Select Committee on the European Union

Uncorrected oral evidence: No-deal preparations

Tuesday 29 January 2019
4 pm

Watch the meeting

Members present: Lord Boswell of Aynho (The Chairman); Baroness Brown of Cambridge; Lord Cromwell; Lord Jay of Ewelme; The Earl of Kinnoull; Lord Liddle; Baroness Noakes; Lord Polak; Lord Risby; Baroness Suttie; Lord Teverson; Baroness Verma; Lord Whitty.

Evidence Session No. 1 Heard in Public Questions 1 - 23

Witnesses

I: Professor Anand Menon, Professor of European Politics and Foreign Affairs, King’s College London; Henry Newman, Director, Open Europe; Tim Durrant, Senior Researcher, Institute for Government.

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Examination of witnesses

Professor Anand Menon, Henry Newman and Tim Durrant.

Q1  **The Chairman:** Good afternoon, gentlemen, and a warm welcome to the Committee. We are all, I think, conscious of events in another place, but there is, or should be, some scope for reflection on our current situation, which we will seek to take your advice on now. Many members of the Committee, either jointly or severally, will know some of you and the contributions made by you and your organisations in this area. This is formally billed as a no-deal Brexit consideration, because we are looking at that area. It is a public evidence session, a record will be taken and it will be recorded. We will share a transcript with you in due course.

This session is mainly about no-deal planning, although we can hardly be unconscious of the dramas that are happening. Indeed, in certain respects they inevitably feed across into each other. We have some questions for you. I think it would be sensible, and we will do it as informally as is appropriate for the session, to ask you three to make your initial contributions and then we will start letting it roll.

I hope there will be a degree of cut and thrust in the exchange of views and we can rattle through some interesting stuff. I am sure we will have some interesting insights in the next hour and a half or so, or a little longer if we need it, but not, I hope, too long, because we have some deliberative matters to conclude with. Let us start with you, Anand, and anything you wish to say by way of introduction.

**Professor Anand Menon:** Thank you, Lord Boswell. I direct an organisation called the UK in a Changing Europe and I will limit my remarks to saying that I am delighted you are doing this evidence session, because so much nonsense is spoken about no deal that the more we can nail down what it might and might not mean, the clearer our debate might be and the sooner the debate in the other place might clarify.

**Henry Newman:** I am a director of Open Europe and I am somewhat less optimistic than Anand about the possibility of the debate becoming slightly more fact-based and less belief-based. We have done some work on the economics of no deal and the medium-term effect of that in a report imaginatively called *No Deal*. We have not published work on the wider implications of the disruption around no deal, although we have done a lot of internal research on that and I am happy to speak to that later.

**Tim Durrant:** I am a senior researcher at the Institute for Government, and I echo what Anand said about the need to look more into no deal. We at the IFG have called for Parliament, both Houses, to look further into this, because it is talked about a lot but not hugely understood. Hopefully, we can make the most of that now.

Q2  **The Chairman:** Thank you very much for the succinctness of those remarks, and above all, if I have not made it clear already, for your
presence in somewhat challenging times.

The only point I would make by way of introduction on the merits of this is that I tend to go around saying to people that the politics is one thing, and we interest ourselves in that, but the sheer complexity of the issues involved, the administrative complications and of course the legislative ones are very daunting. I think successive Secretaries of State for leaving the EU have said that.

In that context, if we can start rolling—I hope that questions will come thick and fast—I would like to ask you three, in whatever order you find most convenient, a general question. What is your assessment of the impact of the last meaningful vote in the House of Commons and subsequent developments on the chances of no deal? It is interesting, for example, that the financial markets appeared to go in one direction, as opposed to the wisdom in another one. What do you think is happening, and specifically, again with a view to events down the corridor, can Parliament collectively take no deal off the table? What are the constraints on it doing so?

Professor Anand Menon: I will say a couple of things about that. First, in its simplest sense, the closer we get to 29 March the greater the chances of no deal, if only by accident. In that simple, temporal sense, the longer we wait, the more likely this is to happen without anyone wanting it to.

Personally, I do not subscribe to the view that the meaningful vote was a great turning point in this history: I do not think anyone expected it to pass. Most people were surprised by the margin, but actually it was clear long before that vote that Parliament was troubling itself with a whole load of distracting issues and not actually coming to the nub of making choices. It is to be hoped, I suppose, that in the next 10 days they will start to address some of those choices, but I do not think we will know, in real terms, whether Parliament is pushing us towards no deal, or not until some of these options are taken off the table. Parliament seems very reluctant to do that at the moment.

The other thing I would say is, no, Parliament cannot take no deal off the table unless it either revokes or agrees to something else. You either agree a withdrawal agreement or you revoke Article 50, and unless and until you do one of those two things there is still the possibility of no deal.

Henry Newman: I would not disagree with any of that. I think the size of the defeat was at the upper end of what anyone expected, but perhaps it should not have been a particular surprise when, just in December, roughly the same number of Conservative MPs voted against the Prime Minister in the leadership contest that was triggered then.

As Anand said, the best way to ensure that we do not leave without a deal is to back a deal. I am still deeply surprised by the number of parliamentarians on the Back Benches of both major parties who say in private that they would like, for example, to suspend Article 50, have
citizens’ juries around the country and negotiate our entire future partnership, and then unsuspend Article 50 to complete both the future partnership and the withdrawal agreement—something that does not seem to be on offer from the EU side.

Until that sort of magical thinking falls out, I do not really see how we can make much progress. The chances of leaving without a deal remain reasonably high, but probably much less high than the chances of leaving with a version of the negotiated agreement that we currently have.

Tim Durrant: I absolutely agree with that—I feel that it may be a boring session if we just agree with each other all the time. The only point I would add is that no deal is the legal default. By the way in which Article 50 works, two years after triggering, that member state is no longer a member state. It is also now written into UK law, through the European Union (Withdrawal) Act, that 29 March is our last day as a member state. So I agree that the chances have not risen, but it is what happens if nothing else does.

Q3 Baroness Verma: Parliament has known that the default position was always going to be no deal. Why do you think it has taken so long to come to the debates that MPs are having now, so late in the day? Where do you think the political parties are positioning themselves? If they want to reopen it with Europe, which they cannot do unless there is agreement, where else do we go? I cannot understand where else we go. If you are saying, “Take no deal off the table”, which we cannot, and the 27 have to agree that you can, where do politicians go, because the public will not know?

Henry Newman: You could take no deal off the table without the 27, because you can revoke. Since the recent ECJ case, that option is now open to the UK, but neither the Conservatives nor the Labour Opposition are saying that.

In the absence of that, an extension requires all 27 to agree. We can perhaps come on to that in a minute, but some of the sounds I am hearing suggest that certain key member states are quite loath to agree to a short extension; they might prefer a much longer extension, particularly because they are afraid of the UK continually coming back for slightly more time.

As for the psychology of particular MPs, I do not know, but it has been abundantly clear from the very beginning that voting for Article 50 after the Miller case would set this process in train. Some MPs have told me that they voted on the understanding that it could later be revoked, but that seems like constructing Lisbon harbour simply so that you can destroy it later in an earthquake. It is a bizarre approach to legislation.

Tim Durrant: I wonder whether part of the issue is that there are two parts to what is being voted on right now. There is the withdrawal agreement, which is the legally binding exit treaty, and there is the political declaration on the future relationship. Part of the rejection in the
meaningful vote in the Commons was to the withdrawal agreement and the backstop in particular, and part of it was because the main parties and different parts within the main parties do not agree on what they want the future relationship to be.

For a long time, whether or not it was wilful misunderstanding, there was confusion about whether everything would be wrapped up by 29 March or whether it would just be our exit, with a sense of direction of travel. I think that is part of the reason why there is a backlash now.

**Professor Anand Menon:** With the gift of 20/20 hindsight, it was probably a mistake to trigger Article 50 with no hint of a plan about the future. I say “with the gift of hindsight”, because it was not abundantly clear at the time. Everyone, myself included, made assumptions about what the process would look like, and I did not think that it would look like this.

Equally, no one expected a snap general election, which has made the process a lot more difficult. With the benefit of hindsight, it would have made sense to have had some idea of where we were going before we triggered Article 50. Let us not forget the enormous pressure that the Prime Minister and parliamentarians were under to honour the referendum at the time and the swirl around them, which was hard to resist.

As to what the point is, it is worth stressing that we do not know that the European Union will not reopen the withdrawal agreement. It is obvious that it is saying that it will not, but it is equally obvious that that is what it would say. Who knows? This seems to be a heightened game of chicken, whereby the two sides face off with positions that they say will not shift. I do not know. There are signs in some member states that people are starting to get worried, with the rumours about some member states signing bilateral deals in the event of no deal to limit the worst of the impact of them. So there are signs of a shift on the European Union side.

If you were to ask me to bet on whether the EU would open the withdrawal agreement, I would probably bet against, but I would not say for certain that it will not, because the pressure is growing on all sides and the whole process is led by politicians who are under the same sorts of pressure as ours are.

**Lord Risby:** What right has an individual EU member state in the context of the withdrawal agreement to block any change, if any? Ireland has been muttering about this.

**Professor Anand Menon:** Formally, it is a qualified majority of the European Council. I find it virtually inconceivable that the Council would outvote Ireland on this. On something as central and seminal as this, I think it would seek to do this by unanimity and it will try not to overrule. I do not know what my colleagues think.
**Henry Newman:** A brief thought on the process: the UK negotiating side made many mistakes on the process side, one of which was not to challenge the EU’s interpretation of Article 50, which, although the entire process is stacked against the exiting country, also puts an obligation on the EU not just to negotiate, which would be interpreted as negotiation in good faith, but to negotiate and conclude an agreement.

For a long time, the EU was suggesting that we may not be able to reach agreement, but you could argue that, under EU law, the EU is obliged to reach agreement with the UK. We never tried to explore publicly any of these interpretations.

**Lord Whitty:** Assuming for a moment that we take the EU at face value and that it will not reopen the withdrawal agreement, and given that the backstop is the main issue, do any of you see another way of resolving the backstop that would meet at least some of the objections in the Commons?

**Henry Newman:** I wrote a piece on this for Conservative Home this morning—just to plug myself—suggesting various mechanisms, including an exchange of letters. The Prime Minister has asked for something beyond an exchange of letters, I think for presentational purposes, but the point that I was trying to make with my co-author is that an exchange of letters can essentially be a mini-treaty. There is no need to reopen the withdrawal agreement itself.

You could have a codicil, but you could have a separate exchange of letters that would be binding on both sides, particularly given that the withdrawal agreement and the protocol are internally contradictory—they talk about the objective not being to establish a permanent relationship, but equally they say that the protocol will apply “unless and until”.

You can make a strong case that a notice declaring how the withdrawal agreement should be interpreted could have a lot of status. It would be hard for that then to be ignored by either party or a possible tribunal. You can do a huge amount outside reopening the withdrawal agreement. To give it extra political and presentational weight, you can call it a mini-treaty—the mini-treaty of Dover, or whatever you like—but I do not think that you necessarily need to reopen something, particularly when the EU has gone to great lengths to say that it is not for reopening.

**The Chairman:** Let us go on to Lord Jay.

**Lord Jay of Ewelme:** Thank you. Some of this has been covered already, but I wanted to focus on the political declaration. I get the impression that you think that the chances for a change to the withdrawal agreement are slight, although we do not really know. I welcome your comments on that.

On the backstop, can you see any possibility of some sort of extension, which the EU side might be prepared to accept, or is a backstop a backstop? In other words, it is for a finite period—that is its purpose—and all 27 will stick together on that.
The final question is on the political declaration. I suspect that the negotiations on the political declaration will be infinitely harder than the ones that we have had so far, but can you see some shift in the political declaration as it is now drafted that could lead to some way through this?

**Tim Durrant:** The EU has been quite open that it thinks that the political declaration could be reopened if there is a clear request from the UK as to what the change would be. The Prime Minister’s problem is that the Commons is yet to signal in which direction it wants to go. Labour Party policy is for a customs union. Part of the Conservative Party argues for a Common Market 2.0 that has a close relationship with the EEA structure, but other parts of the party want something much more distant. Part of the reason why the political declaration has got to where it is is that it allows all those things to happen at a later date and pauses the more difficult discussions on the future until the withdrawal process is wrapped up.

**Professor Anand Menon:** On Lord Jay’s point about the backstop, my answer would be no, quite simply. Whatever the legal form of any exchange of letters or codicil, it is unlikely in the extreme that the EU would consent to doing something that contradicted the text. That is the problem. The EU is objecting to opening the withdrawal agreement because it wants the text to stay the same.

I say in parentheses that I think Henry is absolutely right that, as the EU has said that this is not a permanent arrangement, it behoves it as well as us to put some thought to how you put an end to this arrangement. It seems that the bulk of that work has been delegated to us, but both sides need to think about it.

**Lord Jay of Ewelme:** On that point, can you see some typical EU compromise solution whereby you do not agree that it is going to end but you have some sort of mechanism for consultation on how it might end, were it to, which could somehow fudge the issue and enable both sides to get through?

**Professor Anand Menon:** Perhaps, but the two fudges that come to mind are, first, the note on the CETA treaty that Paul Magnette extracted as the price for acceptance of the treaty. It was a reassurance, but it in no way, shape or form contradicted the sense of the treaty; it was interpretative.

The second one was the Danish case with the Maastricht treaty, which you will remember. There were reassurances to the Danes but nothing that directly contradicted the text. The problem is that the opposition in principle of a number of MPs to the backstop is about the nature of the backstop. Any clarification that satisfied them, it seems to me, would have to contradict what is meant in the withdrawal agreement. That is the problem.

I do not doubt for a moment that a number of MPs are looking for a fig leaf—that is to say, it does not have to be substantively true, but if it is
true enough to look convincing it might do the trick for a number of them. I do not want to get into speculating on the numbers but, for those who have genuine principled objections, nothing will be forthcoming to alleviate those objections.

On the political declaration, I draw your attention to the draft that Andrew Duff has produced; he took it upon himself to write a completely reworked political declaration, which is really interesting and well worth reading. The big question about the political declaration is: does it matter? A lot of play is made of the fact that it is not legally binding. It does matter to an extent, because it will have been approved by Parliament, which will give it some weight. Even if one Parliament cannot bind its successor, the fact that, particularly after a debate such as we are having, Parliament has said okay to it would give it a degree of political force at least.

That said, most political outcomes are possible with this political declaration. A number of the MPs going around saying, “I can’t possibly accept this deal, because I want a customs union”, should read the political declaration and realise that they can have one. It is in the text. The only exception is single-market membership, where one sentence would need to go. That is the one that says that we will end free movement, but I do not see a majority in the other House for doing that at the moment.

Henry Newman: Obviously, that sentence on free movement is in the political declaration, but the EU has also said that, at any point until the end of the transition, it would be open to a shift in UK red lines and an approach to join the single market and customs union. It seems clear that the political declaration opens a range of possibilities. My understanding from internal conversations is that an earlier draft was going to set out a menu of options. When the Cabinet first signed off the deal, a very brief political declaration was published—it was so inchoate as to be almost meaningless. The more substantive declaration appeared a couple of weeks later.

One could potentially shift things around and make that menu of choices more explicit, but ultimately it seems that many MPs, particularly those pushing for Norway-plus as a plan B, are having a fight about something that is not legally binding in the first place. Their advocacy of Norway-plus is premised on accepting all the binding bits of the existing deal.

On the backstop, there are important concerns about what alternative solutions the EU would be open to accepting. Sabine Weyand repeated just yesterday that there are no alternative solutions. If that is the case, the EU’s commitment to finding alternative solutions cannot be in good faith. It cannot be that the only way to resolve the backstop is with a treaty that stays on a permanent footing, which is what the recent letter from Donald Tusk suggested. If the only way to replace the backstop is another treaty with a backstop, that commitment cannot be fulfilled. So there are legitimate concerns to raise about what the EU envisages as alternative solutions.
The Chairman: We move on to the main business of the afternoon, which is no-deal preparations. As our panel has already reminded us, no deal remains in both British and EU law the default option in the absence of any change—I notice that people are nodding at that, so confirming that interpretation. We hear about it intermittently sometimes as a threat to focus minds. For it to be in any sense credible—and, if enacted, to be implemented—requires a degree of preparation. We will now examine that, but I am quite sure that wider issues will continue to return in the minds of colleagues and our panel.

Q5 Lord Polak: Professor, you mentioned that the closer we get to 29 March, the more chance there is of no deal. The perceived wisdom has been that the Government over the past two years have not been preparing effectively for no deal. How advanced do you think their preparations for no deal are? Which departments are most vulnerable and which are most prepared? What impact has the prospect of no deal had on Whitehall?

Professor Anand Menon: In terms of the Government’s preparedness, I have no inside intelligence. What I will say is that not preparing at a certain point in time was a rational political strategy for convincing wavering MPs that the alternative would be dreadful if they did not sign up to the deal. This was all part of the manoeuvring.

It seems to me—I do not know what my colleagues think—that BEIS and Defra are particularly at risk. I think they have each published 29 notices about no deal, which would put them ahead of their rivals if it were a race. They would bear the brunt of the immediate impact. There are other departments as well. Of course, it varies enormously by sector. Highly regulated sectors such as pharma have already made their arrangements for getting licences elsewhere.

We already see Brexit putting an enormous strain on Whitehall. That is just if you talk to people around Whitehall. It can be seen in the fact that very little other governing is happening at the moment because there is no bandwidth for it. A no-deal outcome would exacerbate that massively, because it would in effect be an emergency situation.

Henry Newman: I agree. Other departments such as Transport were pretty exposed. The received wisdom is to a degree unfair. There was certainly a go-slow policy initially, but having spoken to Secretaries of State over the past few months I know that they are spending an enormous amount of time on no-deal preparedness—up to a third, and in some cases a quarter, of their time. That is going back to before Christmas, so it has probably accelerated even beyond that.

There is a limit to how prepared you can be for a solo tango, because ultimately there are things that you cannot agree by yourself. It requires side agreements and so on, which the EU has so far refused to do. Some of the preparedness is very good. The Treasury has always been extremely well prepared. My understanding is that, in many of the banking areas, it is confident that it has put very good plans in place, but,
again, there are limits to what can be separately agreed; you can have the best possible plans.

The focus on things like the mock lorry jam has given a sense of overall chaos to the Government’s no-deal plans. I do not think that is fair. Most officials I speak to say that they are preparing in good faith as far as they can for a situation that they do not want to arise. The civil servants to whom I have spoken, rather than the political people, were horrified by attempts from MPs to block funding for no-deal preparation, because so far as they can see it remains the default legal position and it is irresponsible to block funding for it.

Tim Durrant: Those are clearly the most affected departments. I am not sure that HMRC has been mentioned when it comes to managing the customs if there is no deal.

On how the preparation has gone in the past couple of years, it is right that there have been periods of go-slow, but it feels as if there have been fits and starts or peaks and troughs. At the end of 2017, in the last quarter before the joint report came out, there was a sense that the possibility of no deal was increasing so there was a lot more talk about it in Whitehall. That then dropped off with the joint report and for the next three or four months with the draft agreement in March last year. Last summer, when there was more antagonism between the two negotiating sides, talk of no deal reared its head again. It has been at the back of Whitehall’s mind probably since at least June 2016.

Lord Polak: Is that not the problem? Should they have not been prepared all the way through, rather than just react to press reports or talk about positive developments and then stop? Should it not have been taken seriously as an option, as it is now?

Tim Durrant: If you put that to someone in the Government, they would say that the Government’s priority has always been to try to get a deal but that they are preparing for a fallback. I think that would be their attitude.

The point about the impact on the rest of Whitehall is interesting and quite hard to get at—the Government do not crow about things that they are not doing. One of my colleagues has been looking at things that were announced and have not yet happened. We can send more information to you if that would be of interest.

The Chairman: That would be helpful.

Tim Durrant: There was the social care Green Paper, which was due in autumn 2017 and has still not come out. There was an internet safety White Paper, which was originally due before the end of last year and we are still waiting for it, and a new English devolution framework. Those are just three things which the Government had talked about doing and have not yet done. We cannot ascribe that directly to the fact that no-deal preparation has ramped up, but it just shows the bandwidth issue that
was mentioned just now; there are only so many civil servants who can do these things.

**Q6**

**The Chairman:** Can I ask one very short, specific question of Tim? The others, please do comment. Anand wants to come back on the general issue.

Is there a sense in departments that they can set the priorities, both in terms of their legal obligations and their stakeholder obligations to whomever they represent? Are departments saying, “If time is tight we absolutely must do this”, in terms of either the legislation or the physical disposition of resources, which could wait, if necessary? Is there a sense of evaluation of those things? Perhaps Henry wants to come in on this, too.

**Tim Durrant:** I think that is right. Henry highlighted the Treasury earlier. It is a good example. It has been thinking about this for a long time and will have been doing that internal prioritisation. The Department for Exiting the EU is the central body responsible for co-ordinating preparations for all the potential outcomes across government.

There have been stories about civil servants from departments less affected by Brexit, but particularly by no deal—the Department for Education, the Department for International Development—being put on standby to support work in other departments. I do not know, but I assume that that cross-Whitehall process is being managed out of DExEU, which is asking departments to identify people who can move to work on what it judges to be priorities.

**Henry Newman:** Picking up the DExEU point, there is certainly a senior Civil Service team in DExEU responsible for cross-Whitehall co-ordination on no-deal planning. It is repeatedly evaluating and re-evaluating the progress made by different departments and has a list of goodies and baddies according to that.

On the bandwidth point, very briefly, I did work in government before, and delayed Green Papers and White Papers are not unique phenomena related to Brexit. There is obviously a bandwidth issue here, but there are always bandwidth issues in different ways within Whitehall. There is a particular political bandwidth issue at the moment because of the logjam in the Commons as a result of there being no overall political majority.

**Tim Durrant:** Just to add one final point, the bandwidth issue is not unique to the official side of government. It clearly cuts both ways.

**Professor Anand Menon:** In answer to the question, “Should they not have been doing this anyway?”, there are two reasons why that might be slightly unfair. The first is whether you want to spend what are significant sums of public money on preparations for an outcome that you are assuming and hoping that you will not end up with. There were good financial reasons for not doing all the planning and implementation to start with.
The second is that it is worth underlining in red what Henry said: when we are talking about preparations for no deal, they are very partial, because the only way you prepare for no deal is with the assistance of the European Union. The biggest single impact of no deal is the falling away of that legal framework, which we cannot fix by ourselves. It is about transactions with the European Union, whether it is travel and transport or trade. Actually, we cannot prepare for that unilaterally.

**The Earl of Kinnoull:** I might slightly counter that. I was interested in preparations where the devolved Administrations had concerns, not with English devolution but with Scotland, Wales and Northern Ireland. Everything you have said is about preparations taking place in Whitehall, but of course there is an effect on the devolved Administrations. Will you give us your views on how preparations in Whitehall interact with them? Are adequate preparations taking place there?

**Tim Durrant:** I do not have much of a sense of co-ordination between national government and the devolved nations, but it is interesting that Scotland and Wales—Northern Ireland is a separate case—are taking their own actions. I know that the Welsh Government have set up a website providing lots of advice to businesses about what no deal might mean depending on what sector they operate in and the people they employ, that kind of thing. The Government in London have not done that, at least until very recently. My personal view is that the Welsh one is more helpful.

The Welsh Government and, I think, also the Scottish Government are providing funding support to businesses to prepare for no deal. That goes beyond what the Westminster Government have done. So there are different attitudes to preparing for no deal, but, as has been said, a lot of what happens depends on what the EU does, and obviously negotiating with the EU is a competence of the UK Government. Many other areas that are the most impacted, the most affected, by no deal are Westminster competences—customs, flight agreements, all that sort of stuff. They are the competences of national government, so they are sensibly the focus.

**Henry Newman:** On local government, I am aware that my local council has essentially said that it has not made any preparations at all for a no-deal Brexit. That is an entire level of government that is potentially very poorly prepared.

On Anand’s point about wasting money on no-deal preparation, I just challenge one point. There are obviously certain things that you could do that would have a value, whatever the outcome of the Brexit deal, such as upgrading customs systems with HMRC, which Tim mentioned. Those sorts of areas should have been prioritised right from the start. It should have been a clear objective of the Government that, whatever Brexit pattern we ended up with, we need to upgrade our customs and potentially rethink from scratch the way we collect customs dues from non-EU countries. That was disappointing, but it is a problem that goes back years.
**Professor Anand Menon:** I would add the upgrading of Home Office systems, and staffing them adequately.

**Baroness Verma:** You just touched on this, but I am also worried that local authorities across England and Wales have done no preparations whatever. A number of those authorities have been dependent upon accessing European funding, so it would be interesting to know, if they are not preparing, what happens when we suddenly come to this no-deal scenario and they are scraping around to find what they have to do to manage those shortfalls.

The other issue I come back to is the resources in Whitehall. Do you feel that the numbers are adequate? Again, if we take it down a notch to local levels, those resources, those people, will need to be found to help local authorities, and I do not know where they are going to come from.

**Henry Newman:** Those are very legitimate concerns. I am aware of the local government figures not through Open Europe; I am a councillor and we scrutinise the budget. This topic came up in discussion and the council finance officer said essentially that they had made no plans and were waiting for guidance from the local government department. They assumed that money would be available in an emergency situation, but I accept that your concerns are well founded.

I have not heard specific complaints from inside departments that there is insufficient resource in the number of civil servants. The problem is perhaps the other way: that many of the very best civil servants I encountered in my four or five years in government have ended up working on Brexit exclusively. There has been a collection of the best talent, in DExEU and other departments, on these questions. Maybe Tim will know more.

**Tim Durrant:** I have a couple of points. On local government funding specifically, MHCLG announced an extra £20 million or so yesterday, on top of the £30 million. It is not a huge amount, but I think there is belated recognition that local authorities are going to be affected by this. It might be worth looking into that more. I am not entirely sure what it is for, but there is recognition of that.

**The Chairman:** The Committee will want to return to that later, and to the issue of awareness more generally, but we have very much noted your comments.

**Lord Jay of Ewelme:** Is it your impression that some other member states, particularly the Netherlands, are doing more to prepare for a possible no deal than we are?

**Tim Durrant:** I do not think that they are doing more. They were perhaps a little quicker off the bat, if that makes sense. I would highlight the Netherlands, Ireland and Belgium, given the close relationship between our countries. They are particularly affected by trade flows and have been thinking about this for a long time.
One of the areas in which they have done better than the UK Government, until recently, is communications and awareness raising. The Dutch and the Belgians had Brexit impact scan websites whereby businesses could put in a whole host of questions and would get personalised advice. The Dutch and Irish Governments have put money aside to support businesses in preparing for no deal. I understand that the Dutch Government are launching a radio advertising campaign this week to draw attention to what this might mean for their companies. Those three countries in particular, and other North Sea neighbours—the Danes, the Germans, the French—are going to be the most affected by any clogging up of trade and have been quicker off the mark.

The Chairman: Thank you. We move on to Lord Liddle’s question.

Lord Liddle: Switching focus to the European Commission, it seems to me to have prioritised a number of different areas—citizens, financial services, air and road transport, customs, animal and plant health, personal data and climate change—and it has issued unilateral instructions as to what should happen in those areas. Is it your view that it is prioritising the right areas from its perspective, and what is your view on whether we are matching what equivalent measures it is suggesting in those areas?

Professor Anand Menon: The first thing to say is that the Commission can offer more than us because it is offering us a continuation of those legal agreements in certain areas where it suits the Commission. There are several layers to this. The Commission’s technical notices have gone out, but they are largely meaningless unless member states implement them and put some resource behind them, so they are little more than words until implemented.

Obvious divisions are also opening up on the EU side about what the most pressing things are. The FT reported yesterday that the European Parliament wants to change some of the airline ownership rules to allow IAG to keep flying. That is interesting, because the Commission has deliberately left that out of its mitigating measures in the event of no deal.

So there are tensions on the EU side. Equally, as I said before, some member states are already starting to grumble about the no-deal measures put in place by the Commission and are starting to talk about putting their own bilateral measures with us in place in the event that no deal happens. The biggest test for the unity of the 27 would certainly be a no-deal outcome, because I suspect that our nearest neighbours will be very keen to go beyond what the Commission has stipulated so far.

Henry Newman: There is an area that has not been addressed. Last week, the Commission got into trouble over the border questions, particularly the Irish border, and how the Commission would work to keep it open. It said that it would use its maximum efforts, but what would that look like? How would it maintain a single energy market on the island of Ireland?
We do not really know that. We do not know what steps the Commission would take to protect the flow of goods in very sensitive areas such as medicines, and we do not know whether it would be able to relax a bit more the checks on animal and plant health. Those are some areas where additional clarity is required. The reason for the lack of clarity on the Irish border question is a political one; it is not a substantive policy one.

The Chairman: The impression that the Committee has been given on previous occasions, separate from tonight, is that there has been very little dialogue at official level between the EU and Whitehall or the British administrative system on contingency planning for no deal. Given that an airliner starts in Frankfurt and lands in London, for example, there would appear to be a fairly strong mutual interest. There are also areas of reciprocity, such as mutual healthcare, which are acknowledged but do not appear to have been advanced.

Would any of you like to give a sense of how sufficient the exchanges have been and how much they have been inhibited by wider political considerations, and whether that has contributed to some of this standoff situation?

Henry Newman: It was a very conscious decision by the Commission not to engage in any side agreements and to block member states from doing that. Personally, I think that was very irresponsible. I understand the rationale for it to a degree, but given that it was never necessarily going to be possible to conclude an agreement, I think that was dangerous.

There are some exceptions, obviously. On transport there has been much more separate discussion with member states, but I think it was a political decision. It could have been challenged more, but it was not.

Lord Liddle: Presumably the Commission would not have done that unless it had the support of the French Government. What do you think about Paris’s attitude towards trying to prevent no-deal disruption?

Professor Anand Menon: If you listen to people in Calais, the French Government have been slow to set about investing hard cash in preparations for a no-deal outcome. You hear mixed things. My intelligence on this is probably no better than yours and I read the newspapers. You hear mixed things about the French. On the one hand, they are saying that we will need quite a lengthy extension if we have to extend Article 50, but previously France seemed to be the member state that was playing the hardest of hard balls, so I am not sure what the truth is, to be honest.

Tim Durrant: The way the negotiations have been conducted over the last couple of years also speaks to a wider point. Member states have seemingly all taken the approach that this is for the Commission to deal with. That cuts across both the negotiations on withdrawal, where member states have not wanted to talk to the UK about the detail, and
also the preparations, where the view has been that this is a Brussels question rather than a capital-to-capital question.

Q9  
**Baroness Brown of Cambridge:** I am interested in picking up the area of climate policy that the European Commission has identified as requiring special contingency action. Would any of you like to comment on why it felt that that area in particular required special action and unilateral measures?

**Tim Durrant:** I am afraid I do not know a huge amount about that.

**Henry Newman:** I am sorry. I did not hear what the area was.

**Baroness Brown of Cambridge:** Climate change. Given that the Climate Change Act delivers most of the things that keep us pretty much in line with the rest of Europe, it seems an odd area for the Commission to think that action is required.

**Henry Newman:** There is uncertainty around the Trump withdrawal from the Paris agreement and a broader suspicion that the UK could be looking to realign itself, which does not seem to meet with any of the commitments that the Government have made publicly, but I do not know.

**The Chairman:** For the record, the EU has done something on carbon trading. It has maintained its registry and the British contribution is catered for, at least for a temporary arrangement. I think the general drift of what we are getting is that a lot of this has not, for reasons of the political situation, been brokered in good time.

Q10  
**Lord Teverson:** The Commission stopped the issue of EU ETS certificates to this country from 1 January.

Very quickly on Euratom and no deal, we understand that there are now a number of international agreements with other nations. This may be a specialist area, but I wonder what happens to the Euratom/UK nuclear industry relationship? Does it completely fall away?

I do not want to go over a question which will come later and is about whether a deal is possible, but I would be interested in gaming weeks two and three of no deal. Who starts talking to whom, what has to be resolved, and who has and who does not have the leverage in weeks two and three? How does that start to play out, in your mind?

**The Chairman:** It is an important issue. You do not wake up on day one and a week later say, “And now we have ...”, or, “Good Lord, we’ve found that ...”. What is your sense of this relationship?

**Lord Teverson:** What is your feeling about the negotiations on whatever the next stage is? What happens at that point?

**Tim Durrant:** On the impact of no deal, people talk about no deal happening at one minute past 11 on 29 March and then everything suddenly being different. I think that is wrong. I think there will be a lead-in if it looks as though we are heading to that point.
In relation to an earlier question about the Commission’s priorities, one area that it has not spoken about is security co-operation—policing, information-sharing and that kind of thing. If there is an ongoing investigation that looks as though it will run over, will that be stopped? Will European police forces be unwilling to talk to their British counterparts because they know that in three weeks’ time they will not be able to get information from them?

I think there is a lead-in to no deal, as well as an impact over the weeks and months after that. The border is the big issue. There will not suddenly be customs posts on the border between Ireland and Northern Ireland. Those things will take time if those Governments decide to introduce them. The point about no deal is that the gradual change in the relationship between us and the EU might be starting now.

Professor Anand Menon: Equally, the economic effects will start to be felt beforehand. You will see it in the activities of firms as people’s expectations change. Are we talking about the period afterwards as well now, or are we waiting for the question that will come later?

Lord Teverson: I am talking about one or two weeks after. Are there any areas that will be forced to operate somehow at that point?

Professor Anand Menon: My guess about one or two weeks after is that the member states most seriously affected will be champing at the bit to get it sorted out, and the European Commission will be desperately trying to hold the line on the assumption that we will return to the table when things get very bad here. The Commission’s assumption about a no-deal scenario is that we would have to go back to them, at which point they would say, “There are three withdrawal issues that we need to sort out”. But whether they can hold that line I do not know.

The Chairman: We may well return to these questions. I would just like to toss another little stone into the pond. Presumably they are also interesting areas for anyone contemplating private litigation or otherwise. At least public officials both in the EU and, indeed, in the UK are potentially putting themselves at risk if they turn a Nelson’s eye to the situation and say, “We will carry on until this is sorted out”. Be it the imposition of tariffs or something else, there will be lots of people who feel aggrieved by that situation, unable to benefit from it or damaged by it, and they will all be queueing up for litigation. I use, simply as an example, litigation about the lease for the move of the European Medicines Agency from the UK, which is already triggering some interesting private law issues.

Professor Anand Menon: Equally, there is a danger of litigation if those tariffs are not imposed straightaway by people who feel aggrieved that it is happening too slowly.

The Chairman: Exactly. In a sense, all these questions tend to coalesce.

Lord Whitty: I want to explore whether there is such a thing as a
managed no deal or whether that is a contradiction in terms. EU no-deal offers also seem slightly contradictory, but on the transport side we have seen from the EU gestures to mitigate the effect by extending the present arrangements for haulage and aviation. Indeed, just in the last few days we have seen suggestions that there is some pressure within Europe to extend those—for example, to extend the haulage arrangements, which run for nine months, to cover cabotage as well as point to point, and similar issues in relation to aviation.

Do you see that as a unilateral decision by the EU, or is there some sort of bare-bones agreement, as David Davis used to call it, still available for us in the circumstances in which we find ourselves that would cover wider areas? The transport, the docks and so forth could be the areas where problems hit first, so it is right that everyone sensibly tries to mitigate that. “Is there a minimalist deal?” is basically what I am asking.

**Professor Anand Menon:** I would go for the former. This is a bare-bones agreement that the Union puts in place for its own interests. Its contingency planning is deliberately short-term and can be suspended at any time. I do not think they would feel under any sort of obligation to help us out; they will do what it takes to help them.

This goes back to my earlier answer a bit: at that point they will enter this waiting game, hoping that they can drag us back to the negotiating table. If that is their strategy, negotiating anything that resembles a side deal cuts against it, and I think they will resist the temptation in the short term.

**Henry Newman:** As you said earlier, there is a game of chicken. It is possible that the EU suddenly decides that something like the Malthouse compromise, which we have been reading about this morning—plan C with its own plan A and Plan B—is a brilliant idea, but that does not seem very likely. It would be a wholesale abandonment of their entire negotiating strategy, which would have consequences for any other negotiation that they then undertook.

Obviously there are things that you can do and agree to manage no deal. It depends what is meant by “managed no deal”, but in the sense of paying a certain amount of the money and using a transition period without a withdrawal agreement or a backstop, or in the sense of getting some sort of slightly separate side agreement covering everything other than the backstop, it seems totally far-fetched to me.

**Professor Anand Menon:** Apart from which, I do not think there is any legal basis under which you could do that. Article 50 provides you with the legal basis to do transition. There is the notion that you can do it having not got an agreement, at which point we would cease to be a member state, but I do not see how legally we could do it even if there is the political will, which I do not think there will be.

**Lord Whitty:** Clearly they are doing it in some areas. We know that potential side deals were available as part of a bigger deal, and some aspects of those could mitigate the no-deal situation as they are trying to
do in transport. The fact is that this is not an absolute position of the EU. In particular, the states that are most contiguous to us have an interest in ensuring that it is not disastrous in Calais, let alone in Dover.

There are some things that could be done in self-interest. I am not suggesting that they would be generous or that they would look to a halfway house, but there are some things that, from the point of view of their own member states’ self-interest, would be useful to do.

**Henry Newman:** Possibly, but it is also the case that some member states want to send a political signal to the UK, particularly if we have walked away. I have heard reports from well-placed diplomatic sources that the Macron Élysée is keen to have blood on the floor as a result of Brexit if there is no deal. It is difficult to predict, and it is a high-stakes gamble to assume that the EU would ultimately move that far.

**Tim Durrant:** The point to make about what the Commission has said so far about what it will do in the event of no deal is that that is not an agreement; it is a unilateral series of measures. It is in the gift of the Commission to pass legislation about how the EU relates to an external party. It is not an agreement with the UK. The point that Anand was making is whether, once we have left, for any agreement we have to go through a full process—

**Lord Whitty:** There is some sort of agreement, because aviation and haulage are subject to reciprocity by the British Government. There is a degree to which there is mutuality here.

**Tim Durrant:** Absolutely, but they are mutual unilateral actions rather than some piece of paper signed by the Prime Minister and the President of the Council. They are unilateral and time-limited. Another aspect of this is what member states might do. We have talked a lot about the Commission, but member states might well be in the market for specific agreements with the UK.

To go back to the security and policing issue, we will be outside the European arrest warrant, but it is perfectly within the rights of member states to strike extradition agreements with countries outside the EU, so they might well want to do that with the UK. However, that obviously cannot be in place before 29 March. There will be a long to-do list of mini-deals or subject-specific deals.

**Henry Newman:** Spain has just done one on voting rights, for example.

**Professor Anand Menon:** It is also worth thinking of the political context after no deal, which will conceivably be one of mutual blaming and recrimination, which may not create the best atmosphere for rational negotiation over bilateral mitigations.

**Lord Whitty:** But there are sensible people who know how to make systems work even if there is that atmosphere at the political level. They can actually get things delivered and carry on, at least at a minimal level. That must apply some pressure to both our Government and the
contiguous states.

**The Chairman:** We will revert to business issues shortly. Presumably one factor that may well drive individual member states to take a lively interest in this is if they are subject to some stakeholder pressure themselves in their own countries, I take it. You are nodding at that.

Q12 **Baroness Noakes:** The transport no-deal notices from the EU prohibit member states from entering into their own arrangements. Is that a valid action by the EU? Do you think there is a possibility that the member states will go their own way in the event of no deal?

**Professor Anand Menon:** I think it is valid, yes. The interesting question, if you think about the number of freight licences held in France, is that there will be a massive incentive on the part of the French to try to talk to us and keep that system going on a bilateral basis. There, it is just politics; it is about the extent to which the French put the need to maintain a common EU position above the potential large-scale short-term disruption that they will face by not having a system in place, and, to be honest, that I do not know.

**Lord Teverson:** When is the time of no return? When is it too late?

**Tim Durrant:** At 11pm on 29 March.

**Lord Teverson:** It is interesting that you think that. Although I do not believe this at all, some people say that it could be a “stop the clock” situation, as they do in other areas, but I presume that is legally absolutely impossible.

**Professor Anand Menon:** In what sense do you mean a stop? Do you mean extend Article 50?

**Lord Teverson:** No, I do not. I am saying that occasionally, reading newspapers or whatever, it seems the EU stops clocks on negotiations and lets them go on—say somehow there was an emergency meeting on 29 March, because we could not sort it out. It seems to me that that is legally impossible, but I am interested, in practical terms, in when it is too late. You are saying it is 29 March?

**Professor Anand Menon:** I do not think the EU has ever conducted negotiations where it is treaty-bound by its own rules to complete them within two years. That is the difference between this and any other set of negotiations the EU has done.

**Lord Teverson:** Exactly.

**Professor Anand Menon:** I suppose the answer would be the latest moment the European Council could meet and decide, by unanimity, to extend.

**Baroness Noakes:** But once the withdrawal Act is ratified—
**Henry Newman:** That is an interesting question: what would happen legally if the UK had passed the meaningful vote, and had even passed some of the legislation required and could therefore ratify, but had not completed all the implementation Bill? I do not know the exact legal position on that and what it would expose you to.

**Professor Anand Menon:** The legal position is that unless the withdrawal agreement Bill is also passed by Parliament, it does not count as ratified.

**The Chairman:** Having dangled it before you, I am disinclined to ask you for too much legal speculation at this point, but it is obviously a concern, as well as what you might call the material issues. We will note that. At this point, we move on to Baroness Suttie’s question.

**Q13 Baroness Suttie:** An awful lot of these questions have already been covered.

**Lord Jay of Ewelme:** By mistake.

**Baroness Suttie:** However, I want to ask specifically about the island of Ireland. Do you think it is fair to say that no deal would have the greatest impact on the island of Ireland?

**Tim Durrant:** Other than the UK, or Great Britain, Ireland is the member state most affected by no deal. Henry has written a lot about this and about the irony of the fact that in trying to avoid any kind of hard border we are potentially creating a no deal that may lead to a hard border.

A lot has been spoken about the economics there. I keep coming back to the security side, because that is less discussed but no less important, and it is something I have done some research into. If there is no deal, the mechanisms by which the Police Service of Northern Ireland and its Irish colleagues, the Garda, work together fall away, basically. It has long been the case that if you speak to people in either of those police forces, they say that before the Good Friday/Belfast agreement and before these EU mechanisms came in, relationships between the law enforcement authorities in the two jurisdictions were very difficult and very politicised, for obvious reasons. Actually, the EU framework has done a huge amount to assuage that, so they are very worried about those falling away.

Until very recently, the fallback beyond the European arrest warrant was the Council of Europe Convention on Extradition, which dates from 1957. Ireland repealed its legislation that allowed for that, so there was no way for Ireland to extradite someone back to the UK. It is now putting that back in place, but it will still be a much more cumbersome process than what there is now.

Again, we can speak to the wider economic and political concerns, but that is a really important aspect that I think deserves more attention.

**Professor Anand Menon:** Over 70 of the no-deal notices refer to Northern Ireland, which gives an indication of how many issues will be
raised. There is no doubt that it will be disruptive to the economy. We have talked about the single energy market. There are also questions of trade and what happens at the border. The picture is slightly unclear, but I cannot believe that the European Union will not want some kind of border in place at a certain point. It might not be immediate, but it will come and it will have an enormously destructive impact on the economics. It will also, of course, disrupt the politics. A recent poll done in Northern Ireland showed that in the event of a no-deal Brexit there would be majority support in the north for a united Ireland.

*Henry Newman:* Not necessarily the Republic.

*Professor Anand Menon:* No, not necessarily the Republic, and you have to take these things with a pinch of salt, because if you are asking in a poll, “If X, then what?”, you are not certain, but it is striking that you can get a majority in the Province, considering where the polls were before this process started.

*Henry Newman:* All that is correct, and there are other issues. How do you maintain the common travel area if you cannot also co-operate on immigration security in the way we are used to? There is an unreality to the debate about the border. Tim referred to my point about the irony of the backstop debate, but we are getting completely conflicting messages from the Taoiseach, at Davos, saying that on one hand there could be a militarised border and then that there would not be a border.

Ultimately, if Ireland does not want to put up a border it will be under pressure from the Commission. It may be left with an invidious choice, ultimately, of a de facto exit from the EU’s customs union. That is something that some key member states are considering: in the event of no deal, how would they keep the border between Ireland and Northern Ireland open? Some sort of checks in the channel between Ireland and the rest of the EU? That is obviously nothing that the Irish want, but it is the reality of the choices that will face them in the event of no deal.

We also hear bizarre statements from the Irish Government and the Commission that, even in the event of no deal, the UK will be obligated to follow various commitments of the backstop, which seems implausible, particularly if we reach no deal because of a rejection of those positions in the backstop.

It is worth making a wider point about no deal. Security and defence is obviously a crucial concern that is too often ignored, but, more broadly, no deal by definition means a breakdown in negotiations, which would have profound implications for foreign policy and for defence. The Foreign Secretary has spoken very powerfully about this. I do not think that message is yet received enough on the continent. It would have effects, medium-term, on UK attitudes towards, say, basing in the Baltic states, or NATO commitments in Romania and so on. That whole level of UK attitudes towards the continent would shift, potentially in a very negative way.
Baroness Suttie: Which member states are least prepared for a no deal at this stage, as far as you can tell?

Professor Anand Menon: It is very hard to say, to be honest.

Tim Durrant: I think it is a proximity question; the ones closest have been thinking about it longer than those further away.

Professor Anand Menon: My understanding is that the French have done remarkably little that is practical to prepare for no deal so far.

Tim Durrant: They are passing quite significant pieces of legislation, protecting the rights of British citizens—

Professor Anand Menon: Yes, but in terms of infrastructure.

Tim Durrant: In terms of infrastructure, there is a long way to go.

Professor Anand Menon: It is worth stressing that the real commercial interests at stake, which European member states are going to want to protect in the event of no deal—commercial interests in France, Italy and everywhere else—are not going to want to have that border open.

It is imperfect, but the only analogy you can make is that when Poland joined the European Union there was a very porous border between eastern Poland and Ukraine. Western Ukraine and eastern Poland were, in a sense, one economic zone. The Poles argued hard that it would be detrimental to the economic well-being of Ukraine if a border were put up. Membership came along and the EU said, “We are having a border”. That border was put up and it did have a negative impact on western Ukraine immediately afterwards, but the European Union’s priority was clear and it was to protect its market.

Henry Newman: But equally you could turn around and use the EU’s own arguments. The EU made a whole series of arguments about how the UK should accept an internal customs border within the Irish Sea, pointing to the example of Spain having some customs controls with the Canary Islands. The same argument could be made in the event of no deal as to how you could manage some sort of joint customs zone with Ireland and the UK. The Irish Government are determined, as are the Opposition, not to have that situation arise.

The Chairman: Lord Teverson, who chairs our Energy and Environment Sub-committee, has had to leave to go to his conference in Denmark. There has been some suggestion, I think emanating originally from the Commission, if only as a nod and a wink, that member states might want to make bilateral arrangements with the UK in relation to fishing quotas. Do you have any knowledge or comment on that?

Professor Anand Menon: I would be very suspicious of that kind of a nod and a wink from the European Commission, because it is in the Commission’s interest not to allow that across the board. I do not think they want to encourage that kind of bilateralism, given their position. I do not know about Henry or Tim.
Henry Newman: The Commission has made a political attempt to link together trade, tariff-free trade in particular, and fishing. These are things that have no natural linkage, it is purely a political goal, for reasons we can well understand. There will be huge pressure to resolve fishing quotas; the EU will come for that whether we leave via no deal or via a negotiated agreement. I have read the same reports that I presume everybody else has.

Tim Durrant: I do not have any more to add on that.

The Chairman: Thank you. The Committee is happy at that point to go on to the next question from Lord Risby.

Q16 Lord Risby: Professor Menon, you made the very telling point that in this no-deal situation the ramifications involve the EU enormously, which sometimes escapes, with the sort of legal framework that is involved; perhaps we do not always think of that in those terms.

To the extent that it is possible to work through the idea that our Parliament would have to have some legislation, as opposed to the practical, functional aspects of what has been done now, is there some view about what that legislation might be about? Do you have any view about the priorities within that legislation to deal with a no-deal situation?

Professor Anand Menon: My overwhelming temptation is to duck that and to say that the IfG has done that work, so I will pass over to Tim, who will be able to answer it.

Lord Risby: You are the one who started talking about the importance of this.

Professor Anand Menon: It is a segue for Tim.

Tim Durrant: I am very happy to trot out one that we prepared earlier. This is something that I need to credit my colleagues for. We think that the Government need to get through at least five pieces of primary legislation before 29 March if we leave with no deal. Those are the Trade Bill, which I understand is in your House; the Immigration Bill that had its Second Reading in the Commons yesterday; the Fisheries Bill; the Healthcare (International Arrangements) Bill, which is about reciprocal healthcare arrangements between the UK and other countries; and the Financial Services (Implementation of Legislation) Bill. There is a question about the Agriculture Bill, we are not sure: the Government have not been quite clear.

That is the primary legislation; you may also be aware of what the Hansard Society is doing to track secondary legislation. It thinks, according to latest government statements, that there are around 600 pieces of secondary legislation that need to be got through before 29 March. Most of these fall under the European Union (Withdrawal) Act of last year, and I think that slightly over half have been laid. I looked at it this morning, and 343 have been laid and 104 have completed their
passage through Parliament. So there is a long way to go in terms of sheer volume.

**The Chairman:** For your information, you might wish to know that this Committee has undertaken, on behalf of the Secondary Legislation Scrutiny Committee, to look at the scrutiny of treaties. We are in active correspondence and are actually beginning to get some results from DExEU as to the nature and scope of the outstanding business.

**Professor Anand Menon:** It is worth adding that none of those measures replaces the bilateral frameworks that we had with the European Union. They are mitigating, to a significant extent, and allow us to continue as best we can, but they are not a replacement for that EU law.

**Lord Risby:** Well, they are transposing in the case of the Trade Bill—I happened to be involved in that somewhat. I think the word is “complexity”.

**The Chairman:** At that point, we will go on to business preparations.

**Q17**

**The Earl of Kinnoull:** Can you give us a high-level view of the overall adequacy of business preparation, and then highlight the sectors that cause you concern—just one or two sectors, because the time is late?

**Professor Anand Menon:** I would stress three areas. The first is food, which the British Retail Consortium talked about yesterday, given our high dependence on imports and on things moving fast if they are fresh. Cars are another area. The Society of Motor Manufacturers and Traders has become increasingly vocal.

The third area I would point to is the sheer lack of preparedness among small businesses, because they simply do not have the resources at their disposal to do what some of the larger firms are doing. Hidden from view, because the headlines are always about the big firms, are a whole host of smaller firms that are either just unaware of the risks that await or unable to plan for them because they do not have the resources to do so.

**Henry Newman:** It is obviously very sector-specific, as Anand said. The chairman of Open Europe is the chief executive of Next, and Next is confident that it is prepared for all scenarios, but obviously clothing is not a highly regulated sector in the way that foods or medicines are.

There are specific problems for financial services, but even leaving with the Government’s Chequers deal on the cards does not actually work; either you are in the financial services passporting system or you are not. So there is a different sort of exposure for those industries. They would still obviously seek equivalence notices. It is very difficult to give a general view, other than that it is sector-specific.

**Tim Durrant:** The only thing I would add is that there is one issue that cuts across sectors, which is about workforce. The Government have committed to protecting the rights of EU citizens living here, but
hospitality and the healthcare sector, industries that rely a lot on EU migrants to the UK, will be thinking about whether their workers are going to stay and whether they need more to keep coming.

**The Earl of Kinnoull:** These are all very helpful thoughts. Do you feel that the Government should be doing anything for these sectors that they are not doing at the moment? I was interested that you talked about the Welsh website earlier. It would be helpful to us if you could give us your thoughts there.

**Henry Newman:** We have still not heard from the Government what the tariff position would be if we left without a deal. We do not know whether we would maintain current EU tariffs, whether we would have unilateral tariff liberalisation, or something in the middle. That obviously has quite significant effects, because putting up tariffs with our biggest trading partner would essentially be an enormous revenue raiser for the Government, but it would be a tax on business. That most basic policy has not yet been determined, even at a political level, as far as I know.

**Lord Whitty:** On day one of no deal, does the EU automatically impose external tariffs on EU exports?

**Henry Newman:** In the case of a total no deal, yes. It is not even clear to me whether the Government have the powers to set tariffs without passing SIs.

**Professor Anand Menon:** There is also the Trade Bill, is there not?

**Tim Durrant:** Or is it the Customs Bill?

**Henry Newman:** The Customs Bill, which got Royal Assent last year, set that out at a high level. I am not sure whether secondary legislation is needed under that to set specific tariffs. As you say, those tariff rates have not been decided yet.

**Tim Durrant:** I think you need a specific SI to set the tariffs.

**Q18**

**The Chairman:** Would you say a word in parallel on civil society awareness? I am thinking at the back of my mind about such things as the occasional pensions scandal when people claim they were not informed, or that changes that were detrimental to their interests were introduced without adequate notice, or in some way they did not know and had a nasty shock, to put it in simple terms.

Do you sense at all, not least because a lot of people have probably had rather a lot of listening to us talking about this, from a position at least of some knowledge of it, whether people have switched off altogether and will not thank us if they suddenly have a nasty shock? I remember a farmer, sadly deceased now, who was a neighbour of mine and a tree producer. He said, “They wouldn’t do that to us, would they?” I said, “I don’t know. They might”. What is your sense of the national preparedness for this if that were to happen?
**Professor Anand Menon:** My only experience of this is anecdotal from events around the country. I know for a fact that people are starting to worry about holidays and travel after March. The most commonly asked question if you do a public event is, “Can I book to go abroad after the end of March?” Those concerns are starting to register with people.

I am not sure that civil society as a whole is aware of the complexities or the scale of things that might happen, although as we approach the possibility of no deal I think we will have more and more days like yesterday, when the newspapers are full of headlines about food shortages and the like. At that point you will start to see a shift in public attitudes and public concerns.

**Henry Newman:** On a counternote, one of the dangers we have seen recently is that the public are becoming increasingly dismissive of some of this—or some elements of the public are. That is a huge area of concern, because the referendum campaign made very strong arguments about the economic risks of leaving and the judgement of many of the public is that those have not materialised. That has led to a sense among some that there is some crying wolf happening.

We have seen government reports of very extreme possibilities of running out of purified water, for example, in the event of no deal. My understanding is that that was one of the many contingencies that the Government identified would happen if they took no preparatory steps at all to mitigate certain problems. There is a danger that the public become completely immune to some of the real risks from hearing too many inflated stories about risks that have been managed.

**Professor Anand Menon:** But the boy gets eaten by the wolf at the end, does he not?

**Henry Newman:** That is totally correct.

**The Chairman:** We have had a good run through this. Do colleagues have any other questions? There is an issue that we touched on slightly about negotiating leverage. Baroness Noakes, do you want to come back on that?

**Baroness Noakes:** I want to go back to question 9, which we partly covered when Lord Teverson intervened earlier. A more specific question is how long a no-deal situation would last. Would it actually be temporary, because there would be an incentive for both sides to go into negotiations to have elements of a deal, or mini-deals, or a full-blown deal afterwards? What is your assessment of the period of being literally in a no-deal environment?

**Professor Anand Menon:** First, there is a far stronger incentive for us, because the impact on us will be worse than on other member states. There will be massive pressure on some Governments, such as the Irish. We then enter the phase where everything I hear in Brussels tells me that the plan is to play the waiting game—to wait for the stresses and strains here to become such that we are forced to go back and say,
“Okay, we need to do something about this”. At which point the plan is to say, “Okay, these were our three priorities”.

I do not know whether that line will hold, because there will be massive pressure in Dublin. Some of the northern European states will be feeling it as well, so it is impossible to say at that point, I would have thought. We should not equate what we experience with what other member states will experience, because it will be worse here. The impacts will be felt more strongly here.

**Henry Newman:** That is definitely true. There could be very profound effects if the UK did not reach any agreement—there would be a long dispute over money and so on. That would create huge problems for the Commission, but as Anand said the problems would be very profound on the UK side.

It is impossible to predict. This is not a substantive question but a question about how the political fallout would evolve. If you look even at what happened at Salzburg, say, where there was a sort of tiff over the Chequers plan, the effect on public opinion and attitudes towards Europe hardened very strongly against France, say, and Macron’s intervention. You can easily imagine a scenario in which, a month into no deal, this was all blamed on the French and “those people in Brussels”, and the public attitude hardened further and further against any sort of compromise. Those are all political questions that are quite hard to discern.

One other nuance that is important, and which I did not touch on before, is that some reports have been picked up by our Brussels office of a shift in the way the negotiations are now being handled, away from Task Force 50 and Team Barnier towards more direct control from Selmayr and Tusk’s chief of staff.

There might be some advantages in this. At one level, some member states are upset about it—particularly, as I understand it, the Irish—but the other side of that is that Selmayr was not responsible for the red lines and the negotiation that Barnier and his team produced. There may be some flexibility there to push this over the line. That is just a personal anecdote, but I think it could be an important one.

**Baroness Noakes:** If you compare going into a no-deal scenario and needing to negotiate some kind of agreement, how would you compare that to the position of going in via the withdrawal agreement, with the backstop, which of course we cannot determine how to get out of, and therefore our negotiating leverage is relatively diminished? What would you say is the balance between the two for the UK?

**Tim Durrant:** Henry alluded to this earlier, but Sabine Weyand, Barnier’s deputy, alluded yesterday to the fact that if the UK comes back after no deal and asks for any kind of agreement with the EU, the first questions would be, “How are we going to keep the Irish border open?”, “What are you going to do about EU citizens living in your country?” and “Where is
our money?” In a way, they are not different starting points, if that makes sense: those are the key issues that they want to see resolved first.

**Professor Anand Menon:** But without the legal provisions that Article 50 provides to agree them. If that turns out to be true, we will be negotiating the same things but in a situation where it is far harder to strike an agreement, because the special legal provision will not be there.

**Henry Newman:** My overall concern about the Government’s approach has been that, while I understand that the backstop is highly suboptimal and needs to be improved in certain aspects—Lord Bew talked about the problems it poses intrinsically to the Good Friday/Belfast agreement, the exit mechanism needs to be clarified, we need more detail on what alternative regimes would be acceptable, and all that—the Government’s approach of avoiding the backstop at all costs is a complete mistake.

Strategically the UK’s position should be that we will go to the backstop as soon as possible, at the end of the 21-month implementation period, and be happy to negotiate from there. The backstop provides some surety, although even getting there would require a successor regime on aviation, on data, on security, on fisheries and on all kinds of other things.

If the UK’s position is that, straight off in the transition or implementation period we will do whatever we can to avoid the backstop, that is a very weak position. If our position is that we are willing to go to the backstop, we will negotiate from there and we will slice the elephant in chunks, that is a stronger place to start.

**Professor Anand Menon:** That implicitly recognises the point that they see the backstop as a massive concession to us.

**Henry Newman:** As a final anecdote, I had a discussion with an EU figure in which I was challenged about how I saw the long-term relationship between the UK and the EU. I said that I did not know but that I would start from the backstop and be happy to sit there and negotiate from there. My interlocutor was horrified at this and said, “You can’t use the backstop like that”. That underscored how, for the EU side, the backstop was an uncomfortable compromise. It was obviously not one that landed very well here, but—

**The Earl of Kinnoull:** That is a fabulous story, but I want to check one very small thing with Anand. You said earlier that the pressure will be on the UK immediately after a no-deal exit. I wonder whether, in reaching that conclusion, you took the money factor into account. This Committee has done quite a lot of work on the money factor, and it seems to me that the EU structure would really suffer from the sudden disappearance, in an unstructured way, of the British money. Have you taken that into account in reaching your conclusion?

**Professor Anand Menon:** Absolutely, and the EU want that money. I think the EU calculation is that they can ask for that money either via the
withdrawal agreement or via playing a waiting game post no deal. The assumption in Brussels is that we will go back to the table. They do not know how long it will take, but the assumption is that when we go back to the table, one of the first things they will say is, “There is that small matter of the exit bill and your liability”. So I do not think that they see this as an either/or, and I think you are absolutely right.

One of the mistakes of the negotiation, in a way—David Davis was right, back at the start of the summer of 2017 when the talks started—was that if we sign away the money before talking about trade we lose some leverage. But I do not think that the EU sees this as a choice between either having the money or having no deal. I think the way they are gaming it is that they either get the money in an orderly fashion, with the withdrawal agreement, or, if not, “They will come back and negotiate and we will ask for the money at that point”.

**Henry Newman:** Particularly since even those in the Conservative Party who are actively advocating a no-deal exit—a relatively small number of MPs—are saying that they would seek a deal in the medium term. We have not talked at the more macro level about the bizarre conundrum of being happy to leave on WTO terms but also wanting to reject the backstop because it prevents you doing trade deals. If they are so keen on trade deals, why do they not want a trade deal with our biggest partner? That is one of the bizarre realities in the current debate from the no dealers.

**Tim Durrant:** A related question is what leaving with no deal means for our leverage with other countries. We are going out to seek agreements with partners around the world, and the fact that the UK got so close, within touching distance, of a deal with our biggest partner and then walked away from it raises questions about our reliability as a negotiating partner.

**Lord Risby:** I make an observation. We are presupposing that the British Government have a position. I am not trying to be funny; at the moment, we do not have a position. I do not know what is happening here today, and I am not defending the European Commission in any way, but from its point of view it would be interesting to know what it was actually meant to be discussing. Thus far, it has not been very clear. We might know a bit more today. That would be a useful step in advancing down the route we are talking about.

Q21 **Baroness Suttie:** Do you think that trust is now a major issue? Has trust broken down, and can it be rebuilt?

**Professor Anand Menon:** Obviously, trust is a major issue and we have squandered some of it. We can exaggerate, because the EU is such a legalistic body that, whoever we were and however nicely we had played for the last two years, the same stipulations about the need for judicial oversight and the need for reassurance about Northern Ireland would be there.
I do not think it is simply because these talks have become quite bad tempered that those sorts of things are there. I think that is just the way the European Union negotiates; it wants the surety of its legal system and it wants firm legal guarantees for the Republic of Ireland. I do not think that would have differed too much anyway.

As for the broader politics, the way the negotiations have gone has soured relations, which might have negative implications going forward, but as for the substance, I am not so sure it has been that big a factor.

**Henry Newman:** There is also a trust issue within our Parliament, quite evidently, between the Front Bench and Back Bench within the Conservative Party and across the Commons and the Lords. Trust is clearly an issue at the EU level, but it seems that the UK Government have been very bad at explaining, not just domestically but at EU level, what we are trying to do.

I am horrified to sit down sometimes with, say, French counterparts who ask, “When are you going to decide whether you want to be a European country or an American country?” This is post Chequers, when the Government have clearly pivoted back to Europe and tried to be as close to Europe as possible. That answer from the Government is still not heard.

You could make a strong case for saying that the Government’s entire Brexit policy—Chequers and so on—was designed to resolve the Irish border issue, yet the Prime Minister has never really been given credit for sacrificing the unity of her Cabinet and upsetting a lot of her Conservative Back-Benchers and Members to try to find a way to resolve this difficult question. The trust issue cuts both ways.

**Q22 Lord Whitty:** Since you are here, I was going to ask you about the possibility of extending Article 50, given that we are running out of time to do the deal by 29 March. From your understanding of the European end of it, how likely is it that they will accede, and for how long? Obviously there is the difficulty of the European elections, and one of the Motions before the House of Commons is to extend to December. Do you think that would be acceptable to the EU? Would that involve us, domestically here, in the European Parliament elections?

**Professor Anand Menon:** However unwilling they are, and they have made it clear that they would be unwilling to extend unless there was a good reason, it would be very hard for them not to extend to July if they thought that would increase the prospects of a deal, which presumably it would.

Thereafter, I know that there are significant legal issues around the European Parliament. People are worried about legal action being taken by people who have been deprived of a vote and about the legality of a European Commission that was selected by a European Parliament. That I will leave to the lawyers. I know there are discussions going on about this at the moment, but I do not know where they have got to and there is
certainly no firm position on this. I think they would much prefer to have this out of the way, so that the European Parliament elections were not an issue.

**Henry Newman:** Things have shifted. Last year, it seemed very clear that they were willing to countenance extension only for a referendum or for a general election. Then a possible technical extension got added on. Now, there is a very strong view that they cannot refuse an extension, because they would not want to look as though they were creating a no-deal outcome.

We have had the former President of the Council and the EP’s Brexit co-ordinator saying, “Nothing beyond the end of June”. I am hearing that the French would be keener on a longer extension, as I said, of 21 months. If we go beyond the end of June, the European elections are a problem, not just because the Commission side or the EU side are worried that we might send, as they see it, 73 Nigel Farages or Tommy Robinsons to Brussels and Strasbourg, but also because, as I understand it, we would be denying the additional MEPs that would be allocated to the other member states. So there is a double problem there. If we leave half way through the period of the European Parliament, what do you do with the other MEPs for the other member states?

There are lots and lots of issues, but ultimately if they want to resolve those to avoid a no deal, I presume they can find a solution.

**Q23 The Chairman:** Colleagues, it occurs to me that the provisions of Article 50 do not extend to the deliberations of this Committee, as far as I am aware, so we have no deadline, time limit or whatever. We have had a very intense session for an hour and a half, and we are very grateful for that. Before I wrap it up formally, I just wonder whether our panel members would like to add anything that we might like to attend to as we look into this further.

**Professor Anand Menon:** The conclusion from this is that no deal is an outcome best avoided.

**Henry Newman:** One small detail that we did not touch on was GATT XXIV, which is often held up as a panacea for an agreement. The problem with that is that it cannot be used unilaterally in the way that certain advocates for no deal suggest. That was the only thing I did not touch on that I was concerned to add.

**Tim Durrant:** The only other thing I would add is the issue of UK citizens living in other member states. Most of them have said that they are prepared to protect their rights, but it is a legal process that needs to happen in each country, and obviously that is not within the Government’s gift.

**The Chairman:** On behalf of the whole Committee, I think you very much. It has been, if I may say so—I am hardly surprised—well informed, articulate and stimulating, and it is an area that we have given some attention to. I think you will recall that this Committee published *Brexit:*
Deal or No Deal, which reached the same conclusion as Anand Menon some 18 months ago. Obviously different members of this Committee will take different views, as indeed you have on certain matters. It is immensely helpful to us to take this forward, and we are very grateful for your time and attention.

Tim, you mentioned particular information that you can let us have. If it is not self-evident, I confirm that we would very much like this to be a continuing and open relationship, and if any of you have things that you want to share with us, do. In return, given that this is a public evidence session, we will send you an uncorrected transcript to check for any factual errors.

It would be extremely remiss if I did not formally thank you on behalf of the Committee. We appreciate it very much. It is nice to hear some coherent, and shall we say responsible, voices in somewhat strange and challenging political times.

With those remarks, and that expression, we close the formal session.