position, the supplementary directives for the negotiation adopted in January, for instance, make exactly this point: any "transitional arrangements must be clearly defined and precisely limited in time."

Although I of course do not sit in meetings of the 27, it is my understanding that the view among the 27 is that since this will be delivered through an article 50 agreement—a legal base that concerns withdrawal—your fears about something being as long as a piece of string cannot apply because it must be time-limited. The sort of time that we are talking about—around two years—is about the right sort of timing in terms of the legal base that will be used for the arrangements.

Chair: I am about to bring in David Jones, but I just want to add that the Chancellor of the Exchequer has agreed to come to the Committee, I believe on 5 March, which will be a moment when we can explore this further.

Q106 **Mr David Jones:** The explanatory note to which the Chairman just referred says, "The UK believes the Period's duration should be determined simply by how long it will take to prepare and implement the new processes and new systems that will underpin the future partnership." You have indicated that that points to a period of two years. Could you tell us in broad terms what the new processes and systems referred to in the explanatory note are?

Mr Walker: As you will be aware, this echoes language from the Prime Minister's Florence speech, in which she set out the Government's position on these issues. That referred to the new partnership between the UK and the EU as covering both security issues and economic arrangements. We want to have a discussion about, for instance, customs arrangements, and



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in our customs paper we set out a number of objectives that will allow us to have an independent trade policy, as well as to avoid a hard border on the island of Ireland, and maintain frictionless access to one another's markets for goods.

Clearly, that would benefit from agreements being put in place between the UK and the EU. Those agreements would then require the states on either side to make necessary arrangements. That is one example of where arrangements will need to be put in place. Obviously, software systems and things such as authorised economic operator schemes, which may need to be scaled up, might be examples of things that would take some time to deliver.

Q107 Mr David Jones: Principally, it is customs arrangements. That would be a major part of this.

Mr Walker: That is one example. Another might be the organisation that it has been suggested be set up to deal with citizens' rights issues in the UK. That will take some time to organise and put together. We want to make sure that the relevant administration is in place. That cuts both ways, and needs attention from both sides. I observe in my conversations with EU states that they are beginning to pay more attention to what arrangements they might need to put in place during this period.

Q108 Mr David Jones: Are these customs arrangements being put in place now?

Mr Walker: As you know, there has been money from the Treasury for HMRC, and they are taking steps. We also have the new customs declaration system.

Q109 Mr David Jones: But has that £3 billion been spent yet?

Mr Walker: Certainly not all of it, but some of it has.

Q110 Mr David Jones: Has the process started?

Mr Walker: Yes, absolutely there are processes under way. As you know, we were making arrangements anyway to upgrade our customs systems. Of course, reaching agreement with the EU on the future arrangements being put in place between us will be important in being able to then determine exactly what needs to be done during the implementation period.

This is a point that, again, I am at pains to emphasise in all my conversations with member states and with the European institutions. Reaching the detail of that agreement as quickly as possible is in all our interests to make sure that businesses and countries get the best benefit from the implementation period itself.

Q111 Mr David Jones: Indeed, but given that we cannot rely on agreement being achieved, would it not be prudent to start putting those customs arrangements in place now?



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Mr Walker: That is precisely why, as you know, the Government are also planning for the unlikely event of no deal and the arrangements that would need to be put in place. That is why contingency funding has been made available to Government Departments. One of the first organisations to receive that funding and to begin to spend it is HMRC.

Q112 **Mr Fysh:** Just to follow up on that, if no serious preparations are being undertaken now because we say we do not know what the customs arrangements need to be, why should we think it would be any different if we were in a transition period where the customs arrangements were yet to be decided between you and the EU?

Mr Walker: As I say, I very much put the emphasis on reaching agreement on the framework for the future relationship, including any customs arrangements that would be put in place, before the transition implementation period starts. I think it would be beneficial to both the UK and the EU to do that. That absolutely remains our ambition.

I disagree with your suggestion that no action is being taken. As I have just said, action is being taken to make sure we are prepared, and it is right that Government should take that action across the whole of Government to make sure that we are properly prepared. But our central scenario is one that we believe will be to the benefit of both the UK and the EU of achieving a strong economic partnership agreement for the future. That is what the Prime Minister set out in her Florence speech. That is what I think we can have greater confidence in following the agreement in the December joint report that takes us forward. Securing the implementation period will be another step forward in that direction.

Q113 **Mr Fysh:** But isn't the concept of transition really a red herring when you see, for example, that the Dutch have taken a decision to implement arrangements at the borders to enable them to handle our UK trade whatever the situation? Is it not remiss of the Government to spend time worrying about a transition and not doing the same?

I was in America and Canada the week before last talking to big multinational corporations. They are of the view that they need to see actual infrastructure going in at the border, which will be necessary whatever the scope or nature of our trading arrangements are with the EU from a realistic point of view.

Why are we not pushing the buttons on those things now? Why are we spending all this energy, time and political capital worrying about a transition? Guy Verhofstadt said in the Marr interview on Sunday that in his view a transition is a thing where we negotiate and discuss what the future arrangements are.

Mr Walker: Clearly, in any negotiation people will have different views of the outcome. The Prime Minister has been pretty consistently clear on this. We believe that a time-limited implementation period will be of value in providing stability and certainty to business as we move to a new relationship. As my Secretary of State set out in his Teesport speech, this is about a bridge to a future and a different relationship between the UK



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and the EU. It is in the interests of all parties to secure that stability and certainty in the short term and make sure that we can make the best of the arrangements that we reach between us.

Where I do not agree with the premise of your question is in the suggestion that we are doing no preparation. We are doing that work. As we have already discussed, money is being given to HMRC and other organisations in order to step up that work. It is right that we should be prepared for all scenarios, but there is enormous benefit in pursuing our central scenario: the Prime Minister's objective, which she set out in the Florence speech, of having that deep partnership between the UK and the EU after we have left, recognising the independence of each other's institutions and decision-making processes, but maintaining the frictionless trade where we can.

To come back on one point, you talked about the necessity of putting up infrastructure at the border. We are clear that we will not be putting up infrastructure at the border between Northern Ireland and the Republic of Ireland. We think it is a very important part of meeting our commitments under the Belfast agreement. It is absolutely the policy of this Government to avoid putting physical infrastructure at that border.

Mr Fysh: But there are different ways of actually doing it without necessarily physical infrastructure.

Mr Walker: I agree.

Q114 **Mr Fysh:** I am saying that where physical infrastructure is going to be required, now is the time to start implementing it and actually doing it. Otherwise, we will not be there by the end of March of next year. In that sense, we are not doing it now.

Mr Walker: There is a huge amount of work going on with the border planning group and the Government to ensure that the necessary preparations are in place and that we have clear timelines for those.

You mentioned the Dutch. I was recently in Antwerp. In Belgium they are very clear that they would like both the UK and the EU to set out an agreement on what the future customs arrangements will be, so that they can prepare for it. I think that is eminently sensible and to the interest of all parties. Therefore it is something on which we want to reach rapid agreement. Establishing that we know the length of the implementation period—that will hopefully be agreed at the March European Council, and we can then be clear what we will use that for and what it will be implementing—will be to the benefit of all parties.

Q115 **Mr Fysh:** Coming back to the implementation agreement, will there be a provision in that under which it will be mutually extendable, or can you guarantee us that there will be no such provision in the agreement?

Mr Walker: Clearly this is something that is under negotiation. We have not reached a final text yet, but my expectation and understanding—as



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Steve Baker said the other day—is that the agreement will have a clear indication as to when it ends.

Q116 Darren Jones: Just on this question of transition. The transition period that has been agreed so far—the one after the end of the article 50 period—was agreed with the European Union on the basis that EU law would continue to apply as it does today, but without our seat at the table, and that we continue to pay what we pay today. That is right, isn't it?

Mr Walker: It is a time-limited extension of the existing rules and regulations, as the Prime Minister set out in her Florence speech. Of course, we have already reached that agreement in terms of covering the UK's commitments under the multi-annual financial framework.

Q117 Darren Jones: So yes is the answer to my question?

Mr Walker: Therefore what we have not done yet is to agree the detail of the implementation period. We have agreed in principle that there should be an implementation period. The stage of negotiation that we are now at is to agree the detail of that.

Q118 Darren Jones: The Committee likes clear answers, Minister. I think the answer was yes. It was not a contentious point; it was just part of my question. The assumption therefore is that if this transition period was based on agreeing to EU law and continuing to pay money as we do today, any extension of that transition period would likely be on the same basis. Do you agree with that?

Mr Walker: I think that clearly any extension of the transition period would be on the same legal basis. We are in a negotiation. We want to achieve an agreement on this. As I have said, the discussion around the date is a question of converging two positions, which are really quite close to each other, in terms of the overall time being around two years.

Q119 Darren Jones: So the legal position would be that the law continues to apply in an extended transition period and that probably, as the Chair asked in one of his opening questions, we would have to continue contributing towards costs in the EU budget for that extension of the transition. Is that right?

Mr Walker: It is not our intention to extend the transition beyond what the Prime Minister has already set out she believes the transition should be.

Q120 Darren Jones: Two years. But as you have said in this explanatory note here, you would like that to be flexible and not fixed.

Mr Walker: No, I don't think that is quite the point. We want to ensure that both sides, in agreeing an end date to the implementation period, will have taken into account the time that will be necessary to put new measures into place.

Q121 Darren Jones: I think that means yes. Do you think that it is likely the European Union, which so far has not agreed to the concept of an



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extension of the transition, would agree to such an extension?

Mr Walker: Tim may want to comment on this a little bit more, but obviously it is not for me to speak for the European Union in these negotiations.

Q122 **Darren Jones:** I am just asking for your opinion, Minister, given that you are negotiating with them.

Mr Walker: Our position is that we want both sides to reach agreement on the length of an implementation period. We do think that should be fixed in the implementation period agreement. Therefore we want to ensure that both sides have considered the length of time it will take to implement the necessary measures. That is what the Prime Minister has always focused on. We believe that points to a period of around two years.

Q123 **Darren Jones:** Yes, you have just said that. Thank you, Minister. Perhaps you would like to comment, Sir Tim.

Sir Tim Barrow: I am happy to comment, but the Minister has set out the position very clearly. We have always said around two years. What you see in the document is actually, as Michel Barnier has said, a very convergent position. The end of 2020 falls squarely within that remit. We want to have discussions, as we have said in our document, about concerns around the practicalities, but at the moment the focus within the EU negotiating team is to get a period agreed. They have set out their position in their opening proposal.

Q124 **Darren Jones:** My assumption is that if you do not want there to be a fixed date, you want the option for it to be extended, and therefore an extension of the status quo.

Mr Walker: I do not agree with your assumption that we do not want there to be a fixed date. We want there to be an agreed fixed date between the two parties, taking into account the time it will take to put the necessary measures in place. That is why I referred to what Steve said yesterday. It is important that we do believe that when we have the implementation agreed and signed, there will be a fixed date in it.

Q125 **Mr Fysh:** Sir Tim, when we met in Brussels before Christmas, you were worried that the EU may wish to move from discussing Brexit phase 1 to discussing only transition, which you described as Brexit phase one and a half, rather than doing so in parallel with negotiation of the post-EU relationship—that is, moving properly to phase 2 as agreed. What is your current assessment?

Sir Tim Barrow: That was indeed a concern, but the December agreement and the December European Council conclusions as to article 50 were clear that exploratory talks with regard to the future framework could and would indeed start. It has been my experience since December that much of the conversation in Brussels is about the future framework.

When we see member states, colleagues from the Commission and the European Parliament, inevitably, because the deal was achieved in



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December, thought has moved not only to the transition—the implementation period—but to the future framework. You will know that the European Council conclusions said that additional guidelines on the future would be agreed at the March European Council, and that is the target they are working to.

Inevitably, because we got the agreement in December, we now find that the future is very much in people's minds. For instance, you have seen positions on that future being put forward in the European Parliament—quite significant architecture has been suggested. Others have been talking about it, and of course we have been making speeches—Ministers have been making speeches and the Prime Minister has been making speeches—as part of that debate. As I say, I was not in the discussion with Prime Minister Rutte yesterday, for instance, but I imagine that it will be part of the conversation in all contacts in the future.

Q126 Mr Fysh: When I asked the Prime Minister in the House last year what the implementation period meant, she was very clear that it meant the implementation of an agreed future position. Are you thinking that the terms of the withdrawal agreement should be conditional on a future agreement having been agreed in sufficient terms? I know that the intention is to do a political declaration—the EU have said they are capable of doing only that—but is that simply not enough to be consistent with the concept that nothing is agreed until everything is agreed?

Sir Tim Barrow: The discussions are aimed at a future framework. My impression is increasingly that there is a desire among EU colleagues in many different quarters for that be detailed. Indeed, as the European Council and other bodies have said, that future framework should be referenced to the withdrawal agreement. They are not two things floating separately; there is a logical connection between the two. The European Parliament goes further and talks about it being “annexed to”, but there is a direct connection between a detailed future framework and the withdrawal agreement.

Mr Walker: Our position on this has always been that article 50 is very clear that the framework of the future relationship needs to be taken into account in the withdrawal process. We have always been clear that it will be to the benefit of both parties to have the maximum clarity on that future relationship. I was in Denmark on Monday, giving a speech on the implementation period and the future relationship between the UK and the EU.

I think it is right that we should be talking about both at this stage, and trying to make sure that we maintain the momentum following the December joint report and the agreement to get as much detail as possible agreed on the future relationship, because I actually think that is going to be genuinely in the interests of both parties to the negotiations. What Tim said certainly reflects my feedback from member states as well, which is that they recognise that getting those arrangements in place as early as possible is in all our interests.



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Q127 Mr Fysh: Then why are we waiting for the EU's positions before, for example, submitting our own draft of a free trade agreement that could be included as an annexe, or even signed—maybe not signed, but with clear agreement that that will come into force after we have left the EU? Why are we not setting out our text?

Mr Walker: We have set out many of our positions on the future relationship already, and we published a large number of papers over last summer. I think it has been, to be frank—I have said this to EU colleagues, who would not be surprised to hear me say it—one of the frustrations of the sequential approach that they asked us to take that we have not been able to get the feedback and engagement on all those papers that we might have liked.

We now want to make sure that we are doing that and that we are engaging at pace. We will continue to engage at pace on all of these issues through the process. But in relation to customs, which we touched on earlier, the UK has had a very clear position set out over a long period of time. What we now want to get on with is discussing the detail with the EU, to understand their detailed views on how we can make those arrangements work.

Q128 Mr Fysh: Sir Tim, how many meetings have you had with the officials in DIT, and with Crawford Falconer in particular, to discuss the trade policy aspects of the EU-UK negotiation and the impact it will have on wider UK trade policy in the future?

Sir Tim Barrow: I attend various weekly meetings at which DIT is represented, and my team has constant contact with DIT. As you know, UKRep is a multidisciplinary body and we have experts in every area who are in constant contact with line Ministries.

Q129 Mr Fysh: Have you met with Crawford in particular to discuss these matters?

Sir Tim Barrow: As I have said, I have been in meetings where DIT is present, and on a regular basis. My job is to be out talking to member states and officials in Brussels, representing Government policy that is created back at home.

Mr Walker: I have been in policy discussions with Crawford and a number of people from DIT—the most recent occasion was only a couple of weeks ago.

Q130 Darren Jones: I have just one supplementary question. We were talking about clarity in the withdrawal agreement. Is it the Government's anticipation that the withdrawal agreement will provide the mechanism for perhaps a vote in Parliament should the transition period be extended?

Mr Walker: I think we have been clear that Parliament will have its say in the process, and of course the implementation period itself will be legislated for through the withdrawal agreement and implementation Bill, so that will certainly provide mechanisms for votes in Parliament on the



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approach. As I have said, I will just come back to the fact that there is some misunderstanding about the reason why the date on the withdrawal Bill was in square brackets—it is something we want to discuss, but we do want to agree a date. It is not about having extensions to that or the option to extend at a later date; it is very much about agreeing between us what the date should be on the basis of the practical considerations, which the Prime Minister set out in her Florence speech.

Q131 Darren Jones: Does that mean yes or no to the question of whether there will be a clause in the Bill stating that Parliament will get a vote if the transition period is extended? Yes or no?

Mr Walker: I don't think the intention is for the transition period to be extended—

Darren Jones: So no.

Mr Walker: Parliament will vote on the withdrawal agreement and implementation Bill, which will itself include the implementation period.

Chair: I think we will move on to another subject. Kate, would you like to deal with the Irish issue?

Q132 Kate Hoey: Just before that, Minister, you said that there is lots of momentum, but I don't think that the public think there is much momentum. There seems to be an awful lot of feet-dragging and implementation periods being discussed in great detail before we have actually got anything to implement. I share my colleague's question about why we are not actually getting out there, saying what we want and what we are going to do, then letting the EU make a decision about whether they want to work with us. You needn't comment on that.

Mr Walker: I think we are getting out there. Obviously, we have heard a number of speeches in recent weeks, and there will be more to come. But I recognise, obviously, that we all want to get on with the process.

Q133 Chair: Before you deal with that, because you have raised it, could I just say this? Article 50 changed the nature of the European Union. I don't believe that the European Union have fully or even remotely taken on board the fact that it changed the whole nature of the *acquis* and the whole nature of their approach to the guidelines, whereby they seem to think that we should be supplicants. Actually, as Kate is indicating, and as I certainly believe, having been involved in this business for 30-odd years, the ball game changed with article 50. We are in a different relationship, and they don't seem to understand that. They make the demands. When I asked that urgent question the week before last, it was really because they were issuing an ultimatum. As I said to the Prime Minister back in December, this is the direction in which they appear continuously to move. We have to be very careful not to be supplicants, not to look as if we are literally giving in to their demands, because we have our rights under article 50.

Mr Walker: You are absolutely right: we have our rights under article 50, and of course we need to conduct this negotiation between two parties,



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the UK and the EU, in an atmosphere of respect for one another's institutions. I do believe that cuts both ways—absolutely—and I think what we saw in the agreements we reached in the joint report in December was that there was actually give from both sides in order to reach those agreements, and that in the eventual text there was that mutual respect for one another's institutions, territorial integrity and right of decision making.

Of course we have to ensure that that is safeguarded throughout the process, and as you know, my Secretary of State, when he made his Teesport speech, set out an important element of that, in terms of safeguards, which we have expanded on in the text that we published yesterday, in terms of the role for a joint committee. That is a basis for having mutual respect for one another's positions and institutions, and I think it is important that it should be part of this discussion on the implementation period.

Chair: But be careful, when you are getting into the technicalities and these documents, such as the draft text for discussion, which came out yesterday, and so on, that we don't get into a situation in which we appear to be less firm in our attitude than we should be, and that we actually demonstrate that right is not on their side. We have made the agreement to leave, by virtue of a vote to leave the European Union on the question that was put to the British people. To get the wood for the trees in the right order, you want to be quite sure that you have a sufficient degree of backbone to make sure that we are not being supplicants. That is a strong message that a lot of people feel. Kate, would you like to deal with Ireland?

Q134 **Kate Hoey:** Yes, I think some people might feel that we are giving the EU too much respect and they are giving us very little. Could we move on to one of the issues that gets a lot of discussion: the border between Northern Ireland and the Republic of Ireland? Could both of you just define, very quickly, what you mean by a hard border?

Mr Walker: The most obvious definition would be physical infrastructure at the border put there by the state, and that is something that we are, very clearly, firmly committed to avoiding. You will know the practical and security reasons for that, but it is also certainly clear that the peace and progress that we have seen between Northern Ireland and the Republic over recent years has benefited enormously from the movement, and the lack of barriers, between Northern Ireland and the Republic. So that is something that the UK wants to maintain. We started the negotiations with a very clear position on this. We set out why we believed that the common travel area should be maintained and there should not need to be concerns from the EU about that. Even though there were initially some murmurings and concerns from the EU side about that, I think they have now accepted that that is something that should absolutely be maintained and protected.

Q135 **Kate Hoey:** We had a common travel area long before the common market was even thought of.



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Mr Walker: Absolutely, and that is one of the arguments we made to the EU—as indeed did the Republic of Ireland, to be fair—and of course it was explicitly recognised in the Amsterdam treaty that those arrangements existed between the UK and Ireland. Neither of us is a member of Schengen, which has also helped to maintain the functioning of that common travel area. The Irish Government has indicated that it continues to be its intention not to join Schengen. I think that is one aspect of it.

Of course, it also means that we need to look at issues such as customs and phytosanitary arrangements, where there is currently very good co-ordination on both sides of the border. Of course, there is a border in Ireland, from the perspective of excise and a number of other legal issues and duties. We need to ensure that we can find ways of managing that that avoid the putting up of barriers. I think there is the good will in London, Dublin, Belfast and Brussels to achieve that, and we need to achieve it as part of this process. The joint report reached a very good balanced set of commitments on that, which recognise the importance of avoiding a hard border, but also recognise the territorial integrity of the UK and the principle of consent. We have to make sure that we maintain that balance as we move forward in the negotiations.

Q136 **Kate Hoey:** Sir Tim, do you think that there might need to be some light-touch checks, as there are at the moment? Occasionally, people get stopped as they go over the border with something, if the police have a particular reason to stop them.

Sir Tim Barrow: Our commitment is to avoid a hard border—I share the Minister's definition of that—and our aim is to ensure that we can achieve that. I will not be drawn into what that might look like, because it is the absence of a hard border that we are dealing with, rather than seeking to introduce elements of a border. It is not just ourselves and not just Dublin; as you know, because you were recently out in Brussels, it is a shared commitment from the 27 and from Michel Barnier himself to the importance of ensuring that this area is treated in a way without precedent, as Michel Barnier said not long ago. We are looking at making sure that there is not a hard border, as the Minister has described, and that it is a common endeavour.

Q137 **Kate Hoey:** Indeed, Michel Barnier told us that he thought it could be sorted—I think those were his words. In terms of the actual interpretation of what the EU has talked about, and getting a legally binding commitment that will satisfy both the EU and us, what do you think is the EU's interpretation of full alignment? Where will that differ from what we think?

Mr Walker: The approach that we set out and that we agreed in the joint report took three layers, the top being that we want to address this through the future relationship between the UK and the EU. That should be our primary focus. Underneath that was maintaining the existing measures of north-south co-operation that had been agreed by both communities through the power-sharing Executive in the north, or through the Belfast Good Friday agreement, and looking at regulatory alignment,

where it is necessary to maintain the co-operation that currently exists. We need to look at all those issues.

It is important that, as we reached a balanced commitment in the joint report, we should seek also to do that in the legal text—one that shows respect for each other's systems and the principle of consent, which determines the fact that Northern Ireland is part of the UK and will be leaving the EU with the UK.

Q138 Kate Hoey: So Her Majesty's Government are fundamentally committed to Northern Ireland not being in any way different from the agreement that the rest of the United Kingdom will make with the European Union, in terms of staying out of the customs union and the single market.

Mr Walker: The agreement that the UK and the EU reach must respect the territorial integrity of the UK and the principle of consent. We will not erect any new barriers between Northern Ireland and the rest of the United Kingdom. Clearly there are some areas, such as the energy market and the single phytosanitary area—there is another word for it—where Northern Ireland currently diverges from GB, and we would want to explore how those can be maintained with the minimum friction for businesses. Those operate without friction now and there is no reason why they should not continue to operate without friction in future.

Q139 Kate Hoey: Is there a lot of work being done on exactly what we would need to do to enable that to continue, in order to get the EU to agree to that?

Mr Walker: Yes, of course. We set out many solutions and approaches in our Ireland-Northern Ireland paper some time ago. Again, we want to get on with discussing the detail now that we can. It is important that in the legal agreements everyone recognises that you need to strike a very careful balance when dealing with Northern Ireland, and that that balance has been struck by the joint report. Therefore, that is what we need to build on as we move forward.

Q140 Kate Hoey: Are you confident that you will get the support of the Irish Government in that?

Mr Walker: Yes. I think we have had a very constructive relationship with the Irish Government. Clearly there will always be some issues on which we take different positions—that is not surprising—but we have managed to have a constructive relationship with the Irish Government throughout this process. They are one of those EU member states with the strongest interest in making a success of the whole process, as we are a significant market for them and they are a significant market for us, quite apart from the border issues. We will want to maintain that relationship.

I will be in Dublin next week, speaking alongside an Irish Minister to the British Irish Chamber of Commerce. It is a relationship that we continue to invest in. I don't think we should be surprised if there are some issues on which we disagree along the way, but it is profoundly in the interests of both the UK and the Republic of Ireland to reach a strong, balanced



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agreement on a whole range of issues here. As Tim has said, it is something to which the EU, from all we have seen, is also firmly committed.

Q141 **Kate Hoey:** Sir Tim, do you think there is enough of a voice out there for Northern Ireland, as distinct from the Irish Government, who have huge numbers of people? You have to stand up for everybody, don't you?

Sir Tim Barrow: Yes. You are absolutely right; I represent the whole of the country. As you also know, there are offices of the devolved Administrations in Brussels, but they are very much part of the UKRep family. Indeed, after I arrived, we made some changes to reinforce that. It is important that different voices are heard. You know that, and we have discussed it before. It is a good thing that Monsieur Barnier and his team have a pretty open-door policy and want to hear different voices. That does not mean it is not us who are doing the negotiation. For the 27, the Parliament and the Commission it is useful to have that detailed understanding, including of Northern Ireland specifically.

You will be aware that, for instance, when Mr Verhofstadt visited Northern Ireland recently, he came back and made some important statements saying that, having had that contact, he understood better what was at stake. As he put it, Northern Ireland had not been on his television screens that much in the last 10 years. Greater understanding, contact and knowledge are always beneficial in this. As I say, I think there is genuine goodwill, as you have indicated, for making sure that we get this right, but people have to understand the sensitivities as we try to get that agreement. I think we achieve that in the joint report and I think we can achieve that in the negotiations.

Q142 **Kate Hoey:** So both of you are very optimistic that that is not the big problem that is being pushed by a lot of people?

Mr Walker: I am optimistic that we all have the same ends in mind. Of course, this is a challenging field, as it always has been, but we all have the same ultimate ends in mind and with the right approach we can get to the right solutions. That does require a balance in our approach, recognising that the concerns of both communities in Northern Ireland need to be taken into account, and indeed those of all the people who just want to get on with their daily lives and do not take a nationalist or unionist view of things, but want to get on and do business. We need to deliver for all of those.

One thing that would be helpful—and the Government have said repeatedly that we would like this— would be to see a power-sharing Executive restored in Northern Ireland as soon as possible. Making sure they have a proper say in the process will be valuable. In the meantime, we have to work with Northern Ireland civil servants in the place of elected politicians, which is a shame. We want to make sure we have arrangements in place that work for Northern Ireland, that maintain our commitments in that respect and that deliver for the people of Northern Ireland as part of the UK.



Q143 **Mr Fysh:** Just to come back quickly, Sir Tim, to the concept of full alignment, have the Irish Government now abandoned their aggressive demands that there must be full alignment in the backstop circumstance?

Sir Tim Barrow: As the Minister said, and as you know, the report, which was agreed by the Irish Government at the point at which the 27 endorsed it as the basis for sufficient progress, set out various options. The Irish Government have also recently pointed to the desirability not just of what we would call option C, but also the importance of option A. I think it was the Taoiseach, if I rightly recall, last week who prioritised that as a preferred and good solution.

Q144 **Mr Fysh:** Can I just confirm your understanding of the meaning of "leave the European Union"? Can I ask a simple question: does it mean "fully align with the European Union"?

Sir Tim Barrow: At the risk of sounding like I am repeating soundbites, "leave the European Union" is very clear: it means we will leave, and that is what we will do. That is what I am there to deliver. We can then make sovereign choices about how we then organise our relationship with the European Union, which is what we are negotiating at the moment.

Mr Walker: I point out that option C is focused on those areas that underpin north-south co-operation and have already been agreed by the devolved Government in Northern Ireland as areas for north-south co-operation, or indeed are covered under the Belfast agreement.

This is very much looking at where alignment needs to be maintained in order to maintain that existing relationship. It is not talking about full alignment or taking EU rules across the board. That is an important distinction.

Also, as my Secretary of State has pointed out, we can look at full alignment as outcomes-based, rather than necessarily based on rule-taking. We clearly want to reach agreement on the legal text, but it is good to see that the Irish Government are also talking about the importance of option A and addressing this through future relationship, because we genuinely believe that that is the best way to address it.

Chair: We will now move on to the next set of questions. David Jones has a question to do with the body of EU law.

Q145 **Mr David Jones:** The draft text issued yesterday gives the impression that the United Kingdom is to accept the entire body of EU law during the transition period. I appreciate that this is up for discussion, but is that the Government's position?

Mr Walker: As the Prime Minister said in her Florence speech, we will continue to operate under the same rules and regulations when we have the implementation period for a fixed period of time. The logic of that is that the body of European law should continue to apply, by agreement, for that time-limited period.



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Q146 Mr David Jones: Is it the Government's intention to seek any derogations from that? For example, the Secretary of State for Environment, Food and Rural Affairs has talked about farm subsidies being capped after 2019, which would of course be a deviation from EU law. Is it proposed that the Government should seek any opt-outs from that?

Mr Walker: Clearly, we want to discuss that. The text covers issues such as our no longer being a member of the common fisheries policy after we have left the EU. We want to discuss approaches on these things.

I also draw your attention to the point that the Secretary of State made in his Teesport speech, which is reflected in the text published yesterday. We want a Joint Committee to look at safeguards to ensure that, were there to be changes during this period, the UK would have a mechanism for raising concerns. We think it is unlikely that there would be many or any substantial changes, partly because of the timing, with the end of one Commission and the beginning of another and a new European Parliament and European Parliament elections.

Q147 Mr David Jones: I understand that, but the question was really intended to establish whether the Government intend to seek any opt-outs from the present position once the transition period begins.

Sir Tim Barrow: You will have seen the proposals we put forward. For instance, if you look in the area of the common foreign and security policy, the suggestion is that we could move to a future state during the implementation period, which is obviously different from the current state. There are areas where we could find that we are able to move to the future understanding at the start of or during the implementation period.

Q148 Mr David Jones: So that would be the Government's position going into the negotiations on this text?

Sir Tim Barrow: Our position, as set out, points to the possibility of, for instance, in that area, bringing forward the future arrangements.

Q149 Mr David Jones: What about the Secretary of State for Environment, Food and Rural Affairs and his proposal to cap subsidies? Is he going to be thwarted in his ambition during the implementation period?

Mr Walker: To be honest, I have not seen those proposals. I would want to examine them before I comment on them.

Q150 Mr David Jones: The position basically appears to be that there will be, with minor exceptions, complete acceptance of the body of EU law during the transitional period?

Mr Walker: That is the basis that the Prime Minister set out for the implementation period in her Florence speech: it is under the same rules and regulations. I think that is the approach that we have consistently taken to this, recognising that it is a time-limited period, and there by agreement between the two parties.

Q151 Mr David Jones: Clearly, during that transitional period, there will be



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developments in EU law, which will affect the United Kingdom, but of course the United Kingdom will have no part in formulating that law. Do the Government propose that Parliament should be kept advised of any changes in policy during that transitional period?

Mr Walker: Yes, that absolutely makes sense. This Committee plays a very important role in scrutiny, and where changes are coming through, we would want Parliament—it is for Parliament, rather than Government to determine the scrutiny process—to continue to play an active role in scrutiny, for the Government to take that back into the approach it feeds into the Joint Committee.

This is an issue we will want to look at. Clearly, we need to have the negotiation around the way in which the Joint Committee will work and the arrangements there, and then we will want to come back and discuss in more detail with your Committee and the Lords Committee how the scrutiny process will work during the implementation period.

Q152 **Chair:** May I comment on this for a moment? The scrutiny reserve on which many of our ultimate powers lie, under our Standing Orders, will go on 29 March. So, for practical purposes, for the decisions taken in the Council of Ministers—to which I take the greatest exception anyway, because they are done behind closed doors, the votes are not really recorded and the reasons are not given, as our report showed the other day, and I think most of the British people would be horrified about it if they had it properly explained to them, as they should—the scrutiny reserve goes.

So, on our ability to restrain the Minister from making a commitment, however it is to be done, within the framework of the Council of Ministers—we will not be there and we will not have a say. How does that equate with what you just said?

Mr Walker: Again, this is something we set out in the text yesterday. We want to have a Joint Committee to discuss issues that may be of concern, and I think how these things will work in the future will come down to the working of that Joint Committee.

You are right, of course: we are leaving the institutions of the European Union, and I think your Committee has done important work in shining a light on some of the issues, which of course played into the referendum result. We are, therefore, not going to be playing the same role in the Council of Ministers, and therefore there would not be the same mechanisms written into the EU treaty.

Q153 **Chair:** It is not just that we are not playing the same role—we are not going to have any votes.

Mr Walker: Of course. But that is a consequence of leaving the European Union, and that is the decision which we are implementing through this.

Clearly, what we do want to make sure of, and what the Secretary of State made a significant point of in his Teesport speech, is that we have a mechanism for raising UK concerns through a joint system which is



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respectful of one another's systems during the implementation period in which EU law will apply. That is what we set out in the text yesterday.

As I say, when we have negotiated the detail with the EU, we will then want to be able to come back to the Committees in both the Commons and the Lords to discuss how the scrutiny process can feed into that.

Q154 Kate Hoey: Shouldn't you just simply say, "We are not going to implement any of the new law you are bringing in when we are not there to discuss it"? Why are we giving in on something like this? Why aren't we just saying, "Sorry, we are out"? Yes, there is an implementation period, but why should we even think of implementing law during that transition period?

Mr Walker: There are a number of points here. One, which the Secretary of State has made before, is that much of the law that might come in during this period is law that we will already have had significant input into, and which the scrutiny process will already have taken a look at. So that is law that we may well wish to implement in order to maintain market access and the same conditions for businesses.

Q155 Kate Hoey: What about when we don't want to?

Mr Walker: That is the point of having a safeguard mechanism. If there is something that we see as being of concern—

Kate Hoey: The mechanism is to say no.

Mr Walker: —we will have a mechanism to raise that and to discuss it. But it is also important to bear in mind that the timing of this does happen to coincide with a new Commission and a set of European parliamentary elections, which means that actually the amount of law that is likely to be changing in this period is significantly less than it might have been if it was any other period.

Q156 Mr David Jones: If I could come back to the mechanism of the Joint Committee, the draft document issued yesterday makes reference to the work of that Joint Committee. I have to say, frankly, that it is pretty sketchy. For example, paragraph 2 provides that "if the matter"—that is the matter in dispute—"cannot be resolved, the Joint Committee should be tasked with examining all further possibilities to maintain the proper functioning of this Part and taking any decision necessary to this effect (within a specified period of time)." That is nonsense. Frankly, this is the sort of stuff that conveyancers put into documents to obfuscate.

Mr Walker: I am not a lawyer and I am not going to attempt to handle—

Q157 Mr David Jones: Believe me—I have done a bit of obfuscation in my time. That is obfuscation.

Mr Walker: Joint Committees are a pretty well-established framework for international agreements and for trade agreements in particular, where they are widely used. Clearly, in the negotiation with the EU we need to discuss the working of this Joint Committee. I think it would be useful,



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when we have done that, to come back to the Committee and be able to give more detail. At this stage, we have set out our approach to the text of the implementation agreement. We believe it is important to establish a Joint Committee, so that there is a mechanism for raising those safeguards that the Secretary of State set out.

Q158 Mr David Jones: I would accept that it is desirable to have a Joint Committee, but it seems to me that the basis upon which the Committee operates could be set out a lot more clearly than it is in this document. I very much hope that the Government will seek to tighten the wording of that provision when it enters into negotiation with the European Union.

The Secretary of State famously said that it takes around two years for major new European legislation to be agreed at EU level. Does that mean that the Government do not believe that any delegated or implementing Acts could have so-called major policy implications, such as, for example, fisheries discard plans, which would be incorporated within the two year period?

Mr Walker: He clearly talked about major legislation. There are regulations that are constantly taking effect. I think there is that distinction in place. He also talked about the importance of having a safeguard mechanism—an opportunity to discuss areas where we believe changes will be of concern. That is the balance we have struck, to ensure that that mechanism is in place. Clearly, we will want to explore further and we will, as ever, pay attention to the views of this Committee and the experience of people on it as to how we can deliver the best mechanism for that.

Sir Tim Barrow: Of course you are right that there are primary, secondary and tertiary categories of EU actions. Primary legislation is a treaty and I am not expecting that. The point the Secretary of State was making—the Minister is absolutely right to say it—is that because of the particular period into which the European Union is entering, secondary legislation is unlikely to be created in the sort of volume it would be in a more normal period of time. That is because we have the European parliamentary elections, the new Commission and then the machinery starts up again.

Publicly, the Commission has talked about bringing forward the last of its list of proposals, which would be secondary legislation, by May this year, in order to try to get those done under this Commission and with the Parliament. That gives you a sense of the timeframe. You are right, of course, Mr Jones—you know this very well—that there is tertiary legislation as well and that primarily comes through agencies and bodies, and that is why, as the Minister has said, we need to have a Joint Committee: so that we can resolve concerns, if we have concerns, about actions in that space.

Mr David Jones: With the robust provisions for dispute resolution.

Sir Tim Barrow: I hear what you say about obfuscation. I did not think it was so obfuscatory, but it was a lack of clarity. We can always do better.



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The point about this is to try to talk jointly about concerns. It is not just us saying there will need to be a Joint Committee. The other side will also want to discuss with us things which are happening. It will be joint and I am sure that the conversations will be mutual and robust.

Q159 Mr David Jones: Do you think that there will be provisions, as Ms Hoey says, for the British Government simply to say no?

Sir Tim Barrow: The provisions within the Joint Committee will be so that we can raise concerns and seek to resolve those concerns. That is what it is about.

Chair: Sounds like consensus to me.

Q160 Geraint Davies: Minister, the transition period is supposed to be business as usual. Will you confirm that no country that trades with the UK through the EU has currently agreed to continue trade as usual with the UK during the transition period, and that two countries—Chile and South Korea—have said explicitly that they want to change the trading relationship after the transition period?

Mr Walker: There are many countries with ambitions to develop the trading relationship after the transition period, and we welcome that, obviously. In terms of the application of those third country agreements through the implementation period, we believe that will be the most sensible approach for the UK, the EU and indeed those third countries.

We have had very positive feedback. Indeed, I draw to your attention the evidence that Lord Price gave the International Trade Committee about the discussions he had with various countries about their ambitions for maintaining continuity during any implementation period. Of course there are those who will welcome the opportunity to deepen trade relations after we have exited the EU and after the end of the implementation period. As a global trading nation, we should welcome that and engage with it.

We want to ensure, as per the text published yesterday, that during the implementation period we can have discussions with third countries and reach agreements that can be brought into force at the end of that implementation period, so that we have the maximum benefit from stability in the meantime but also the maximum benefit from having an independent trade policy at the end of the implementation period.

Q161 Geraint Davies: So that we are clear about this, you are confirming that it will not necessarily be business as usual in the transition period. Countries may reject the current arrangements for trade and try to broker more advantageous arrangements, and what's more, some have already said explicitly that they want a better deal. No one wants a worse deal, after all, and they know we will have our backs against the wall because we will have lost our biggest trading partner. Doesn't that really jeopardise jobs?

Mr Walker: No, I disagree with your characterisation. As you know, I think there are great opportunities for us to deepen our trade relationships with a number of countries, and that could be mutually beneficial. In the



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meantime, I have not seen any evidence that any countries object to the principle of continuity during the implementation period. I have seen a great deal of evidence that countries want to see that, that they recognise the benefit of that and that they want to maintain the positive trading relationships we have.

We should all welcome the fact that many countries out there want to go further and want to have better, mutually beneficial trading arrangements in the future. It is one of the opportunities of having our own independent trade policy that we can explore that.

That is certainly the balance we struck in the text we published yesterday: maintaining the flexibility to develop that international trade policy and to reach agreements during the implementation period that will come into force at the end of it, while maintaining continuity in our existing trade relations.

Again, I draw to your attention the evidence that trade Ministers past and present recently gave to the International Trade Committee about the priority that the Government has given to establishing continuity in existing trading arrangements and its focus on developing an independent trade policy after we leave the EU. We need to focus on both those opportunities.

Q162 Geraint Davies: When will they sign up for them? There are 40 of them. When will the first sign up for just the transitional period, and when do you anticipate the last will sign up? Nobody has signed up.

Sir Tim Barrow: If I understand your questions correctly, one is about the attitudes of third countries to the extension of the current FTAs during the transition period, and one is about future attitudes. I can confirm what the Minister has been saying.

I have had a series of meetings in Brussels with major trading partners, and they say to me openly that they are interested in and welcome the proposal that during the implementation period the approach that the EU and the UK have set out will be followed. I have not had a conversation with anyone who has called into question that arrangement. But as the Minister said, they are also very interested in getting on with discussions about what the future trading arrangements will be. Those are not mutually incompatible.

Chair: We must move on. Kelvin Hopkins.

Q163 Kelvin Hopkins: The Chair and my colleagues David Jones and Kate Hoey have raised concerns about legislation that is introduced by the EU during the transition period, which is considerably different from accepting carrying on with existing legislation that we participated in making.

The political legitimacy of this source of law will seriously decrease—and pretty rapidly, too, I would think. I can see the newspapers saying, “This law is being introduced without any say from us. We are having to



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implement it without having had any say.” It could become quite controversial, particularly where there is problematic new legislation, which we may not like. Isn’t there a serious problem?

Mr Walker: That is why we have always been very clear that an implementation period should have to be time limited. I think that is absolutely crucial. It is about providing certainty and stability and making sure that the changes, to move to our future relationship, can be implemented properly and in good order; it is not about prolonging our membership of the EU or becoming a rule taker.

I think that is where the balance is important, and setting an end date for the implementation period will be important. So that is where I come back to the fact that it is our intention to agree an end date for the implementation period, and to be very clear that this is only a time-limited period by agreement.

I also think that the emphasis that the Secretary of State put in his Teesport speech on safeguards is important in this respect, and that if there were specific issues of concern, we need a proper forum for discussing and raising them. We have set out in the text we published yesterday that we believe that that should be this Joint Committee, which does give proper respect to the roles of both parties to the agreement—the UK and the EU.

Q164 **Kelvin Hopkins:** Would it not be sensible for Britain to try to troubleshoot before it happens—to make sure that when this legislation is going through we may not be part of the negotiation, or deciding it, but we can tell the EU, “This is going to cause a problem and it would be wise if you didn’t include us in having to implement it” or, indeed, even deferring it until after we have left?

Mr Walker: You make a very interesting point, there, and of course one of the things I have noted during my contact with both member states and EU institutions is a great deal of respect for British expertise in a number of areas where EU legislation may or may not come along.

I think the opportunity for British expertise to be taken into consideration is important. Some of the text that we have put into our suggestion for the implementation agreement reflects on that and on the fact that the EU may want to call on that British expertise. We think it might be a mistake for them to rule it out in the consideration of some of these things. I do not know whether you want to expand on that, Tim Barrow.

Sir Tim Barrow: Indeed, and of course it goes to a more general point about the future as well, because it is not, in my view, a question in future of our voice falling silent and our expertise being separated off. I think in the Prime Minister’s speech in Munich, for instance, it was very clear that we have lots of expertise that we are willing to share with European partners on the basis of a new relationship.

It will be an important part of the future relationship that we will continue to express our views, and impact upon colleagues’ thinking, without being



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a formal member of the EU—that they will want to hear our views, because we are a big and important economy and a big and important security player, both internal and external, and so on and so forth. So I think we should not get the sense that what happens is that our views don't matter anymore and that our voice falls silent.

Q165 Kelvin Hopkins: You mean making sure we are represented in some way as this legislation is being formulated within the EU and warning them that if they implement something which is clearly unacceptable to us there might be problems.

Mr Walker: That, I think, is precisely the sort of thing the Secretary of State was setting out to address in his Teesport speech. I think it was the point that he has made about the importance of having safeguards, and what we set out in terms of the Joint Committee here will be the right forum for developing those safeguards.

You are right: it is an important balance to strike here—one that recognises that there are benefits in the time-limited implementation period, but of course we will no longer be members of the EU during that time-limited implementation period, and therefore we need to ensure there are safeguards in place.

Chair: I think we must move on. In fact, as I understand it, Sir Tim, you have got a meeting in No. 10 at around 12 o'clock. Is that right? And you have got to get there.

Sir Tim Barrow: I do have to, but it is also important for me to—

Chair: I appreciate that. We must move on. Andrew Lewer, would you like to ask the next question?

Q166 Andrew Lewer: We have covered question 16, so if we move on to what we have got down as 17. You know about the role of this Committee: to scrutinise the Government's approach to draft EU policy. The Government will continue to seek to influence EU policy, but they will not have a vote in the Council of Ministers, so the scrutiny reserve, which the Committee has, will no longer apply.

In a sense, the Government will therefore not be under any obligation to report their activities to Parliament. How will the Government seek to keep Parliament informed of legislative developments? I know you said you will do that, but how, when the Government no longer sit on the Council?

Additionally, as a supplementary, will the Government commit to engage with the Committee, once the transition period is agreed—to actually formulate and formalise an approach that will allow Parliament to continue to scrutinise Her Majesty's Government's work in Brussels?

Mr Walker: The answer to your second question is yes, I think there is an opportunity to do exactly that and, when we have reached an agreement, to come back to the Committee and indeed to the Lords EU Committee to discuss how that scrutiny relationship could work during the



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implementation period. Obviously, first of all, we need to reach agreement with the EU on the implementation period itself and the functioning of that.

The scrutiny that the Committee undertakes is very important to both the parliamentary process and also the development of Government policy, which we have seen on a number of occasions. Given the decision to have an implementation period, and to have a role for European law during that, making sure that we have a mechanism for parliamentary scrutiny will be crucial, so we certainly want to develop this.

What I cannot do at this stage is to go into the precise details of how that will work, because we need to get the agreement done first.

Sir Tim Barrow: From my point of view as somebody who has appeared before the Committee in different guises for, I think, decades—some Committee members will recall this—I do not think that the future means that that relationship will change. There will still be a role and a dialogue, and it is my sense, as I have said before, that this is a very important part of the policy formulations and a very important part of the job and is very beneficial. I am sure that there will be a relationship in the future, both at ministerial level and official level.

Chair: David Jones wants to ask a question.

Q167 **Mr David Jones:** Yes, there is one question I want to ask, which is about Gibraltar. What discussions have taken place with Spain about Gibraltar's place in the single market during the implementation period?

Mr Walker: As you will know, I chair the joint ministerial council with Gibraltar. We have regular discussions with the Government of Gibraltar, the next of which is coming up in a couple of weeks' time. We take the clear view that the withdrawal agreement covers the whole UK territory that is leaving the EU, which includes Gibraltar, and that the implementation period is based on the withdrawal agreement. It therefore follows that the implementation period should absolutely cover Gibraltar and the arrangements there.

Clearly the Spanish Government take a different view, and we recognise the need to engage there. Fundamentally, we have clarified with the Commission that the basis of the implementation period is the withdrawal agreement, which covers the whole territory of the UK, which is leaving the EU.

Q168 **Mr David Jones:** Have there been bilateral discussions with the Government of Spain, either at ministerial or official level, about Gibraltar?

Mr Walker: As you will know, we have a very clear commitment that we discuss arrangements with regard to Gibraltar on a regular basis, but we do not discuss the sovereignty of Gibraltar with the Spanish.

Mr David Jones: But the issue of the single market is separate from sovereignty.



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Mr Walker: There has been official-level engagement between the UK and Spain, with the knowledge of the Gibraltar Government, to discuss issues regarding our withdrawal from the European Union. We have emphasised in those engagements the benefits of ensuring civility and continuity on, for instance, the Gibraltar border. We absolutely want to continue to do that.

However, we have been clear that that is not a forum for discussing sovereignty. In fairness to the Spanish Government, they have also been clear that they do not seek to raise the issue of sovereignty as part of those discussions.

Chair: We must move on to the next issue, which is the transition guidelines, which refer to the UK ceasing to be party to all international agreements.

Q169 **Mr Fysh:** Thank you, Chair. I guess this is related to not only the trade arrangements that Geraint asked about earlier but also all the other multilateral arrangements that we currently have by virtue of being in the EU.

I wanted to get an overview of how you see that operating in the real world and to what extent we are going to be relying on the EU, whether that is representing us in those international bodies and arrangements or by virtue of what is in the withdrawal agreement about essentially submitting to a concept of them having the right to negotiate those things for us—or at least withhold their permission for us to enter into negotiations on our own.

How do you see that interacting with the duties of sincere co-operation? Where I am coming from is that I don't see why we would be giving away such rights and powers within the transition arrangement when there is a significant body of legal opinion that says we have the right now to enter into arrangements with South Korea, for example, on a bilateral basis. Why would we give the EU more rights than it currently has to tell us what to do under the transition and withdrawal agreements?

Mr Walker: Our position has been that we are not doing that. We are being clear that we will be able to negotiate and agree new international agreements during the implementation period. The one thing we do not want to do is bring them into force in a way that would conflict with our responsibilities to existing trading arrangements. That is the balance we are seeking to strike, to be clear that, when the UK leaves the EU, it is a third country and is therefore able to go out and negotiate on its own behalf in these things. Indeed, there are many international forums in which we are directly taking our seat so that we can ensure that we do that.

It is an important balance to strike on how you maintain continuity in those agreements where we all agree it is mutually beneficial to do so in this. With the implementation period, we are seeking to strike that balance. We are seeking to say that we can maintain continuity in our trading relations with both the EU and third countries with which we have



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trading agreements through the EU during that period, but also use the period to develop future trading arrangements with countries that we can bring into force at the point of exit.

That is a sensible approach from the UK's perspective, but it is also in the interests of the EU, because it does not want to reopen trading agreements that it will already have reached with the UK as part of its territory. It should be, I think, a win-win approach to things. It is important that we are able to go and make those preparations for our future trade policy during the implementation period, and that is why we set that out in the text yesterday.

Sir Tim Barrow: May I add something? It is important to raise the concept of sincere co-operation and the fact that it is accepted that sincere co-operation as a duty is mutual. That is the basis on which we will be operating during the implementation period and it means that there must be respect for each other's concerns and opinions.

Q170 **Mr Fysh:** So when the EU talks about not allowing us to "be bound", what is your legal interpretation of what that means? What does that preclude?

Mr Walker: I think their concern is new agreements that could come into force that might conflict with our existing commitments.

Q171 **Mr Fysh:** "Into force"—so actually be effective as to date?

Mr Walker: Yes.

Q172 **Mr Fysh:** So we could sign an agreement?

Mr Walker: That is our position. Our position is clearly that we want to be able to make and sign agreements, but they would not come into force in a way that conflicted with our responsibilities and market access—

Q173 **Mr Fysh:** Is it not binding for us to enter into an agreement that would have effect at a future date? Are you not worried that if we agree not to be bound—

Mr Walker: That is a point for negotiation, where we are taking the position that we want to be able to reach those agreements and sign them, but we will not be bringing them into force in a way that conflicts with our commitments under the implementation period. I think that is something we should be able to secure in the negotiation to come.

Q174 **Kate Hoey:** Will you stand firm on it?

Mr Walker: Speaking personally, absolutely.

Q175 **Kate Hoey:** Minister, it sometimes seems that whenever there is a negotiation and a bit of a conflict, the British Government always give in.

Mr Walker: I don't think that is the case. If you look at the joint report we achieved in December, you will see that there were a number of issues where the Commission had to move a very long way from its initial starting point. The £100 billion figure is one that springs to mind, but there were many others. In terms of the balanced text that we eventually



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agreed, the fact that there would be no ongoing jurisdiction by the European Court over UK courts is a significant shift from its opening position. Clearly, in any negotiation, you need some movement from both sides in order to achieve a deal, but what we see here and with the negotiation about the implementation period is that we are broadly aligned in our approach to it. I think it is in the interests of both sides to get on with it and make sure that we can get into the detail of the future relationship, so that the implementation period has as much value as possible.

Q176 Kate Hoey: I have one quick question. Am I absolutely right that you will be negotiating to ensure that we leave the common fisheries policy in March 2019? That is really important, because if we don't, all sorts of things will happen in that transitional period that will probably effectively destroy the fishing industry in this country.

Mr Walker: We will leave the common fisheries policy on the date we leave the EU, but clearly there will be discussions taking place in the coming months and years that will set some arrangements between us into the implementation period. What we will be very clear about, though, is that outside the common fisheries policy we will be an independent coastal state.

Q177 Mr Fysh: On the legal status, what is the legal origin of the UK's ability to have the rights under third-party agreements that we have by virtue of the EU? What is the legal basis? Once we leave the EU, we will not be part of those agreements anymore, so within the framework of the withdrawal agreement, what is the legal authority for us to enforce those rights?

Sir Tim Barrow: If I understand the question correctly, what we are talking about is, for instance, trade agreements. There is a concept in international law called interpretive effect, which would allow the EU and the UK to say that for this period those provisions apply. That is a concept in international law; it may be in the convention, but I could be wrong on that one.

Mr Walker: One thing to add to that, of course, is that the Government are taking powers through the Trade Bill to ensure that we can provide continuity in these things, so there is a basis for it in UK law as well.

Q178 Mr Fysh: Within the document you produced yesterday, there seems to be a stated desire by the UK Government to enter into agreements relating to European defence. That is something that we as a Parliament have never even discussed, and it is pretty important. I understand from the text that you are looking to implement it right from day one of the transition and have it operating then, rather than it being subject to further negotiation. Are we going to have any detail at all about what is going on here?

Mr Walker: There have been debates in Parliament on our future security policy. As far as I am aware, there has been very strong cross-party support for the approach that the Prime Minister has taken of saying that

we think there should be a continuing commitment to European security from the UK, and that working together on security and defence issues is in our interests. Of course, we have also been very clear that NATO is a key pillar of our security and defence policy, and we do not see that changing.

We want to explore the ability to move to a new relationship with the EU on security and defence issues during the implementation period. If that can be brought forward sooner, it is absolutely worth exploring, but as part of the wider agreements, this will of course be discussed with Parliament, and we will come back to Parliament on any arrangements of that sort.

Q179 Chair: I would like to wrap this up, but first I want to ask a question about the European Court—and make a point at the same time. The text that you have just issued makes it clear that the means by which Union law will apply to the UK during the transitional period is under discussion. This is absolutely fundamental to the relationship between ourselves and the European Union, because European Union law applies in customs, the single market area and a whole raft of different things. During this period are we going to be having a dispute resolution? Has it been discussed? Martin Howe, QC, I and a number of others have put forward a proposal. A member of the European Court who retired recently talked in his final speech about how the United Kingdom remaining within the framework of European Union law and the European Court would be a “legal vipers nest”. The problem we have here is whether we will actually be bound exclusively by the European Court’s own jurisdiction, or come up with some form of dispute resolution in all the areas where this can apply. In other words, will we have a dispute resolution system? I would like to ask Sir Tim Barrow, because I think he knows more about this at the moment, if I may.

Mr Walker: The Prime Minister has been clear that when we enter the implementation period it will be under the same rules and regulations. The European Court will continue to have its role for that time-limited period. But if we can bring forward dispute resolution mechanisms—we absolutely have the ambition to agree dispute resolution mechanisms as part of the future relationship between the UK and the EU—we would like to do so.

Q180 Chair: But remember that clause 1 of the repeal Bill says, “The European Communities Act 1972 is repealed on exit day.” That actually includes 29 March 2019. At that moment, the European Court ceases, under the repeal Act—assuming that the Bill has gone through by that time—to have effect. Therefore, how can you arrive at a point during that transition period whereby the European Court is then enabled to exercise exclusive jurisdiction?

Mr Walker: The answer to that is that the withdrawal agreement and implementation Bill will legislate in UK law so that UK law is taking that decision for a time-limited implementation period. That depends on the agreement that we reach, but if we do reach the agreement on the basis that the two parties have set out, that will mean that at the start of that

period the European Court will continue to have a role in interpreting the rules and regulations.

Q181 Chair: So you are telling us now that in that Bill the intention is to extend section 3 of the European Communities Act 1972 beyond the date of its ceasing to have effect on 29 March?

Mr Walker: As you will appreciate, I cannot speculate on the exact detail of that Bill when we are not yet at the stage of publishing the first draft. We are clear that the basis for the implementation period will be written into UK law as part of the withdrawal agreement and implementation Bill, and we have accepted that to have an extension of the same rules and regulations for a time-limited period, the European Court will have its role to play.

Q182 Chair: Lastly, I will simply say that yesterday we had Caroline Nokes here, regarding the question of immigration. I have been having meetings with the Prime Minister, and with the director general of the Home Office, with respect to citizens' rights. It is generally agreed that all these things can come within the framework of this overarching question about the exclusive jurisdiction or otherwise of the European Court.

That does not seem to be completely clear, because this note that you have put out actually talks about discussing the means by which Union law will apply. That is a step in the right direction, but I have been assured that an inter-departmental discussion can take place about the application of European law through the European Court of Justice and that we will be given an opportunity to participate in that. The legal adviser in the Home Office agreed to that yesterday, or at least the director general did. I also understand that the Prime Minister is interested in our being involved in that as well, because this is something that is absolutely critical to the whole operation of Union law and its adjudication.

I just leave you with that thought, and I sincerely trust that you will continue to bear in mind the points that we have made, and that if we have any further points you will give us the opportunity to see you again, is that right?

Mr Walker: Thank you. We very much value the advice of this Committee and the detailed work that you do, so we would definitely be keen to take you up on that opportunity. As you know, I am looking forward to our Secretary of State being able to come to you as well.

Chair: Thank you very much indeed.