

Select Committee on the European Union

Corrected oral evidence: Scrutiny of Brexit Negotiations

Tuesday 17 July 2018

9 am

Members present: Lord Boswell of Aynho (Chairman); Baroness Brown of Cambridge; Baroness Falkner of Margravine; Lord Liddle; Baroness Noakes; Baroness Suttie; Baroness Verma; Lord Whitty.

Evidence Session No. 1

Heard in Public

Questions 1 – 7

Witnesses

[I](#): Michel Barnier, Chief Negotiator, Task Force for the Preparation and Conduct of the Negotiations with the United Kingdom under Article 50 TEU; Nina Obermaier, Adviser, Task Force for the Preparation and Conduct of the Negotiations with the United Kingdom under Article 50 TEU.

Examination of witnesses

Michel Barnier and Nina Obermaier.

Q1 **The Chairman:** We are very grateful to you, Mr Barnier. It has occurred to us that you may be a little busy and we are very conscious of the honour you give us with your time. Perhaps I may be unusually partisan for one moment by congratulating your home country on its victory in the World Cup, which some of us were quite excited about in the event. It perhaps proves that not everything is about politics, although sometimes it becomes a preoccupation.

As you will know better than anyone, we are moving on with the Brexit negotiations—we hope they can move on. We should like to ask you some questions; we have always very much valued our dialogue. As you know, we are a scrutiny Committee, we are not particularly partisan. I sometimes say to colleagues in Britain that we should be candid but we

should be friends. We should say what we think but we should do it in a friendly, constructive manner. I am sure we can continue that spirit of discussion now.

As we are not named as such, although you will have our names, it might be sensible if I asked my colleagues to introduce themselves, perhaps beginning with Roger as he is to the right, and then circulating.

Lord Liddle: I am Roger Liddle. I am a Labour Member of the House of Lords and I used to work for Tony Blair and Peter Mandelson before I was in the Lords.

Baroness Suttie: I am Alison Suttie. I am a Liberal Democrat Member of the House of Lords and I worked in the European Parliament for 10 years.

Baroness Noakes: I am Sheila Noakes. I am a Conservative Member of the House of Lords and I did a proper job before I came to the House of Lords.

Baroness Falkner of Margravine: I am Kishwer Falkner and I chair a sub-committee of this Committee that deals with EU budgets and financial services.

The Chairman: I am Tim Boswell, a former Conservative Member of Parliament who moved to the House of Lords in 2010. Since 2012, I have been the non-partisan Chairman of the European Union Committee, beginning in times that were a little different from those now.

Baroness Brown of Cambridge: I am Julia Brown. I am a Cross-Bench Member of the House of Lords and I am an engineer.

Baroness Verma: I am Sandip Verma and I am Chairman of the External Affairs Sub-Committee in the House of Lords and a former Minister with the Cameron Government

Lord Whitty: I am Larry Whitty, Labour Member of the House of Lords and Chair of the Internal Market Sub-Committee.

The Chairman: And there are our staff. Perhaps you would kindly give us any opening thoughts you have.

Michel Barnier: Once again, you are warmly welcome, and for many reasons, one of which is because for 20 years I was a Member of the French National Assembly and then of the French Senate. National parliaments are key for me in these extraordinary negotiations. We need public debate every day. That is why I remain keen to meet you and to listen to you. I perhaps have some questions to ask you in order to understand properly what is happening in the UK and to act properly.

If I may, I will use French as well as English in my short introduction. Chair, Ladies and Lords, you are welcome. I understand that there is a summary of this meeting, but I will speak, as you know, very frankly.

The Chairman: Yes, we are taking a transcript.

Michel Barnier: And I think you have translation.

The Chairman: Yes.

Michel Barnier: *[Interpretation.]* Many, many things have happened since our last opportunity to meet back in February. Every day that goes by brings us closer to the day when we have to conclude the negotiation on the Brexit treaty. That is what I want and have always wanted – an orderly withdrawal rather than a disorderly one, because that is what it is all about. Your country chose to leave the European Union. I repeat that on a personal basis I deeply regret that decision, but we respect what has been decided and our job is to implement it.

The question is: on the date that you chose, your Government chose, to leave the European Union, which is next March, will you be leaving with or without an agreement with us? For many reasons, and in our common interest, we hope that you will leave with an agreement, in good conditions and with a transition period that gives you time to prepare as well as to negotiate the other agreements or treaties necessary for the future relationship.

As I have always said clearly from the start, no deal for us, for you, for Europe, for the UK would be the worst of solutions. None the less we have to be ready for that possibility, and we on our side are preparing for it. We are about 12 weeks away from the event of October. As you can see on the slide, a number of stages are involved. October is a key moment, perhaps the key moment. I cannot tell you exactly when, but it will be around then that we have to have concluded the withdrawal agreement and when we have to start the process leading to ratification over a number of months. I do not know precisely how long it will take for Parliament on your side, but for the European Parliament it will be three months or so, even if there are no surprises in the text.

Alongside the treaty, the green line, we will have to put on the table—yours and the European Parliament's—a political declaration that will describe precisely the future relationship. We are at a crucial stage now. We both have to conclude on the major subjects related to the separation and to prepare that political declaration.

On the withdrawal agreement, we agreed with the Government of the United Kingdom on many of the things in the draft treaty. You know that in March, and since the joint report in December, agreement has been found on citizens' rights and the financial settlement, and on an important point asked for by the Government of the United Kingdom, which is transition, which will last 21 months up to the end of December 2020.

Since those three areas of major agreement, we have gone further on some other issues, as we published on 19 June in a joint statement. Nine further articles switched to green. It is not really about the colour, it is not about colouring things in, but that is a way to illustrate that we are about 80% there in terms of the substance of the agreement. Nine new

articles switched to green—goods on the market at the end of the transition, customs procedures that are under way at the point of Brexit, questions related to excise duty and VAT, judicial co-operation in civil and commercial matters, public procurement and Euratom—nine articles of the draft treaty on which we were able to agree.

There are other points on which, even this week, we are continuing our discussions but we have not yet been able to agree. That is data protection, judicial and police co-operation in criminal matters and questions related to the stock of protected geographical indications—the last is not negligible; it is a substantial matter. It is not just Scotch whisky; there are about 3,000 of these geographical indications—you are talking to a former Agriculture Minister in France. There are also the administrative and judicial procedures of the Union, and two big matters: governance and Ireland. I will return to the latter in a moment.

On top of that, there are a couple of protocols: a protocol on Ireland, of course, and the protocol on United Kingdom Sovereign Base Areas on Cyprus. We are moving forward on those points, and I think we will be able to reach an agreement shortly that protects the rights of Cypriots who live and work in the British sovereign zone around and in the bases. In fact, I will be going to Cyprus in just a few days.

As you know, nothing is agreed until everything is agreed, so we have to reach agreement on those subjects for there to be an orderly withdrawal and a transition. That is why the European Council, for which I negotiate, since I work with a mandate from it, has called for rapid progress on all the matters that remain open.

I would like to say a few words about Ireland, because I am very worried. We absolutely have to find a pathway before October. We put a proposal on the table for a backstop to handle two vital dimensions, customs matters and regulatory alignment, in order to avoid a hard border.

Michel Barnier resumed in English.

Let me say a few words in English to be more precise. The 27 member states have been unequivocal: we need a cast-iron guarantee in the mutual agreement to avoid a hard border and for a good outcome to the negotiations on the future relationship between the EU and the UK. The so-called backstop will apply unless and until another solution is found that ensures at least the same fluidity of interactions on the island of Ireland and the integrity of the single market. The UK Government have committed to this. They also agreed that the full set of issues covered in our backstop proposal must be addressed, and it is high time to address them now.

Our proposal takes the existing situation as a starting point and addresses practical questions that will have to be answered. I will cite four of them, just to illustrate, to which we need to find an answer. What is required to protect one of the main achievements of the peace process: the invisible border? How do we ensure that goods can continue to cross

the border as now? Can farmers continue to produce on a cross-border basis? How can the single electricity market continue to function? Those are just four illustrations.

If we want to maintain the status quo for goods crossing the border, we need solutions that respect the integrity of the single market. For this, we need to deal with two types of checks. The first is regulatory compliance checks, which exist to protect the health and security of EU consumers and to ensure food safety and animal health. Most such controls concern veterinary checks and checks on plant health rules. These checks, as you know, already exist between Northern Ireland and the rest of the UK, albeit to a smaller extent.

For example, livestock entering Northern Ireland from the rest of the UK is checked at Larne and Belfast port. Our backstop proposal would see a limited set of EU rules continue to apply in Northern Ireland for industrial and agri-food products. That would allow us to move the controls from the land border to the ports and airports of the island of Ireland. That is the first type of check: regulatory compliance.

The second is customs controls, which are carried out at the external border of the EU's customs union, so we know which goods enter the EU to collect duties and to implement security and safety measures; for instance, against smuggling or counterfeiting. The EU and the UK have jointly agreed to protect the all-island economy, but imposing customs declarations on small and micro-businesses would place a burden on them and could harm their regular cross-border activities. In order to avoid the need for such controls at our border, the EU's proposed backstop would move them to the ports and airports and to entry points to the island of Ireland and elsewhere.

We are not asking for any new borders between Northern Ireland and the rest of the UK—never. All or parts of the backstop can be replaced by an agreement on the future EU-UK relationship that addresses this specific issue of the Northern Ireland/Ireland border. We all need to de-dramatise this backstop. Ultimately, we are talking only about technical controls on goods—no more, no less. The solution we have proposed is specific to the unique circumstances of Ireland and Northern Ireland, as the European Council and President Tusk have always made clear and as the UK itself has recognised.

[*Interpretation*] That is the point that I specifically wanted to make in English on the question of Ireland. I would be very interested in your analysis of the votes that took place last night in the Commons. We are very worried, to be absolutely frank with you. I do not think that anyone in the United Kingdom should underestimate our requirement, hand in hand with the Government of Ireland, on behalf of whom I negotiate too, that there be a backstop—and I mean “a” backstop, an operational backstop in the withdrawal agreement. No one should underestimate that question.

I reacted in an open and calm way to the Chequers document, the White Paper, but if we now start to see amendments blocking any possible solution, the United Kingdom Government risk getting closer to a no deal—I am trying to weigh my words carefully—and we will further our preparation for a hypothesis, an outcome, that I do not wish to see. Brexit is creating the problem in Ireland and Northern Ireland, nothing else. Those who want Brexit must find solutions to avoid instability and a return to a form of violence. Everyone must take their responsibilities. We will not accept the question of Ireland being carved out, isolated, in the negotiations, and we will not accept it being instrumentalised. It is a one-off solution, a unique solution, for a unique situation.

We made a proposal exceptionally to include Northern Ireland in our customs territory to avoid a hard border and to ask, as far as necessary, for a certain amount of regulatory alignment. We are prepared to work on that backstop, to amend it. I will do everything I can with my team to take the drama out of this—you are talking about technical controls. Many of these things already exist and are implemented in Northern Ireland for products that come from the rest of the United Kingdom into Northern Ireland. That is a practical, technical basis. It is not ideology; it should not be seen as threatening the unity of the United Kingdom or the constitutional order of your country, which we respect. That is the basis on which we are working, but it takes two to work on the subject properly; we cannot do it alone. I repeat: as negotiators for the European Union, we are very concerned.

One word now on future relations. We take as our starting point that your country has decided to become a third country on 29 March 2019. Quite apart from the separation, which we are trying to organise, the most important thing—and the most interesting thing—is an ambitious, durable partnership and relationship after Brexit. We have made a proposal—the European Council made this proposal—and it is described on this slide.¹ If we can achieve all this, then never in the history of the European Union with any country of our neighbourhood will we have produced a partnership of such a nature. It is based on four pillars and three toolboxes. The four pillars are: an economic and trading pillar—probably a free trade agreement if your country does not change its red lines; a pillar of specific agreements; a pillar for internal security; and an important pillar for external security and foreign policy.

There are three toolboxes. The first is green: that is, the new, extraordinary negotiations that we will have to have with the United Kingdom because it is leaving the Union. We have to organise our trading relationship through a new agreement. You are leaving the single sky; if we want British Airways flights to be able to take off from and land in Europe, there has to be a specific agreement on aviation. There also has to be agreement on Europol, judicial and police co-operation and foreign

¹ This slide can be found at https://ec.europa.eu/commission/sites/beta-political/files/eu-uk_possible_framework_for_the_future_relationship.pdf

policy and defence. What is in green there means new, extraordinary agreements that we have to have with your country.

The second box is a toolbox that we have and that is being updated: it is for our co-operation with third countries. We will be able to use it with the United Kingdom; it is in the other shade of green there. It is for co-operation on European policies, such as research. It is for example about co-operation between universities or Erasmus. We have co-operation with countries that are not members of the Union, such as Switzerland, Norway and Israel. We will be able to use that toolbox with your country.

The third box is an existing toolbox. These are unilateral tools and instruments that we use with third countries in certain specific areas where we take unilateral measures—in both ways—in co-operation, such as financial services and data protection. Financial services are a big industrial and economic sector for your country. We will be able to use the system of equivalences that we have already used.

Last week, I was in the US for five days, in New York and Washington. I met many stakeholders. It is a system that works well with the US. Two hundred equivalence decisions for American, Japanese and other financial markets have been concluded. I do not see why what works very well with the Americans would not work well with the UK.

The same is true of adequacy decisions, which we are able to take in data protection matters. That is the way we see things.

It translates the decisions of the European Council on behalf of which I negotiate with a mandate. That is the basis on which we will continue to work.

I need to flag up the guidance provided by the European Council. It is a reality: a third country will not be in a situation equivalent to or better than that of a member of the European Union. The best relationship with the European Union that can be hoped for is to be a member of the European Union. The next best is to be like Norway in the European Economic Area, which requested membership of the single market. Each and every model of co-operation has a balance of rights and obligations. We will be vigilant in protecting the integrity and indivisibility of the four freedoms of the single market. We shall have to find a way to ensure a level playing field, particularly with respect to state aid and competition.

Something that will be very important for the 27 Heads of State and Government and the European Parliament is respecting the autonomous decision-making of the 27. We respect your right to leave the European Union and your red lines, and we ask you in turn to respect the independence of our own decision-making. We will talk in terms of partnership and co-operation, but not of co-decision, on all the economic and foreign policy-type matters.

That is the basis on which we are scrutinising last Thursday's White Paper published by the Government of the United Kingdom. Of course, in the

light of amendments voted on or to be voted on in the British Parliament, we will see whether on the basis of that White Paper we can find the things we need that will make it possible to draw up all the different chapters of the future political declaration that will have to be produced in October. Time is of the essence here and there is not a lot of it.

The White Paper is a starting point; it is not the landing zone. We will study it with our teams, and the member states will study it, in the light of three questions. Do the proposals contained in the White Paper comply with the guidance produced for us by the European Council? Are they realistic and feasible? Would they work in practice? Tomorrow, I will speak to the College of Commissioners in this house. On Thursday, I will meet the new British Secretary of State for Brexit, Mr Dominic Raab. Then I will be in the General Affairs Council on Friday, where I will explain the analysis of the White Paper.

There is a long way to go. I will not hide that I am concerned. That is why the European Commission will publish on Thursday an official communication on the preparations for Brexit and for something that we do not want but which we are preparing for, which is the no deal scenario. All the different departments and stakeholders in the European Union will be ready for that possibility, which we do not want. As I said, we will be publishing a communication, because all stakeholders in Europe have to be alert to the possibility. I took up a lot of your time there, I am sorry, but I wished to be frank and detailed with you at a date that is so close to the end of the negotiations.

Q1 The Chairman: Can I respond? In a sense, you have, as I hoped you would, anticipated my question, but I thank you for being frank, which we need to hear, and friendly, which we are pleased to hear.

We have always understood—you may know that the Committee recently published our latest thoughts—that there has to be, at least tactically, some degree of trade-off, but we need to respect your principles and our Government's autonomy in this. That is what a negotiation should be about.

Picking out specific things, first, I am delighted, if I may say so, by the personal involvement that you have shown. You mentioned going to Cyprus, an island I know. We obviously have a particular British interest there, but we all also have an interest in the intercommunal relations there. I know that you have visited not only the island of Ireland but the border area, which is really important. That has strong coincidence with our interest in Ireland.

I often say myself, having alluded to the fact that I have a background in agriculture, that I have a farm, which at 150 hectares is not large by English standards. It happens to lie on the site of a boundary between two counties. As you know, the Northern Ireland border was created along the traditional county boundaries in Ireland. I could find myself crossing that border 12 times a day on a tractor or having livestock moved across.

That is just a small example, but I think that there are very intense problems, which we know about, for residents on either side of the border, as well as some of the more geopolitical problems that may exist between Belfast and Dublin, Belfast and Westminster or any of us and the European Union. That is important, and I am sure that colleagues will want to ask further about that.

Going to your more general analysis, first, I congratulate you on your graphics, which are always very clear. We tried to copy the spirit of them in our recent work by looking at your famous staircase and saying that there could be an escalator to something positive. There are various points along the way that we must achieve. That is the common wish here, although there will be people in my team with very different views and approaches.

You asked, understandably, about last night. Perhaps it would be impolite of us to comment on the activities in what is still in Parliament called the other place: the House of Commons. Having been a Member and a Whip, a government organiser, there, I know that there is always an element of tactics and decisions that you make short term, but you will know that a very lively debate is going on in Westminster. The important thing is that the Government have at least been able to produce a common position, one that I hope responds to your previous calls for some detailed thinking, which it is fair to say has taken a long time to come, but we are beginning to see it. Only when you have that can you have a response. We look forward to your comments from the point of view of the task force and the Commission.

We are conscious of the point you made on the timetable. We need to get into a negotiation where there is a degree of urgency to find solutions. This is a different place and a different negotiation from when we last visited and heard you in February; it is now more immediate. I think that is understood in Britain. There has been and continues to be an intense political debate in Britain, but we have always had a blind spot about the European perspective: not at the official or technical level but at what I would term the political level. That needs to be modified, and we will do our best to ensure that it is understood that we need a negotiation that reaches a solution and does not result in a disorderly exit or no deal, which you talked about.

In fairness to my colleagues, I will drop any specific interrogation on the White Paper, because you have already spoken on it and we are expecting your considered comments from the EU 27 side. We will need to keep in touch, and the spirit you have shown today is particularly helpful. We need to understand each other, we need to use all the channels that we usefully can to find solutions. I think many of us feel that, despite the difficulties, we will find our way to those solutions, although the timescale is short, because there is a lot of good will to find them.

Rather than interrogate you on the details of the White Paper, we respect your forthcoming response, but colleagues will want to explore particular cases about feasibility, which you mentioned. I know that we will want to

look again at Ireland. Colleagues will want to ask about that because it has been a strong interest of our committee.

If I close my remarks on that point, I think that Baroness Noakes would like to come in first on the specific facilitated customs arrangement.

Q2 Baroness Noakes: On the facilitated customs arrangement, I am sure there are a lot of practical difficulties that need to be understood before there is an assessment of whether it is feasible, which I am sure needs to be dealt with in detailed negotiations. My question is: if it is feasible, do you think that it provides the basis on which the relationship between the UK and the EU can go forward?

Michel Barnier: *[Interpretation]* This customs arrangement that we saw in the White Paper is not new as far as we were concerned. One year ago, the British Government produced a document. It was a little different, with this rather creative idea of double taxation—a European tariff and a British tariff—reimbursement, product traceability and so on. At the time, with regard to the technical feasibility of such a solution, we said that it would be difficult. We do not want a solution that creates additional problems, red tape and additional burdens for European companies; I obviously cannot speak on behalf of British companies.

I would like to understand exactly what is behind this idea. I say this to you in particular. I see the whole debate in the UK after the vote in the House of Commons on the question of customs co-operation, a customs partnership or a customs union. We are very willing to work on a customs partnership or customs union with the United Kingdom, particularly with regard to goods, including agri-food. We are certainly very available for such a debate, but that also means that your country would be involved in our commercial policy, which is constantly evolving.

Our President [Juncker] and President Tusk are in Japan today signing the trade agreement with Japan, a very important agreement between the 28 and Japan, an agreement that you will then leave, that you will wish to leave, in March next year.

For whatever reason, you will leave that agreement as you will leave all the other EU trade agreements. To be perfectly frank, none of these agreements has ever prevented a member state developing its commercial activities. Look at Germany. Being part of the EU trade policy or the euro has not prevented it being “global Germany”.

I am trying to understand exactly what this would involve and how such an arrangement would operate. It seems very complex to us. We need to examine it and work further on it.

The amendments adopted last night certainly do not simplify matters—on the single VAT system, for example. We will have to look at these things in enormous detail, analyse all the amendments and see what happens in the House of Lords. It is not always that easy for us to keep up with everything that is happening, but we try to do so rigorously and objectively. If you are asking, Baroness, whether we are prepared to

work on a customs partnership, my answer is certainly yes. That could be on top of an ambitious free trade agreement, but a customs partnership would be in the framework of our current partnerships with other countries.

The Chairman: Thank you very much for that. Perhaps I may comment on something that I could have mentioned in the original question. I had anticipated asking you for your reaction, which you have now given. It is important that we have the idea of a common rulebook for goods and agri-foods, which rather simplifies considerations. I understand that there are underlying concerns about the common rulebook, because, as is acknowledged in the White Paper, you need to address state aid and maintenance of high regulatory standards, on which there is some text. I do not think anyone in Britain, whatever their views on Brexit, wants social dumping or downgrading on the environment, climate change, labour standards or consumer protection, for example. We understand that concern.

There are also bound to be issues that follow on, but which you will want to look at in parallel, to do with a joint institutional framework. One has the machinery for the joint committee and the draft withdrawal agreement. This is, of course, a new chapter for us, whereas our EFTA colleagues will be familiar with that style of working. We need to think about how this can work to be effective as we move, as you say, from a single regulatory system to one that is more differentiated but that needs to be within the spirit of the White Paper proposals and your own needs. Those are just comments at the moment.

Q3 **Lord Liddle:** Can I take you back to the facilitated customs arrangement which the Government propose? From my point of view, I wish that we were not leaving. If we leave, I want us to be as close as possible to the EU. Examining what you have just said and what the Government are proposing, am I to take it that if Parliament voted to be in the customs union and we had to remain part of the existing customs union arrangement—in addition, the White Paper proposes a common rulebook for goods and agri-foods, so regulatory alignment—would it resolve the disagreement on the Northern Irish backstop?

Those elements in principle in the political declaration would be clear for the future, and the disagreement on the Northern Irish backstop would then fade away because we would know that the whole United Kingdom would eventually be part of the customs union and in regulatory alignment on goods with the EU.

Michel Barnier: [*Interpretation*] I repeat that in the withdrawal agreement we need an operational backstop for Ireland, quite apart from the discussion on the future relationship.

On what you have said about the White Paper, I would respond by saying that my point of departure would be the guidelines from the European Council. If this provides a better solution than the backstop, we would be prepared immediately to put in a new solution to replace the backstop,

but we want a backstop that is not an empty shell. We want something that is operational, which is what we have proposed. We will not postpone the question relating to Ireland to the future relationship; we want an operational solution now. It is the responsibility of those who wanted Brexit to find an operational solution, because it is Brexit that creates that situation in Ireland.

I can see the temptation of using the Irish backstop for the whole of the United Kingdom, but that is a different debate. Maybe we could show you that previous slide on checks and controls. Have a look at this slide;² I can provide you with a copy of it. It is a little technocratic, but it shows all the controls that we apply at all the external borders of the European Union and single market at the moment—in Scotland, Ireland, Greece, Poland and everywhere.

These controls are conducted predominantly at the external border of the Union. Within the Union, of which you are part at the moment, we are in the single market and the customs union—the one goes with the other—so that controls within this big market of 500 million between the member states can be minimal. The controls are carried out, but they have to be carried out predominantly at the external border. That is why the current customs union goes with the single market in its entirety, not just for products but for all exchanges—services, capital, persons and goods.

Then, in the middle, you can see two red lines that have been crossed through—rules of origin and customs duties. If your country wishes to be in a customs union with us, that would remove those two lines. There is a common external tariff and not two different tariffs. There is no need for us to control rules of origin, which is very important for industry and value chains, but all the other controls will have to take place. That is the problem we have in Ireland.

In the yellow column on the left, we have all the controls that I mentioned in my introductory comments: all the controls that are carried out in Belfast at the port and the airport on products coming from the rest of the United Kingdom. At the moment, physical controls, safety controls, veterinarian controls are all conducted in Northern Ireland on products that come from the rest of the United Kingdom. That is the technical principle that we wish to build on, but there is an obligation to carry out all those controls.

I will mention one final point to reflect on. *[Holds up a smart phone]* As you know, I do not know whether you can see this, but it says “KEEP CALM AND NEGOTIATE”. These are not just products: 20% to 40% added value comes from services. In any product put on the European market, between 20% and 40% of the added value of the product comes from services. Europeans are constructive but not naive, and they will not accept a rule whereby you have unfair regulatory competition from

² This slide can be found at https://ec.europa.eu/commission/sites/beta-political/files/customs_controls_0.pdf

services via free movement of goods. You need to bear that in mind, which is why we think that in economic, technical, legal and political terms there is the indivisibility of the four freedoms: products, services, capital and persons.

As a European, I am very struck by the fact that in your country some people imagine that, in order to facilitate or organise Brexit, Europeans should unravel or call into question what they have constructed together with you for 44 years and in total for 60 years. Your country contributed to the construction of the single market in all its dimensions—the four freedoms, the ecosystem of laws and standards. We have done all that with you.

What could justify calling on us as you leave to weaken this ecosystem? I would like to hear an answer. We cannot be asked to unravel part of the single market because the United Kingdom is leaving. I just do not understand that and I really would like someone to explain it to me. We will not accept the unravelling of the single market.

We are prepared to seek solutions. That is why I reacted in such a calm and an open fashion to the White Paper. In the White Paper, there are some interesting and positive aspects— the Court of Justice, the European Convention on Human Rights, on the fact that on several occasions it refers to the core free trade agreement.

Lord Liddle and Baroness Noakes, you raised this whole issue of the customs arrangement. As you said yourselves, there are certainly things there that will enable us to work, and I am more than willing to explore them in a very objective way. I have read it in great detail. We will build on the positive points to come up with the components of the political declaration. You can rely on me to be objective.

As Europeans, the European countries on whose behalf I am negotiating will not accept a weakened single market as a result of this.

Q4 **Baroness Falkner of Margravine:** Thank you, Mr Barnier. I think you have given us a little more to think about.

If I have understood what you just said correctly, you are more or less saying that you will not accept the facilitated customs arrangement because you will not recognise different treatment for goods and for services. You have also shown us in slides over a quite a long period—I think this is the Committee's fourth meeting with you—that you believe that there is just Canada-plus or Norway-plus customs union. Am I correct in understanding that you really see no other option? You say at the same time that you will consider the White Paper, but I take away from what you said that in effect you will not consider the White Paper. I wonder whether you could clarify that for me.

The White Paper proposes an association agreement in reverse. The Committee has spoken to Mr Verhofstadt, who said that he could see the Parliament being able to accept an association agreement. We ourselves have just produced a report on EU-UK relations after Brexit, and we also

thought that an association agreement in reverse—in other words, incremental steps in an association agreement—bring a country into the EU. Likewise, incremental steps, retaining a common rulebook, regulatory alignment and customs co-operation with backstops would to some of us be the logical way out. You take some time, you do it with firm law; the United Kingdom proposes, for example, introducing legislation for criminal sanctions on smuggling goods in the Northern Ireland situation and so on.

However, what I have heard from you this morning seems to me to imply that nothing other than an FTA or EEA is good enough. I wonder whether you could confirm my understanding.

Michel Barnier: *[Interpretation]* I do not think that you have understood me correctly, Baroness. I have said that we could imagine an ambitious FTA to which one could add a customs partnership, so I have not rejected a customs partnership. But there will be conditions: in particular, the coherence of our commercial policies. So I have not rejected that.

I think you are also confusing this customs union or customs partnership, on which there was a positive vote in the House of Lords, with regulatory alignment. You talk about regulatory alignment for products. I am talking about regulatory alignment in all areas, because products are to a considerable extent manufactured with services. We will not accept unfair competition in services with the European economy. That is not possible. Regulatory alignment must take place everywhere. You cannot just take part of the single market that interests you and maintain the capacity to engage in regulatory competition in other parts, which is what you read in certain parts of the White Paper and which worries us, as it says that the British Parliament will retain the freedom to modify the rules.

Baroness, you and we are in the same ecosystem: common standards, common rules, common surveillance in financial matters and common certification for products. That is why we are in this big single market. The confidence between us is based upon common jurisdiction, common certification tools and common supervisory systems. You are leaving all that. You are going. It is you who are leaving. You will be on the outside in a different legal order. To call for your legal order and ours to be put on an equal footing raises issues for our autonomy in taking decisions.

I am not closing the door on anything, but you must respect the 27's autonomy when it comes to taking decisions and the integrity of the internal market. We will not accept a system which weakens that. We can find solutions—we have found solutions with other countries—but we wish to build trust on a common legal order.

I have looked at the White Paper with great care. We still need a few days to complete our scrutiny of it. We will also look at the amendments from the British Parliament. We will build on the positive components in the White Paper in order to establish how we can put together the various parts of the future political declaration. But I have not rejected the customs arrangement—in fact, I very much hope that we can find a

solution on that question—but do not ask us to do things that are too complicated to work either.

You mentioned Guy Verhofstadt's proposal for an association agreement. That is something that the European Council will decide on, which is the legal box for our partnership, if you look at the slide again. What the Parliament is proposing on the substance is exactly the same as what I am saying on substance. There is no difference if you read resolutions from the European Parliament and the European Council guidelines: the four freedoms, autonomous decision-making by the 27, and so on. Substance is one thing. The legal box in which you place it is something else, and that is very important for you. Will we have a single legal box and association agreement with a single vote, or will we have several different boxes, several different votes, several different agreements?

I draw your attention to one aspect that I think I mentioned last time in February. I think there is a tendency on your side, and sometimes on ours, to underestimate the political challenge that we all have with the ratification of the future co-operation agreement between the UK and the EU. It is not a question of just putting a letter in the mailbox. All these agreements, whether there is a big, comprehensive agreement or a series of different agreements on customs, aviation and internal security, because they are so-called mixed agreements, will require ratification by the 27 national parliaments of the member states, and perhaps also some regional parliaments.

I recommend that you do not underestimate the importance of the ratification process. You can put that in your record and we can come back to this in two years' time. That is why I am taking the time to visit every national parliament. I was in Lithuania last week, and I will be in Greece next week. At my request, I am meeting national parliaments, trade unions and employers to explain the negotiating process but also to pave the way for ratification.

The whole issues of the level playing field and unfair competition and of preserving social and environmental rights are issues in every member state of the Union, and we need to find answers to them if ratification is to succeed. Mark my words, and we will come back to discuss to this in a year or two's time.

The Chairman: Thank you very much for that, Mr Barnier. I think that warning is well understood. I would say only as a personal comment on the association agreement that it provides a potential vehicle for confrontation or exchange of opinion between parliamentarians, which is very important on an ongoing basis.

Michel Barnier: *[Interpretation]* I certainly have not closed the door to that possibility—absolutely not. In fact, in the plenary in the European Parliament I said: why not? But I do not have a mandate to tell you anything more than that today. The European Council has not yet chosen its vehicle, or its box if you like, in legal terms. I was saying that when we choose the vehicle for this, we will have to bear in mind—this is

important for you and us together—how we manage the ratification process.

The Chairman: I fully understand that, and of course we are sensitive to that point. I know that colleagues have some questions that they would like to ask. I should check at this stage how long you have. You are being very generous with your time.

Michel Barnier resumed in English.

Michel Barnier: I have 15 minutes.

The Chairman: I ask colleagues to respect that in their questions and go straight to Baroness Suttie on the issue that concerns many of us: Ireland.

Q5 **Baroness Suttie:** Thank you, and thank you Mr Barnier. I have been struck in this meeting with you and at our previous meeting by your personal knowledge of and commitment to the peace process and the Good Friday/Belfast agreement. For nearly two years now, I have been speaking for my party in the House of Lords on Northern Irish issues, and I am trying to demystify the complexities of the very particular politics that go on in Ireland and Northern Ireland.

When I hear the Democratic Unionists and other unionists in the House of Lords speaking about Brexit, it is obviously a very emotional issue for them that they cannot be treated separately. My question to you is: do you think that the Commission and you personally have taken enough account of unionist sensitivities and reached out to them enough in this process?

Michel Barnier: *[Interpretation]* I am a politician, not some sort of Brussels super technocrat, a Eurocrat from Brussels, and I attach a great deal of importance to personal contact. I understand the concerns expressed. It is not just the unionists; I have heard Conservative and Labour politicians speak about the idea of a new border in the middle of the United Kingdom, but that is not what it is about. To look at things objectively, it is just about finding practical solutions to the practical problems caused by Brexit and to be able to do the controls and checks on products. I am not talking about people, because you have the common travel area, a solution for people, but products and goods. Many of these checks and controls can be done in places other than ports and airports. They can be done during the journey on boats, et cetera.

We have to take some of the drama out of this concept of controls, look at them one by one, see what we need, where they can be done and how they can be done—sometimes technologically, but not always technologically. That is it, really. I have received the unionists; I have met the DUP. They come to see me and I meet them. They have recognised that some of these controls already exist in Belfast for products that come from the other side of the sea. I can understand that, and I did understand that.

The question of the border between Ireland and Northern Ireland is extremely important. It is not just about goods, borders and technology; it is about ordinary lives. I was very touched at a personal level by going to Derry/Londonderry and the people I met there, the civil society groups. Their concern, their fear, is that it will start again. I am very sensitive to that and I am trying to find a solution.

The backstop that we are proposing can be “a” backstop. I can accept changes; I can accept change to the backstop that we have proposed. It can be amended, it can be improved, some of the drama can be taken out of it. It is a backstop and it is there not be used. I read that in the White Paper as well, but we need it. If we do not use it, all the better. That would show that we did our work properly and found a better solution. So much the better, but it cannot be left pending, hanging out there in the air. That is why I spoke of my concern that, because of that, there might be a complete failure and breakdown in the negotiations.

The Chairman: Thank you. That is very clear and helpful. In the interests of time, because you have been so generous with your time, I ask my two colleagues to ask their questions together. Then you can respond and perhaps we can wrap up. I call Baroness Verma and then Baroness Brown to ask about different matters we have not yet discussed today.

Q6 **Baroness Verma:** Thank you Lord Chairman, and thank you Mr Barnier. My question is on security and your response to the White Paper’s proposal for a future EU-UK security partnership. How do you see our security position internally and externally? Will there be flexibility from the EU 27 on how you see us as a third country, and will there be special flexibility for you to see us through a different lens than other third countries?

Q7 **Baroness Brown of Cambridge:** My question is about the jurisdiction of the CJEU. You will be aware that this is one of the particularly sensitive issues for the Government, and one of their red lines is that there should be no direct jurisdiction of the CJEU in the UK after Brexit.

Given that some of the legal obligations in the withdrawal agreement will inevitably go on for a long time—a period well beyond when the UK leaves the EU—I should be interested to know what sort of dispute resolution system for the withdrawal agreement you can envisage that would respect the UK Government’s position on the direct jurisdiction of the CJEU.

The Chairman: I add one small point on Gibraltar. We had some expression of concern, which is why three members of our Committee flew out to talk to them locally about their concerns. It is a very sensitive area, although in practice we acknowledge that it works acceptably well; they are both European Union territories. There is a strong wish there that that should continue.

You will be aware that there is a certain ambiguity on this. Is there some hope that we can at least clarify in the withdrawal agreement its

application to Gibraltar and for the transitional period? Our reading is that it is not entirely clear yet.

Michel Barnier: *[Interpretation]* Nina next to me is in my team. She is working on Ireland and Northern Ireland. Perhaps she should add a word to give you more detail.

Gibraltar is leaving the Union at the same time as the United Kingdom. There is a specific bilateral question between Spain and the United Kingdom. The 26 countries of the European Union have expressed their solidarity with Spain to provide a lever to the Kingdom of Spain, a member of the European Union, in its negotiations with United Kingdom to solve bilateral questions that are pending in Gibraltar between the United Kingdom and the Kingdom of Spain on tax matters, the environment or the management of Gibraltar airport.

The United Kingdom Government have, I think, understood that they need to settle those four points if they are to find an appropriate solution for Gibraltar at the time of the transition. My information is that the Prime Minister's adviser on this is well aware of its importance and intends to give a fillip to the bilateral negotiations between Spain and the United Kingdom to solve these four questions before October and as soon as possible. That is really what I need to say on Gibraltar at this point.

On security, we want an operational and ambitious agreement on the two pillars on the right—you will remember that I showed them to you—internal security, taking account of the fact that mechanically you will be leaving Eurojust, Europol and other structures where we have co-operation. So we have to rebuild that co-operation in some new legal and financial framework. We are quite prepared for that, and I will show all the necessary flexibility within my mandate, the guidelines that I work to, which relate to the independent decision-making by the 27: our decision-making autonomy.

Your country cannot ask for co-decision with us. Co-operation, yes. Co-decision is an entirely different matter, be it on internal or external security. We are quite prepared and ready to find arrangements and constructive solutions, so my answer is a clear yes.

A very important point, which I have tried to show in the middle of those two pillars, is the agreement on the security of information. It is one of the conditions: trust in and confidence related to data is a key point of internal and external security. I think there is a step forward in the White Paper on respecting the European Convention on Human Rights—fundamental rights. That is very important for us. I have a mandate and I have to respect it. It speaks about protecting the fundamental rights of European citizens. That means a certain coherence is incumbent on me in my discussions with the UK.

I have seen all the debate and argument about security related to Galileo, for example. I listened to it and I think it is terribly sad, because there is nothing polemic about it. By leaving the European Union you are

leaving Galileo. That is a decision that your country took. We have to work hard to find a form of partnership with the United Kingdom on Galileo on a different basis, and we will find a partnership; some way to enable your country to use the signals, including the most sensitive signal, which is the defence-related PRS signal.

What will not be possible is for a third country to participate in any technological development of the signal, having left the Union, which was the country's choice.

There are literally hundreds of legal consequences that are purely automatic and mechanical. We have to manage those completely automatic consequences.

I am not speechifying. We are producing a treaty that gives legal certainty. For Galileo, we will find some way to enable your country to participate and use the signals, including the most sensitive of those signals. We will see how we can ensure access by your country to that signal, but it will not be involved in the industrial technological development of Galileo in the way it has in the past, because it becomes a third country. So that was a yes.

On external security, I read the White Paper quite closely. In broad-brush terms, there is room for an understanding in what is proposed. I hope that we can reach agreement on external security and foreign policy before the end of the transition—if possible; that is a hope that I am expressing.

On the jurisdiction of the Court of Justice, distinctions are called for. There is a distinction to be made between the withdrawal agreement and the future relationship. First, there must be some governance of the withdrawal agreement; we have to reach agreement with the United Kingdom on that. If there is no agreement on governance of the withdrawal agreement, the withdrawal agreement is simply not credible.

There has to be some dispute mechanism. We are starting discussion on this—it is difficult—with the United Kingdom. We would like to see the Court of Justice keep a role. We found agreement when it came to citizens' rights. It is quite clear that we will ask for the Court of Justice to preserve its role and its place. It is a difficult point; I am speaking frankly. It is the second most difficult point after Ireland.

The other question was on the role of the Court of Justice. It is the tool that provides trust and confidence among the 28 now. It is the cement, if you like. It is what holds us together. It is an ecosystem of standards and laws, and right at the peak of that is the Court of Justice of the European Union. It is fundamental. I read the White Paper and there are steps forward there in recognition of the role of the Court of Justice.

Nina, would you like to say a word on Ireland to conclude?

Nina Obermaier: Thank you. We should recall that a common UK-EU starting point was to protect one of the principal achievements of the

peace process: notably, the invisibility of the border on the island of Ireland. Our objective, which is also the mandate given by European Heads of State and Government, is not to do anything in the withdrawal agreement that undermines the Good Friday/Belfast agreement, which is a bilateral agreement between the UK and Ireland that has at its heart the principle of consent.

That means that the focus when drafting the backstop—in this context, it is worth recalling that it is a backstop notably to apply unless and until another solution is found; Mr Barnier has said that on numerous occasions—is that it should not predetermine the future relationship. This is something that we have agreed in the joint report. It should exist irrespective of the future relationship.

We have construed and drafted the protocol around this common understanding and shared objective with the UK that there should be no re-emergence of a hard border. We have looked at what is strictly necessary and have followed a minimalistic approach in setting out what regulatory and customs alignment we think is necessary to ensure that no checks and controls are required at the land border.

It is also maximalistic—Mr Barnier has made this very clear—in that it is very flexible and prepared to take a risk for the benefit of protecting what has been achieved on the island of Ireland. That means that it is very specific to a situation that is unique and is the result of a long and difficult history.

The Chairman: Mr Barnier, I sense that we should conclude. I would like on behalf of our Committee to express our great thanks to you for your time, your attention and your clear expertise on so many details of this interesting, challenging, difficult and, in certain cases, rather sobering set of circumstances.

As we have identified, the timescale is now tightening; it sometimes focuses the mind. It is necessary now to move towards decisions or to what we need to take a decision on later on, but we have not discussed that in detail. We are aware that, in a sense, the political statement is not fleshed out yet, but it will be very important to future relations.

We are grateful for your assertion of the principles, which I think we need to remember in the United Kingdom, and for the openness of your mind and readiness to look for flexible solutions in these. This is now a situation in which we all need to do that. It is not our job to do it on behalf of the British interest; it will be for our government negotiators—I know you are meeting Mr Raab later in the week, which we welcome.

We are very grateful for your time and analysis. We will reflect on it rather than come to any instant conclusions. Just as you and your colleagues have been open to us over many years of relationship, so I would hope to feel in this situation that we can maintain a degree of flexibility of contact. If there is anything that we can do as a Committee to make sure that this reaches a satisfactory conclusion for all parts of

the European Union and the United Kingdom, I am sure that all my colleagues would wish that to happen. We would like to hear from you if there are concerns. We are nobody's agent; we do not need to be. We are very grateful for your attention, for the time that you have spent with us and for the frankness of the answers that you have given us.

Michel Barnier: *[Interpretation]* Thank you very much for that conclusion and, above all, for the spirit in which you and your colleagues from the House of Lords are so willing and happy to come here. You are always welcome. It is not a question of being flexible; it is a question of being available. I will always be available to meet you, because it is very important for this to happen.

I have spoken very frankly, which I think is also a sign of respect to you as Members of Parliament and Members of the House of Lords.