Select Committee on the European Union

Corrected oral evidence: David Davis evidence session

Tuesday 11 July 2017
3.55 pm

Watch the meeting

Members present: Lord Jay of Ewelme (The Chairman); Baroness Armstrong of Hill Top; Baroness Browning; Lord Crisp; Lord Cromwell; Baroness Falkner of Margravine; Baroness Kennedy of The Shaws; Earl of Kinnoull; Baroness Neville-Rolfe; Lord Selkirk of Douglas; Baroness Suttie; Lord Teverson; Baroness Verma; Lord Whitty; Baroness Wilcox; Lord Woolmer of Leeds.

Evidence Session No. 1 Heard in Public Questions 1 - 12

Witness

I: Rt Hon David Davis MP, Secretary of State for Exiting the European Union.
Examination of witness

Rt Hon David Davis MP.

Q1 The Chairman: Secretary of State, as you know, you are always extremely welcome before this Committee. I am standing in for our Chairman, Lord Boswell, who is unwell at present, and I am delighted to do so on such an auspicious occasion.

Perhaps I could begin by asking the first question. Could you tell us something about the negotiations that you have started with Michel Barnier? What progress has been made so far in negotiations at ministerial level? Perhaps you could extend that by saying a little about what the structure of the negotiations will be and the relationship between the negotiations at ministerial level and those going on at official level.

Mr David Davis: Thank you, Lord Jay. When you have the chance, please give my best wishes to Tim for a quick recovery. It is a pleasure to be here and not to be stopped, as I was last time, in effect by being imprisoned at the other end of the House. You will remember that the terrorist event stopped our hearing.

You are quite right. The negotiations opened between Michel Barnier and me and our corresponding teams of SROs from various departments, led by Ollie Robbins. The opening was about the sequencing we had discussed. You will remember that we challenged the Commission’s argument in the first instance that it would simply be about what it termed the divorce proceedings, and then we would get to ongoing matters in perhaps a couple of years’ time.

The outcome is that we are addressing three issues in working groups: citizens’ rights; what they call separation issues—a whole bundle of things I can go into, if you wish; and financial matters. There is a dialogue—if you like, I can explain why there is a difference—over Northern Ireland between the leading Civil Service negotiators, Ollie Robbins and Sabine Weyand, with the intention that Michel should be able to recommend going into parallel negotiations in October or November. That is what he wants to do. He has to go to the Council and say that he thinks sufficient progress has been made. That was the draw-off.

We were very keen to make an early start on citizens’ rights. Bluntly, I view it as a moral issue. There are 4 million people—a large number—who are susceptible to being anxious about their future: 3 million European citizens in the UK and approximately 1 million British citizens on the continent or in the EU more broadly. That was our biggest priority.

To be fair, I think the Union shares that view. Its other big priority is probably money. The series of separation issues covers everything from goods on the market, as that is technically known, through to whether
the European Court of Justice should have locus in sovereign base areas in Cyprus, and a number of other things along the way.

As regards the circumstances of Northern Ireland, there was some sensitivity from the Government of the Republic of Ireland about treating that simply as another subject category, so we decided to treat it as a rather special dialogue. My aim was to get it started soon, although we do not expect to finish it until quite close to the end because of the other technical issues to be resolved, which I can discuss if you want. It will also depend on the final outcome on customs, free trade, citizens’ rights and so on.

**The Chairman:** If an agreement is reached, and let us hope that it is, is that put on one side until everything is agreed? What happens as you go through? I assume that some issues are more complicated than others, some will not be resolved, some may be resolved. How do you see that going forward?

**Mr David Davis:** As you well know from your own history, the favourite phrase of the European Union is that nothing is agreed until everything is agreed. That is its stance. We rather agree with that, because we do not see the separation being agreed without the ongoing arrangement. We point to Article 50’s wording for that reason. That said, on an issue such as citizens’ rights, where confidence is quite important early on, I do not expect that we will get to a treaty in the immediate future, but I hope we get very substantive, detailed heads of agreement, which we can, as it were, initial and say that is what we want at the end game. I think that will give people a degree of confidence in their own lives.

**The Chairman:** Would that apply both to EU citizens in the United Kingdom and UK citizens elsewhere in the EU?

**Mr David Davis:** That is what we hope. That is what we are aiming for.

**The Chairman:** A number of us have received messages and emails over the past couple of days from UK citizens in the EU saying that it is very important that they should not be forgotten in this debate. We will come to that later.

**Mr David Davis:** On that point, our entire strategy has been to bind the two together. There has been a lot of rhetoric about making people into bargaining chips. We do not want anybody to be a bargaining chip; we want the whole thing to be settled as one. We think it is an issue of civilisation as much as anything else.

**The Chairman:** I have one further question on the sequencing. In your own minds, do you have an idea of when you might move from discussing the withdrawal agreement to discussing the longer term and the transitional arrangement? Is that sequence beginning to be clear?

**Mr David Davis:** It is beginning to be clear. Michel would like to go to the Council in October or November, because it holds the lock on that, to say that now is the time to go to the next stage, which will be, in parallel,
all the free trade, customs, justice and home affairs issues, and transition arrangements, too. I have avoided the phrase “transition arrangements” because it is so vague. We have used “implementation phase”, but for shorthand you can use “transition arrangements”. What has not yet become clear—it is quite difficult, logically, to disentangle—is how we can reasonably bring to the front of the discussion the issue of transition. It is quite hard to know what transition looks like unless you know the beginning and the end. I do not want to have a negotiation about that as well, but, generally speaking, we want to accelerate it as fast as possible.

Baroness Wilcox: Do you see any thawing of attitude by Michel Barnier at this early stage? It would be very nice to think that you could.

Mr David Davis: I dealt with Michel Barnier 20-odd years ago when the Chairman and I shared a professional interest in this area. He has always been very upright and quite a principled man in his approach to things. He is very French, very logical and quite tough, but not wholly inflexible. My best evidence for that is more recent, when he was the Commissioner for financial services. Initially, the City of London recoiled because he was seen to be so tough-minded about it, but eventually he got to an agreement that everybody thought was reasonable. The same is true here. He has been given some quite narrow guidelines by the Council and the Commission, and he is operating to those. I think he wants this to be a success every bit as much as I do. That is perhaps the best way to put it.

Q2 Lord Woolmer of Leeds: You undertook last September to provide at least the same level of information to Parliament as the Commission is providing to the European Parliament. Given your commitment to transparency, how do you intend to fulfil that undertaking?

Mr David Davis: We have a member of staff appointed to do just that. His primary aim is to make sure it is covered. To give it some context, I think I have made seven statements to the Commons so far, and they have all been matched in the Lords. We have had about half a dozen debates in which I have appeared, including the one this week, on themes related to Brexit.

As to documentation, I heard the Chairman on the radio this morning refer to the Lancaster House speech, but in addition there are two White Papers—the main negotiating White Paper and the great repeal Bill White Paper—and the Article 50 letter itself. In addition, we have provided the citizens’ rights document, which is quite extensive. The Commission publishes its own working papers before each negotiating round. Citizens’ rights are, as it were, free-standing, but when we come up with either free-standing papers or responses we will publish them as well. Later this week, we may well do some in response for next week, as long as I can get through the clearance procedures, with which you will be familiar, quickly enough. We are being as forthright as we can. Obviously, it is a negotiation, so we cannot say absolutely everything up front. To put it in comparison, I have made seven statements and about half a dozen major
speeches in the House. I think Michel has made two to the European Parliament in the same time.

**Lord Woolmer of Leeds:** The Commission has published several position papers, working papers and so on. In that regard, the Government have published very little. For example, there is the Commission’s paper on the essential principles on financial settlement. Why have the Government not published anything along those lines?

**Mr David Davis:** The one you mention, financial settlement, is the Commission’s ask. As the Chairman will recognise from past experience, we are now going through that line by line, almost word by word, to see exactly how much we think it stands up. Remember what we have said: we have said that we will meet our international responsibilities and expect others to meet their responsibilities to us. Those are two sides. That does not mean we are going to accept verbatim what they make as their first claim; we will go through it piece by piece. Where we were putting forward a counterproposal, or a proposal, as in the case of citizens’ rights, we published a detailed and extensive paper, right down to recognition of professional qualifications and so on. For something like the financial paper, we will go through it in session and debate it with the Commission. At the end, we may well publish an alternative proposal, but at the moment the proper approach, to get the right outcome in the negotiation, is to challenge what it is doing. It will vary piece by piece. We may well publish some things later this week. It will depend on our clearance procedures. They will not be as lengthy as that, but they may be responses to some of the statements the Commission has made.

**Lord Woolmer of Leeds:** That sounds rather as though the Government will not publish their own proposals but will wait until the Commission publishes its proposals and will then respond. That makes it difficult for Parliament to know what the Government seek to do. Given your distinction between papers the Government produce and publish and the areas where you are waiting to see what the Commission proposes and which you will then negotiate in private, it would be helpful if we could know which are the areas where you will take which approach, because Parliament finds it very difficult to know what the Government’s objectives are in a number of areas.

**Mr David Davis:** It is fairly obvious that the objective in the case of the financial settlement is not to pay more than we need to, but there will be a process of challenge, which has already started in the negotiating process, to establish whether we believe in that particular case that the Commission has made a legally defensible argument. Just as in the House or a court of law, some of that is done in writing and some of it by face-to-face challenge. At this stage—the so-called divorce or separation stage—to a very large extent what is being asked is mostly being asked by the Commission, and what is being volunteered in the case of citizens’ rights is by us, because we, along with the Commission, think that needs to be resolved quickly.
Later, when we get to the stage of the ongoing relationship, I think you will see it as being slightly the other way round. We will be the ones arguing for a free trade agreement and what that would look like. Of course, a free trade agreement, albeit a comprehensive one, will have all sorts of subordinate issues, such as data approval and air transport agreements. There will be a whole series of things where we, rather than they, are doing the asking.

Lord Woolmer of Leeds: Can we expect the Government to publish their proposals on those important issues in the early autumn?

Mr David Davis: Yes, where it is appropriate. Throughout all this, I have said that we will be as open as we can be, subject to not undermining the negotiations.

Lord Woolmer of Leeds: In our report on parliamentary scrutiny we suggested that the Government should be willing to share sensitive documents with Committees under conditions of confidentiality. We have heard nothing from you on that. What are your thoughts on it?

Mr David Davis: I was asked about it on my first appearance before the Committee, and Lord Boswell used the ISC as a comparison. I do not think that was a good comparison. I said that because in effect it was appointed by the Prime Minister, but more importantly its reports were redacted by the Prime Minister. It is one thing to say that we can tell you some aspects of what we are doing, subject to its being held confidential and redacted from the report, but I do not think that would lead to a very good Select Committee outcome. I have said that there will be some privy counsel-level briefing. Bluntly, to that end, my opposite number in the Commons, Keir Starmer, has been raised to the Privy Council in the last week or two with my support. That was deliberate. That is one step, but beyond that we have not gone further in our thinking.

Baroness Neville-Rolfe: Still on transparency, will you be publishing the Commission papers that are forwarded to the Council and sending them to Parliament with memoranda for scrutiny in the normal way? I think that would be quite helpful. Have you thought about how we piggyback on the four-week negotiating cycle that you have agreed with Mr Barnier? Is there an opportunity to report back to the Select Committee, for example, as part of that process, even during the summer holidays, because we are all very concerned about what is going on?

Mr David Davis: I have not thought about the Select Committee at the moment, but let me come back to that. In general, my aim is to report back to Parliament as soon as possible. I will report back in the Commons—and I imagine Lady Anelay will in the Lords—on the progress, or non-progress if that is what it is, immediately after each stage of negotiation, where it is possible. Recess does not necessarily allow that. We are meeting next week. If we finish on Wednesday, I will report on Thursday. If we finish on Thursday, I will report in September. The general aim is to come back as quickly as possible. Following on from
Lord Woolmer, the aim is also to provide what documentation we can, where that is possible, so that people can discuss that. I have not given any thought to how we maintain current notification of Select Committees. I am interested. Do you have any proposals? Clearly, the Select Committees will be the best informed of groups in terms of responding.

Baroness Neville-Rolfe: Perhaps we could make some proposals to you, but we thought that linking into the four-week cycle and having information provided to Committees in both Houses could be valuable to us, and possibly to you as regards response.

Mr David Davis: We can certainly look at that. My first concern was to keep the House absolutely up to speed. From my own experience as a Select Committee Chairman, I tend to think of Select Committees as moving at slightly slower speed but sometimes getting more deliberate outcomes. Let me give some thought to that and I will come back with proposals.

The Chairman: This Select Committee takes a very close and pretty constant interest in the negotiations.

Mr David Davis: I hope so.

The Chairman: A sub-committee of the Committee is going to Brussels tomorrow to meet Mr Verhofstadt and Mr Barnier. We would also be very interested, although the month of August is not all that far away, in getting an indication during the summer months of the progress that has been made. I am sure we could find ways to be present effectively during the month of August to get a helpful response. Can I leave that thought with you? Perhaps we can take it up afterwards.

Mr David Davis: Let me think about it.

Baroness Neville-Rolfe: That would be very helpful. You gave Lady Wilcox a view about Michel Barnier. We, too, have had an opportunity to look at his speech, which is quite gutsy and fierce.

Mr David Davis: Last week’s.

Baroness Neville-Rolfe: Yes. Do you think the Commission and other member states, which are also important, are looking for a deal on terms that any reasonable person would accept?

Mr David Davis: Yes. The institutional view and the member state view is slightly different. You will remember that we had a slightly difficult month or two after the referendum when there was talk of punishment and Lord knows what else. I think that was mostly an emotional response, but not entirely. The bit that was not entirely an emotional response was the feeling, among some members of the Commission in particular, that they did not want us to appear to profit from the decision in case it was an incentive for somebody else. I have always viewed that as a fear without foundation. I do not think anybody is likely to follow us
down this route. We are a very different country. Probably the nearest to us in global reach is France, which will not bail out of Europe, so I think that fear has receded a bit. However, there are no doubt some members of the Commission who would probably like this to be a rather difficult process for us.

Against that, 27 member states have been very disciplined about maintaining the line, staying within the solidarity of the 27, but they have their own strong interests. Belgium, Holland and France have strong interests in the trade position. I understand that at the Council a couple of weeks ago, after the Prime Minister left the meeting, when Barnier presented to the Council of 27, President Macron raised the whole question of when it would get round to the issue of trade and said that these were just technicalities. I think he was followed in that argument by the Prime Ministers of Belgium and the Netherlands.

Part of my job has to be to try to make sure that the member state interest is vocalised, not publicly in public speeches—member states will not do that, and I do not blame them for not doing that—but inside the Council and when they are talking to the Commission itself, so that the Commission understands very plainly that this is about the collective benefit of everybody. My view throughout the whole process is that we will succeed if we can identify a common set of policies that serve everybody. That is the aim. What you have highlighted is the central problem I have to address, which is making the member state interest manifest.

**Q4 Lord Whitty:** Bluntly, Secretary of State, can you clarify whether the general election has changed anything from the Government’s point of view? According to commentators, allegedly based on leaks, there has been a softening of the position compared with the Lancaster House speech in relation to possible continuing membership of the single market or the customs union, at least on a temporary basis; in relation to a transition period of some sort; and in the response to Michel Barnier’s position. Has it actually changed, or are we still in the same position? Are the Government going to say anything publicly in that direction?

On the timing, there may be some anxiety on the other side to get to the trade talks, but do you still believe, because it appears that Michel Barnier does not, that we can reach a comprehensive trade agreement, even in broad outline, by March 2019? You have already indicated how complicated that might be.

**Mr David Davis:** On change, I have read the same newspapers as you, with equal amusement. There has been a degree of misinterpretation. When we arrived at the position outlined in most detail in the White Paper, but outlined in the Lancaster House speech, it was not about what we could get away with but what the optimum position would be. What is the best outcome that meets the requirement of the referendum? The referendum was judged as bringing back control of borders, laws and money. The single market issue is dictated by the decision to bring back control of our own borders: that is, an end to free movement. When you
see Barnier, no doubt he will say to you that you cannot have single market membership unless you accept free movement. We accept that, so we are outside but seeking access; similarly, with the customs union. It would be nice to be inside the customs union, but in order to get the economic upside from Brexit, we need the ability to do negotiations with the rest of the world over free trade.

What has been conflated a little bit has been the approach to the implementation stage, transition phase or whatever phrase you like to use.

To jump to your second question, I believe that we can get a free trade and customs agreement negotiation concluded in the period. However, it will be much more difficult to have all the practical implementations that go with it. That is not so much for us; it will be quite tough to get our customs in the right place in two years, but it is doable, spending a bit of money. To get the French, Belgian or Dutch customs in the same place in two years is a different issue. That is why there is a transition period. There is a whole series of practicalities. I think people are misinterpreting the statement that we might have to do something in the transition period as an abandonment of the original aim. The answer is that in those terms the major elements have not changed. Of course, parliamentary arithmetic, as you know as well as anybody, will dictate a certain sensitivity, but I do not think the principles have changed that much.

There is a certain amount of catching up by the public media as to the internal thinking of government. I have been debating for some time with colleagues in government, most obviously the Chancellor but others, how we manage transition arrangements. I have had this discussion with Lord Jay. I did not want us to be in a position of being the demander for transition arrangements when it would be beneficial to both sides. We have had to manoeuvre, as it were, so that everybody understands where the benefit lies. That means we did not talk earlier about transition as much as we do now.

I think the press has overplayed any sort of softening, as you put it. The truth is that we are now getting to the point of dealing with practicalities. The Labour Party’s phrase is, “We want a Brexit for jobs”. Of course we do; we want a Brexit where the outcome is good for the economy, full stop, whether it is the creation of jobs, or wages, skills or whatever. That has always been the case, but it has become more apparent.

**Lord Whitty:** To pin you down slightly more on the timescale, you see a “transition period” as implementing things that have not already been agreed in a phased way.

**Mr David Davis:** Yes.

**Lord Whitty:** Given the complexity of the things that have to be agreed and the timescale that we have for that, it looks a pretty impossible task, and it seemed to me that Michel Barnier was making the same point the other week.
**Mr David Davis:** I cite as my evidence Karel De Gucht, who used to be Trade Commissioner. He is not very friendly to Brexit. He hates the idea, yet he said in terms that there are trade deals that take two, three, four, five, six or seven years, but that is not a technical problem; it is a question of whether the political desire is there. If the Council wants to achieve it in two years—we come back to the point made by Baroness Neville-Rolfe—it can do it, in the timetable. The technicalities can be achieved. The question is political will. I think it is there, but we will test that by about Christmas.

**Baroness Armstrong of Hill Top:** I was interested in what you said about the 27. It looks to us as if they are getting their act together. In one section of Barnier’s speech last week, he said, “For these negotiations to succeed, and we sincerely want them to succeed, we will have to move through the successive stages one by one and keep our calm. There will never be any aggressiveness or arrogance on my part, and I recommend all to adopt the same attitude”. He hints in other areas that there are some people from the UK who keep saying things that put the strategy you have been outlining in some doubt. This morning, the Foreign Secretary said that the money it appears the EU is asking for is extortionate and an appropriate expression is “Go whistle”. The truth is that we all read this; the Europeans read this. He is not the only one; other members of the Government say things that blow the strategy off course.

For me, that is the biggest impact of the general election. It happened a bit beforehand, but it is happening loads now, so those of us on the outside do not know what is happening and who is in control. Is anybody going to get the tone right throughout this process? You are talking about the gap between full single market membership and a good free trade deal on jobs and so on. We can get there only if we in this country agree on what that means, and others agree, but at the moment I do not have a clue what you or the Government mean by it.

**Mr David Davis:** I try to be as clear as I can. Let me talk a little about tone and about communication with our continental partners. We have had the first experiment in this, as it were. You will have to get the Foreign Secretary here to explain his views if you really want him to. I will not comment on other Ministers. You will see two levels of knowledge when you go to our continental partners. You are quite right. They read all the British newspapers and, if anything, they take them too seriously. That is what I say to them. It was the subject of a humorous exchange between Jean-Claude Juncker and me last time I saw him.

More importantly, in the context of 2017, very little of what happens here percolates across. To give an example, I remember talking to the Austrian Foreign Secretary, who is turning into a very good friend of mine. About two months ago, we were talking about citizens’ rights. I explained what we wanted to do, and he said, “You had better come to Austria and say that, because nobody in Austria knows it”. Our bigger
problem is not the noise; it is getting the argument across. The Monday after the Prime Minister announced the citizens’ rights policy, 26 of the 27 embassies—not Ireland, because there is a different policy—published the policy in the main newspaper in every capital. There was an extensive op ed on it, and every ambassador was sent out to do interviews on the issue to explain it in detail. The real issue of getting the message across is at that level, because the people have to understand—the people of Slovenia, the people of Hungary, the people of France.

**Baroness Armstrong of Hill Top:** And the people of the north-east and the people of Wales.

**Mr David Davis:** I am carrying out the negotiation hopefully on behalf of the people in the north-east, not with them. The truth is that we were trying to get that point across, and I think we did so successfully. As an initial response there was a stand-off, but a few days afterwards, from most of those countries—not every one—we were getting a positive response. I have to worry about getting across the clarity of our offer, because the offer is a good one.

**Baroness Armstrong of Hill Top:** The discussion that we have heard within government around a transition agreement or implementation period, whatever you like to call it, has varied enormously between the Chancellor talking about no cliff edge, and therefore raising the question of single market and customs union membership continuing, and others saying something very different. Where do you think that stands?

**Mr David Davis:** Leave aside the briefings, which I cannot speak for, and you will find that in public statements it is very hard to put a cigarette paper between the Chancellor and me on transition or implementation agreement, because we have discussed it at length, virtually weekly since Christmas last year. You will find similarly that in another controversial area—migration policy—we have both said time and again that bringing back control of migration policy to the UK is not the same as slamming the door. We want to maintain the attraction of talent to British industry and we do not want to see labour shortages in the UK economy, or parts of it; that is where we come back to Northern Ireland and other places. I am afraid you have to look past the briefing at the official statements, because that is what the real policy is, not what you see in some unnamed, unspecified briefing from an unknown person.

**The Chairman:** We must move on. Baroness Browning.

**Baroness Browning:** Secretary of State, the Government have made it very clear from the beginning that home affairs and justice matters are a high priority for agreement. Since the election, has there been some movement in the approach to the European Court of Justice? For example, it is very hard to see how the European arrest warrant could be maintained at the level it is now without the European court being involved. Is that an area where you feel there needs to be a bit more give and take, or a softer line?
Mr David Davis: You are right: justice and home affairs are very important, and this Prime Minister, of all Prime Ministers, takes it incredibly seriously, as you might imagine. The European arrest warrant is quite a good example. Our view on appropriate jurisdiction is territorial. If we issue a European arrest warrant, if we have some analogue after 2019, as I think we will—or maybe after 2021 if that is when the transition runs out, or whenever—after the conclusion of our negotiations and departure, you would expect that within the European Union to be subject to appeal all the way up through the normal national courts and from them to the ECJ, inside the ECJ. If a Polish police force submits a request for a British citizen in Britain, or anybody in Britain for that matter, it will go up to the British Supreme Court.

We have similar arrangements with the United States, with extradition arrangements that operate under each court system. You do not need to have extraterritorial reach for a court for it to work. You find the same thing in data. Let us imagine that we have data applications and we are asking a foreign state—another state—to impinge on the privacy rights of an individual. That would fall within the courts in that country, or in the case of Europe in that court.

Baroness Browning: We have in our Home Affairs Sub-Committee taken evidence from lawyers who said that if the European Court is not the final arbiter, nonetheless lawyers going into the UK courts would still wish to draw on the results of case law coming out of the European court. What are your thoughts on that?

Mr David Davis: The extent to which it takes on board the case law of another court will be entirely up to the court. I should not raise this, as it is embarrassing, but I have been in court with such an issue relating to a Government, in which another court’s judgment—I think it was a Swiss court’s judgment—was taken into account. There was no relationship; it was just that that court had dealt with a similar case in that way and it was used. I would expect British courts to look at European case law but not to be bound by it. That is the point. Not being bound by it is the issue. We are not bound by the decision of another court.

Baroness Falkner of Margravine: Secretary of State, can I take you back first to the discussion about parliamentary scrutiny? I did not catch the Chairman’s eye in time. You referred to Lord Boswell in our previous September discussion relating to the Intelligence and Security Committee.

Mr David Davis: The ISC, yes.

Baroness Falkner of Margravine: As I recall—I may be wrong but let me put it on the table now in case we did not mention it at the time—we also discussed parliamentary scrutiny of the way trade talks happen, as the trade talks commence and continue. Without being a privy counsellor, parliamentarians are allowed to go into the room, look at documents, know what is going on—
Mr David Davis: Is this the TTIP?

Baroness Falkner of Margravine: Exactly—TTIP. That was the example. I am sure Mr Starmer is going to be great at scrutinising you in Privy Council terms, but this Committee has an important role in that scrutiny process, and what we wanted to get from you at the time was to have at least those kinds of arrangements. It is for the Commons to speak for itself, but let me say to you, talking about this Committee, that I spent 40 hours this weekend getting to Tallinn and back to speak for three and a half minutes in order for the United Kingdom to be represented. The Commons was not there because its Committee is not appointed yet, so the House of Lords is rather more with it in that regard.

Mr David Davis: I would never dispute that.

Baroness Falkner of Margravine: I wonder whether you might be able to write to us specifically on those arrangements.

Mr David Davis: Can I come back on TTIP? We discussed the TTIP arrangements, in which I think basically there was a private room in one of the departments where people could go.

Baroness Falkner of Margravine: Indeed. That is right.

Mr David Davis: They could not take a phone or anything, but they could do that. At the moment, frankly, I do not think there is anything in the arrangement that is going to be private for that long. It is more a question of sequence—when in time things will come out. So far, every publication we have will hit the public domain at some point. For example, next week, if we put in some submissions, we will publish them the day we put them in. That may change when we get to the later timetable—

Baroness Falkner of Margravine: The agreement.

Mr David Davis: Yes. At that point, I would certainly look at it, absolutely. But at this stage there seems to be no useful function for it. I will think about it and perhaps write to you about it. Do not let me forget. Next time I come, nag me about it. Later on, it may be different. As it gets to more complex trade proposals, it may be different.

Baroness Falkner of Margravine: But if we find in the interim that we feel we need to see some documents, I hope you will keep that position under review.

Mr David Davis: Yes.

Baroness Falkner of Margravine: Colleagues have covered the transition agreement somewhat, but, as you know, my committee, the Financial Affairs Sub-Committee, interacts with the financial services sector extensively, and those people are taking decisions by the end of this year. Waiting for a decision later on in the negotiations as to whether there will be a transition arrangement or not may be very well, but they
will have made up their minds and gone, if they need to go, in order to maintain passporting and rights to work.

Mr David Davis: Some are deciding now.

Baroness Falkner of Margravine: Indeed, some are deciding now, and I hear that weekly. Would you consider, besides whether it is transitional implementation, along with the EU 27, that if you have not made sufficient progress on the framework for a transition deal—how long it will last and so on—by the end of this year, perhaps contemplating the extension for one year that is allowed under Article 50 for the negotiations to continue?

Mr David Davis: Only by unanimity.

Baroness Falkner of Margravine: It is by unanimity, but you keep talking about the good will, the bilateral diplomacy and all those things.

Mr David Davis: The difficulty is that we are in a negotiation. I had this conversation at Chevening on Friday with some members of financial services, and the ideal outcome from their point of view—not just theirs but other industries’ too—is that we get to the point of decision with enough time left for them to carry out any regulatory and physical changes they need. If we can, we will, but we are in a negotiation. There is good will, but it is not infinite, and if we say, “We have to have this”, it will become a point of leverage instantly. We will seek to get that transition.

We started off by explaining to our European colleagues that we thought it was to their advantage as well as ours, in order to give them the incentive to do something about it, but some of them see it as their advantage to wait, because if enough American banks in particular say that they are going to go to Paris—good luck to them—or Frankfurt, even better luck to them, they encourage the other side to hold back. Yes, of course we understand the value of transition. We have been through the effect of it in excruciating detail, and we will do it as quickly as we can, but it is a negotiation. Unlike any other area of government, where I would say, “Yes, I will do this by December”, which is what I would do if it was, I cannot do that. I will say that we will make best endeavours.

The Chairman: There is a lot to be said for Paris, by the way, but I think we need to move on.

Mr David Davis: I think you are biased, sir. He was the ambassador to Paris.

The Chairman: Let us move on to the really important issue of the effect of Brexit on devolution. Lord Kinnoull wanted to ask a question.

Q7 The Earl of Kinnoull: Thank you, Chairman, and thank you, Secretary of State. The Welsh and Scottish Governments, in the shape of Mark Drakeford and Mike Russell, wrote a letter to you on 15 June with an awful lot of issues contained in it. I know that a lot of colleagues would
like to quiz you a bit on it, and perhaps I can start the ball rolling with their general concerns in the letter. The first general concern was what they viewed as a lack of consultation and a general lack of engagement on the part of your department with the devolved Administrations. The second general thing was a call for reform on their part for how the JMC EU negotiations were going to work. Could I ask for your comments on that narrow set of issues?

Mr David Davis: Sure. First, bear in mind that the department was not created until July, virtually one year ago, and created as in announced. It took a bit of time to build up. In October last year and January this year, we had a JMC (P)—a plenary joint ministerial committee—chaired by the Prime Minister, and since then, for the few months running into the election, we had four JMC (EN) meetings. At the third one in January, I think the Scottish Government presented their White Paper, which they described as a compromise. It was a compromise that required Scotland to have completely separate membership of the single market. Bluntly, I do not think it would have been negotiable even if we wanted to do it. It would also have introduced interesting considerations in the unity of the United Kingdom single market if you had done such a thing. Nevertheless, we looked through it and tried to find principles where we could agree with them.

After that JMC, we had a presentation of the Welsh proposal. That was in many ways much more practical. It was focused very clearly on maintenance of employment, maintenance of industry and so on, and we sought where possible to take out of those documents issues with which we could agree, such as the protection of employment rights. I have said on at least four different occasions in speeches—and the Prime Minister on I do not know how many, but a number, has said—that there will be no reversal of employment rights as a result of departure from the European Union. We have said it over and over again. In that same period, the Scottish First Minister did everything possible to try to use Brexit as a motor for another independence referendum, from which she has now backed off.

I basically take issue with the thrust of Mr Russell’s arguments in particular, less so with Mr Drakeford’s. We have bent over backwards, not to give them a veto—we said from the beginning that there will be no veto—but to pay attention to the interests of the people of Scotland, the people of Wales and, of course, particularly the people of Northern Ireland, where we have not had an Executive to deal with through much of the time and it was very difficult to do.

The Earl of Kinnoull: Yes. I will put it to you once again. When we took evidence in Cardiff and Edinburgh, we heard disturbingly similar criticisms—simple things such as getting agendas on time and setting up meeting rooms. I put it to you that when you have battling parties, as you have just described, almost resetting the way in which meetings happen can bring people together a bit more, and at least allow them to start again to see if they can work together. I will ask whether you would comment on that in a second. To move on to a second thing within this
very meaty letter, there is a suggestion of developing common positions for issues where devolution forms part of it.

**Mr David Davis:** I am sorry, I did not hear that.

**The Earl of Kinnoull:** Devolution issues—fishing, for example—and forming a common position is a slightly different mechanism from Westminster dictating and then telling everyone what has gone on afterwards. Could you comment on that bit of the letter, as well as the general suggestion that you might reset the meetings?

**Mr David Davis:** Sure, if there is no contradiction between their aims. The various fishing industries around Britain have different interests. Some of them want to be able to fish in other waters; some of them want to be able to market abroad. Most of our fish goes abroad. At some point, if need be, we will have to act between them. The other thing is that, in ongoing negotiations in Europe relating to issues such as fisheries, there has been considerable regular consultation with the devolved Administrations over many years under Governments of all colours. I would expect that consultation to go on. When we come to the point of the ongoing relationship, which will not be until the latter part of this year, we will have extensive discussions with them.

**Lord Selkirk of Douglas:** Perhaps I should mention a past interest, having been in the Scottish Parliament for its first eight years as an elected Member. May I ask how you would respond to the Welsh and Scottish Governments’ request that they should be more closely involved in negotiations? What language is used?

**Mr David Davis:** The language is as diplomatic as it can be. The truth is that we will consult them. We will take into account what they have to say. We will worry greatly about the interests of the Scottish people, because sometimes the Scottish Nationalist Government do not always seem to put that at the forefront of their concerns. They sometimes have other issues, such as independence. We will talk, too, to industries and stakeholders in Scotland, Wales and Northern Ireland. When the Prime Minister came into office last year, the very first place she went was Scotland, and shortly after that Northern Ireland. Northern Ireland was the first place I went to, and the first country of the 27 I visited was the Republic of Ireland, all with the aim of trying to put the interests of the component nations of the United Kingdom on as level a playing field as you reasonably can to make sure that we do not accidentally, for example, harm the interests of any particular industry in particular areas. It is more than just talking to them; it is also talking to the people they represent.

**Lord Selkirk of Douglas:** Thank you. Although you have recently confirmed that the repeal Bill will be subject to legislative consent by the devolved legislatures, what do you believe would happen if such consent was not forthcoming?
Mr David Davis: I am not going down hypothetical routes. We will not get to that point until, I would have thought, early next year. It is quite important to bring the Committee up to speed on what will happen between now and then. The repeal Bill will be laid in the next two days. Elements of it are aimed at allowing the determination of what powers remain within the devolved Administrations, which is, in effect, all the powers they currently have, and what further powers will be devolved to them after they are passed down from Europe and what will need to have a United Kingdom level of decision. Broadly, we are trying to do the latter only where we need it for preservation of the United Kingdom single market, for preservation of compliance with international treaty obligations or the ability to negotiate for the latter part. That discussion will happen over the course of the next six to nine months, I think, and that all comes before the LCMs.

Baroness Suttie: Do you think the Government are being sufficiently proactive in coming up with solutions for the very particular problems on the island of Ireland, and, if so, can you give some specific examples?

Mr David Davis: Yes. Let me divide the problems into two groups: those that relate to Northern Ireland and those that relate to the whole island of Ireland.

In Northern Ireland, the first concern, which is one, to be fair to it, that the Commission shares, is the preservation of the peace process—the preservation of the Belfast agreement and subsequent agreements. A primary element of that is the preservation of, effectively, the visible border, while being able to maintain what will be an external border of the European Union. A lot of thought has gone into how we can operate a customs system outside that. It involves a variety of things, such as whether we are using trusted trader schemes or authorised economic operators, which is the technical term for it, to allow people to go across the border and carry things across the border without being stopped, and whether we can use ANPR and pre-tagged containers and that sort of thing. That is one area where a degree of technical work has been started. It has been slightly stymied by a change of Government in Ireland, where there is a new Government. I saw Mr Coveney, the new Foreign Minister, only the other day, and we started that discussion again from scratch. That is one element.

Another element to which we are giving some thought—because these are ongoing relationships, we are nowhere near a solution—is what happens to the Republic of Ireland’s exports. A lot of them come to us anyway, but a lot of them also go through the mainland of the United Kingdom to the continent. How we maintain that to be completely frictionless is what we are trying to do at the moment, so we are giving thought to that as well; a lot of thought has gone into it. We are not near resolution, partly because we have no Northern Ireland Executive to deal with, which is slightly problematic, partly because we have had a change of Government in the south, in the Republic of Ireland, and partly because, of course, we will probably not have a solution to the Northern
Ireland issues until near the end of the process, as we will need to know what the free trade agreement is. If it is, as we wish, a very comprehensive free trade agreement, it means you can get away with a lighter customs agreement than you otherwise would, in which the primary new piece of information involved will be rules of origin.

As you can see, some thought has gone into that too. We are making best speed is all I can say. It is not as fast as perhaps I would like, but we are making best speed.

**Baroness Suttie:** Following the confidence and supply agreement with the DUP, what steps are you taking to make sure that the concerns of the nationalist community are being sufficiently heard?

**Mr David Davis:** What we did before the election—I have not had a chance since the election—was to try to talk to both sides. The Prime Minister did the Sinn Fein half. The confidence and supply agreement has not at all impinged on our policy area, because both sides of the argument, both sides of the Executive in Northern Ireland, want that open border maintained. It seems to me there is no controversy there at all. I do not want to leap around with my size-9 boots in what is a very sensitive area at the moment, while they are trying to sort out the Northern Ireland Executive in the middle of the marching season, which is about to come. Once we get through the sensitive times, I will try to make arrangements to speak to both the major would-be components of the Executive.

**The Chairman:** Would you be able to give us another 10 minutes to finish off our questions?

**Mr David Davis:** Sure.

**The Chairman:** The questions on citizenship are extremely important and concern a lot of people.

**Lord Cromwell:** Could I bring you to citizens’ rights, Secretary of State—a subject of keen interest to you and, of course, to millions of people in this country and in the EU who are currently held in suspense awaiting the outcome? The Justice Sub-Committee of this Committee recommended a unilateral declaration confirming EU citizens’ rights in this country, which the Government unfortunately rejected on the basis that their primary responsibility was to protect UK citizens in the EU, which they did not feel that was a useful step towards. Be that as it may, positions have moved on.

There are reports today of apparently some softening in the position on ECJ jurisdiction and its duration. Perhaps you can enlighten us further on that. Can you tell us where we are with it, what obstacles remain and what is the timetable for getting there, because I think the biggest problem for everybody here is that they are held in suspense? That is certainly what is in the emails we are receiving.

**Mr David Davis:** First, as I said earlier, we made a sustained effort to get the message across to the people of the countries involved, for two
reasons: to influence their Governments, and because they would be
talking to their relatives here. I have an article about to go in one or two
of the domestic foreign language papers here—Polish language and so
on. That is the first thing.

As to areas of difference, the first you refer to is the European court. We
do not see a need for European court jurisdiction. Indeed, such
extraterritorial jurisdiction would be unique, other than rather limited
operations in Ukraine, and this country is not Ukraine. We do not see a
need for it, and quite a few of the member states do not see a need for
it. What they want is some guarantee that the rights we are giving will be
sustained and that no future British Government could change their mind.
We understand that.

First, of course, there will be an Act of Parliament—it will not be some
fiat—which will be enforced by the British courts with their normal vigour,
and I know they are pretty good at that. It will be backed up by a treaty,
and therefore we will be subject to international law—not European law,
but international law—in maintaining the rights. That is where we are.
One or two countries—Lithuania, which has a vast proportion of its
population in this country—said it did not see a problem over the
European court issue. Frankly, at the end of the day, as long as we can
give them confidence that it cannot be withdrawn at some future date,
we will get past that hurdle. That is my expectation. I could be picky and
say, well, okay our million citizens are at the behest of the Europeans on
this, but I do not believe they are going to reverse it either. We need to
give everybody confidence.

As to the actual rights, there are a lot of real issues and a lot of
mythology. When we addressed them, you would hear about somebody
who had been deported and turned out to be a security issue, but it
looked as if you were just treating individuals badly. We tried to deal with
the worries. One worry was people thinking that we were going to treat
European citizens in the UK as second-class citizens in some way. What
we tried to do was to make it as close to British citizenship, without the
general election vote, for which you have to be a citizen, in every other
respect—in employment, economic, welfare, health, education and
pension rights. All of those will be the same. That is what we set out to
do, but there is one differential, which is the question of the ability to
bring a family member from another country. That is the difference. At
the moment, we do not have that right for British citizens, so we
agonised over it and thought it would not be right to give 3 million people
rights that British citizens do not have, as they would not if they were in
Australia, America, Canada, or wherever. That is one of the areas of
contention.

The other area, which we have left open, is exactly when the date falls.
We have tried to say that, whatever it is, it will not be before the Article
50 date, because that gave people nine months or so after the
referendum result, so that they would know it was coming. We did not
want to say to anybody who had come here in good faith expecting their
rights to be preserved to lose the fundamental, main rights. We said it will not be any earlier than that; it will be no later than the departure date, but where it ends up will be for discussion. What we do not want to do, however, is to give a date so far in the future that it will attract people to come here for welfare tourism or something like that. We have tried to be as fair as we can, and to do it in such a way that it does not lead to other misunderstandings. It has, even so, but we have tried to avoid that, and we will be discussing it next week.

Q10 Baroness Kennedy of The Shaws: Minister, I chair the committee that created the report on acquired rights of European Union citizens, and worked on it with Lord Cromwell. It sounds to me as though the issue of the red line is one that you adhere to as well on the European Court of Justice; it is a red line for the Government and you certainly hold that view, even if others in your own Cabinet take a different view.

Mr David Davis: It seems unnecessary to be any different; that is why.

Baroness Kennedy of The Shaws: I want to point out a number of areas where it may make a difference. For example, people who might be listening to this who are living in Spain or somewhere might want to hear that when issues arise that are to do with their rights, and which they take through the Spanish courts, you are making it very clear to them that the Spanish courts or the Polish courts are their only recourse and there will be no overarching court that deals with supranational issues, such as the rights that they feel they have acquired.

Mr David Davis: That decision will be a decision for Spain in that case, and the European Union itself. We think our Supreme Court is perfectly good for this purpose.

Baroness Kennedy of The Shaws: You are saying that our Supreme Court in Britain is fine for Europeans living here, but you are basically saying to people who are British that in the same way the courts of Spain, and the courts of Italy or Poland, are perfectly right and okay to deal with them. That is your message here today: satisfy yourself with the courts of—

Mr David Davis: If I go to live in a country, I accept the rule of the law in that country.

Baroness Kennedy of The Shaws: One thing that you said in answering one of our number on the issue of the European arrest warrant was that it was basically territorial, and there should not be the European Court of Justice, although in fact most of the European 27 take a different view. You said that there is nothing wrong with people invoking law from other jurisdictions in our courts and that they do that anyway. That is not actually right. We do it with regard to common law matters from other courts and we do it in relation to European Union law because we are members of the European Union, but we do not in courts in Britain invoke the law of Tanzania or the law of China in arguments before our courts.
Mr David Davis: I recommend you look at my DRIPA case, because they did.

Baroness Kennedy of The Shaws: You will find it very rare that our courts would look at anything, but the question that is being raised by your—

Mr David Davis: But they are not bound by it. That is the point.

Baroness Kennedy of The Shaws: The point about the European courts is that there is anxiety that if we are to be travelling on parallel lines, trading with Europe and trying to do things on a reciprocal basis, we should be travelling in the same direction on issues to do with law; our law should be working in tandem, so that it develops on parallel lines. Do you agree with that or not?

Mr David Davis: To a very large extent, most of western law develops on parallel lines but not the same lines. The point about the referendum last year was that it was a decision about control: control of laws, laws being decided here; control of borders; and control of money. Those are the three big issues that dominated, in rather less elegant ways sometimes, but, nevertheless, those were the big issues. That is what I have to deliver, bringing control back here, not giving control to another legislative and judicial authority.

Baroness Kennedy of The Shaws: I want to press you on this. We have been taking evidence on a number of matters to do with law. One of the great things that has developed across Europe, which has enhanced our world—you used the word “civilisation” and wanting to think in terms of civilising forces—one of the great civilising forces, has been that we have reciprocity as a fundamental principle in the way we deal with matters of law. It has been developed in a very impressive way, which in fact is envied by other parts of the world.

For example, if a British person is married to an Italian and they divorce, if they have children and the British person is the mother of the children and wants her Italian husband to pay for the maintenance of those children and he is looking rather reluctant to do so, she can get an order in the courts here and it will be enforced in Italy in short order, because of the reciprocal arrangements we have on enforcement. You cannot get that to work in China. You cannot get that to work in other places. It is because of the arrangements that we have developed over 40 years. In your negotiations on the European Union, are you going to have that sort of thing in mind?

Mr David Davis: Yes.

Baroness Kennedy of The Shaws: I will give you another example.

Mr David Davis: Yes, because that is not quite the same.

Baroness Kennedy of The Shaws: No, it is all to do with the same sort of thing; it is to do with the fact that if you want to do things—
Mr David Davis: For a lawyer, Baroness Kennedy, you are being very vague on this. It is not the same thing.

Baroness Kennedy of The Shaws: No, I am not being vague. If you want to do things across borders, Minister, if you want to have trading arrangements across borders, if there are marriages taking place across borders and you want to have law operating across borders, you end up having to have overarching supranational courts. That is the bit that was never discussed in the referendum, and it is the piece that is missing in much of what is being discussed now. If the ordinary people of Britain realised that some of this reciprocity and enforcement of orders is not going to take place, they might actually think, “Hey, if only I’d known that, I might have reached a very different decision in the way I voted at the referendum”. What is the answer?

Mr David Davis: I do not accept your premise. The simple truth is that—

Baroness Kennedy of The Shaws: How do you get enforcement?

Mr David Davis: An effective system of judicial co-operation is a perfectly reasonable thing for us to achieve or to seek to achieve.

Baroness Kennedy of The Shaws: Without a supranational court.

Mr David Davis: Yes, without a supranational court.

Baroness Kennedy of The Shaws: What are you going to do with trading arrangements where you have a trading arrangement with somebody in Germany and the German company goes bust and you want to get your compensation from it? We have arrangements to make that possible now, and it is done through there being overarching principles and an overarching court.

Mr David Davis: What would you do if the same thing happened in New Zealand or America or—

Baroness Kennedy of The Shaws: Sometimes, as your colleague says, you are told to “Go whistle”. That is what happens.

Mr David Davis: Which colleague is this?

Baroness Kennedy of The Shaws: “Go whistle”. This is our Foreign Secretary.

Mr David Davis: You will have to talk to the Foreign Secretary about what he has to say. I am afraid you are making enormous generalisations about this. I worked in international trade before I came to work in this place and on many occasions had to enforce judgments across other judicial areas. It was perfectly possible all the time. It is older, frankly, than the European Union.

Baroness Kennedy of The Shaws: I suggest to you that the enforcement arrangements that operate across Europe have in fact come with great success, and lawyers in Britain are very anxious about what is
going to happen when those enforcement procedures are no longer available.

**Mr David Davis:** We can do this without subjecting ourselves to a foreign court—full stop.

**The Chairman:** We have one final question from Lord Crisp.

**Q11 Lord Crisp:** Can I pick up on the point that began this last set of questions, about the disappointment that has been expressed in a number of quarters with the proposal on the rights of EU citizens, and ask two questions? First, what impact do you think it is going to have on staffing in the NHS? That is one of the very salient questions that is around. Secondly, and this may be a topic that we look at, do you consider that it will be easy to sort out reciprocal health arrangements for our citizens in the EU and the citizens here? Adding to that slightly, you may be aware that we have been contacted by a number of UK citizens living in Europe who have asked us why you are not willing to meet them, as I believe they have already met Michel Barnier.

**Mr David Davis:** Do I think it will be easy? I am never going to say anything is easy in this exercise. Before I come back to your question on the NHS, we said in our paper on citizens’ rights that we will seek to maintain reciprocal health treatment and, indeed, try either to maintain or create an EHIC-type arrangement. It is quite explicit on that.

On staffing, the difficulty is that a whole series of issues will affect whether people come to work in the UK. Bluntly, after the referendum there was some pretty unpleasant behaviour by some British citizens, I am ashamed to say, which the Government were very fierce about, and so they should have been, and that did not encourage people to come here. The value of the pound as money you can repatriate has an effect. In the case of nurses, there has been a new, very rigorous language standard, which may be too rigorous actually, although it is not for me to say. You should ask the Secretary of State. I do not know, but that has come in as well. These have all had effects.

The aim, as I have said many times, is to bring back control of migration to the UK, not to slam the door shut. This country has had very large numbers of European and other countries’ citizens come here. They do a very good job. They add enormous value to society; they add enormous value to the NHS in particular, and not just there, but in social care homes and other industries that rely on them. They should not see what I do as aimed at stopping that. What it is aimed at is managing it in the interests of the UK but also in their interests.

**Q12 Baroness Kennedy of The Shaws:** I have one very brief question. May I ask you, Minister, how many women are on the negotiation team?

**Baroness Armstrong of Hill Top:** The photo in the *Times* was a disgrace.

**Baroness Kennedy of The Shaws:** Shameful.
Mr David Davis: Was it? I did not look.

Baroness Kennedy of The Shaws: How many women are on the team?

Mr David Davis: I cannot remember. I will write to you.

Baroness Armstrong of Hill Top: There are none.

Baroness Kennedy of The Shaws: Are there any?

Mr David Davis: I will write to you. I do not know.

Baroness Armstrong of Hill Top: Your PS is the only woman.

The Chairman: Secretary of State, thank you very much indeed. You spent rather more time with us than I think you had hoped.

Mr David Davis: That is all right.

The Chairman: It is a sign of the interest that the Committee takes in the subject, and we greatly look forward to our next hearing and discussion with you. Thank you very much indeed.

Mr David Davis: Thank you.