



HOUSE OF LORDS

Unrevised transcript of evidence taken before

The Select Committee on the European Union

Inquiry on

POST-EUROPEAN COUNCIL EVIDENCE SESSION

Evidence Session No. 1

Heard in Public

Questions 1 - 14

TUESDAY 5 JULY 2016

4.10 pm

Witnesses: Rt Hon David Lidington MP and Rt Hon Oliver Letwin MP

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Members present

Lord Boswell of Aynho (Chairman)
Baroness Armstrong of Hill Top
Baroness Browning
Baroness Falkner of Margravine
Lord Green of Hurstpierpoint
Lord Jay of Ewelme
Baroness Kennedy of The Shaws
Baroness Morris of Bolton
Baroness Prashar
Lord Selkirk of Douglas
Baroness Suttie
Lord Trees
Lord Whitty

Examination of Witnesses

Rt Hon David Lidington MP, Minister of State for Europe, Foreign and Commonwealth Office, and **Rt Hon Oliver Letwin MP**, Chancellor of the Duchy of Lancaster and Head of the Whitehall EU Unit

Q1 The Chairman: Good afternoon, Ministers. You are very welcome at our EU Select Committee. I am particularly grateful that both of you have found the time to come together at relatively short notice, and in early days.

I think we all understand the basis of this. It will be webcast, it is on the record, and the normal rules of engagement apply. We will send you a transcript for factual correction. As I have often said, and as David, Minister for Europe, will be well aware, we regard the inquiry as a continuing dialogue rather than an intermittent series of inquisitions. If either of you wants to add material hereafter, or whatever, you are free to do so. I say on our side advisedly that we are not going to throw at you the complete list of questions the Committee is interested in or that we think the negotiations will need to deal with, so, if you had not already noticed, this is life ad interim. I hope that is understood and we can have a productive discussion on that basis.

We are very familiar with David Lidington, Minister for Europe. He has served the Committee well over the years, and he is entirely familiar with our ways and interests. We are very pleased to see Oliver Letwin here in the new circumstances. Rather than invite both of you to make a long statement, perhaps you could introduce yourselves and say anything you want briefly before we start, or are you happy that we should begin?

David Lidington: I am happy to go ahead, Chairman.

The Chairman: In a way, we move from the general to the particular in some of this. We move from the concepts towards the nuts and bolts. David Lidington, can I take you back briefly to the referendum and ask a simple question on behalf of the Committee? Why do you feel that the Government's case for remaining in the EU was rejected?

David Lidington: It is always difficult to generalise about the votes of many millions of individuals. Inevitably, my answer is going to be somewhat impressionistic and anecdotal, because that is all we have to go on at the moment. Two things struck me. First, looking back at my own experience of talking to people at street stalls and so on, the immigration question was undoubtedly in the minds of many. Those who were voting leave would often say out on the street, almost as a throwaway line, "Too many immigrants", or something like that. There is absolutely no doubt—it was borne out by the opinion polling evidence—that that was one key element.

The other was to do with the economic argument on which those of us on the remain side focused as the chief element of the campaign. Looking back at the campaign and its outcome, a lot of people in the country seemed to feel that, whatever was said about something abstract called the economy, leaving the EU was going to make no difference to them for the worse. A lot of people had economic or political grievances of various kinds that had built up over the years. It is slightly pointless for me to argue whether particular grievances were justified or unjustified, but they existed, and to some extent the referendum became a lightning rod for a number of those other grievances.

The Chairman: Following that up, you will recall that when we last reported on the whole referendum renegotiation process we advised the Government to base their case for continuing membership on "an inclusive and positive vision of the UK's role in a reformed EU". Would it be fair to say that the UK is now paying the price for the Government's failure to do that? To borrow a phrase I have used in a different context, did that forward gear never come into gear?

David Lidington: If you look in particular at what the Prime Minister said both in the House of Commons and in the various speeches he made around the country during the referendum campaign, the opportunities and positive benefits to our economy and our diplomatic leverage that EU membership provides were very much to the fore of his thinking, but it is also the case that a significant number of people in the electorate were pretty pragmatic in their view. They had no great love for the EU and its institutions—if anything, they probably felt that it was rather irksome and intrusive—but they were very concerned about the potential risks of

leaving. Therefore, an important element of the remain campaign was about trying to get through to those people that the risks were real and would have a negative impact on them and their families' futures.

The Chairman: Frankly, we will not want to rake over the coals in extenso. There will be others who wish to do that. Thank you for those replies. Oliver Letwin, please feel free to chip in, but we will not necessarily ask you to do that until we start homing in on the work of your new unit. We pass to our second line of questioning and ask Baroness Prashar to do that now.

Baroness Prashar: Before I ask my question, perhaps I may put a supplementary? I agree that immigration was a big issue in the referendum, but would you also agree that issues were conflated in the narrative—freedom of movement, refugees, asylum seekers and economic migration—and people played on the fear of immigration by looking at it in the round without any explanation being given about the different aspects of migrants coming here?

David Lidington: Yes, I agree with that. It was an element in the leave campaign, although it also reflected a difference in the way people of this country have tended to look at the migration question compared with attitudes in some, but not all, member states. Over the past year, Ministers from other European countries have sometimes said to me, “Surely you make a distinction between freedom of movement within the European Union and immigration from third countries”. I have to say to them, no; my experience is that, when people think and talk about immigration in the UK and the challenges of integrating very large numbers in a relatively short space of time, they are not making a conceptual distinction between those two elements. There is a case for a discussion another day about how we deal with that question more generally in UK politics.

Baroness Prashar: I would like to pursue it further, but, as you said, this is not the time to do it.

The Chairman: Do you want to come in specifically on the migration issue, Baroness Kennedy?

Baroness Kennedy of The Shaws: I want to follow up your question, Lord Chairman.

The Chairman: Perhaps you would do that now.

Baroness Kennedy of The Shaws: Do you think it was sensible to present to the public as a binary matter—for or against—something as complex as that question? We ended up oversimplifying it, and now people are saying, “Golly, I had not understood that these were the implications of what I signed up for”.

David Lidington: At the end of the day, it is a binary question, in the same way as the choice of candidate or political party at a general election is a binary question. On the rare occasions that anyone reads a party manifesto, most voters would probably find that they agreed with some elements in most parties' manifestos and disagreed with other elements, and would make a choice on balance as to which candidate and party they believed was right for them. The same principle applies. The pledge of an in/out referendum and that the Government would abide by the choice was clear as crystal in the Conservative Party general election manifesto. There is no way that people could argue that they were not going to be presented with that choice.

Baroness Kennedy of The Shaws: Except that some people were presented with the argument, "We will still have all the same things and a relationship with Europe". The offers were different from different—

The Chairman: I am going to interrupt. You have posed the question. It is of some debate, not least in the Chamber at the moment. We will put the past behind us and look forward. Baroness Prashar, perhaps you would like to put your substantive question.

Q2 Baroness Prashar: I turned to the European Council conclusions of 28 June with some anticipation but was disappointed to find just one sentence saying that the Prime Minister informed them of the outcome of the referendum. Perhaps you can throw some light on what the mood was like, how member states felt and how this was taken within the EU institutions.

David Lidington: It was quite emotional—one might almost say mournful. There was a sequence of contributions from other leaders that in various ways highlighted the role the United Kingdom had played in the histories of their countries and in the history of Europe more generally. The Estonian Prime Minister, for example, spoke about how the UK had been involved in helping Estonia's independence back in 1918 and had again supported Estonia and the other Baltic states when they restored their independence in the early 1990s. The mood among Heads of Government followed that.

I went to the Council of Ministers on the Friday, the day after the referendum, and it was a very downcast and quite emotional occasion. It is not an exaggeration to say that among my counterparts—various Foreign Ministers and Europe Ministers—there was a sense of devastating shock and regret about what had happened. At the same time, there was an acceptance that, with a turnout on that scale and a margin that, although relatively small, was still decisive, it was a democratic verdict that had to be respected and we had to plan accordingly.

Baroness Prashar: Was there any good will to make it work? Did you sense that they were really fed up with us, or did they have any good will towards us?

David Lidington: There was clearly an element of frustration, but no sense of hostility was expressed to me on the Friday or to the Prime Minister at the European Council, although we would be foolish to think that when it comes to a detailed and complex negotiation other countries will not have regard to their own national interest.

Q3 Lord Green of Hurstpierpoint: Looking forward to the negotiations that inevitably will get under way at some point—we have a question later about the specifics of triggering Article 50—I want to focus on the strategic approach that you would expect the British Government to adopt, particularly on trade and investment. People have talked about various models: the EEA, plus or minus a bit; the Canadian CETA model, which is sometimes discussed as a template that we might be able to take off the shelf; the WTO fallback that people talk about; or a sui generis effort to square a circle that preserves as much access to the single market as possible consistent with reasonable control over net immigration. Given those various paths, can you give us any steer as to how the thrust of the negotiations will develop?

The Chairman: Ministers, if I may join in on that, it was only in March that HMG published a report on the alternatives to membership and possible models for the UK outside the European Union. It would be helpful, particularly if Mr Letwin is going to contribute on this question, to get some indication of the extent to which that analysis is still seen as valid and is playing into his unit's consideration as to how we might take this forward.

Oliver Letwin: The way I can probably best approach it is to explain what we are doing and not doing, because that will set the thing in context. Before the referendum, useful, broad-brush analyses were performed on various options. We are now in quite a different situation, where we are not asking people to consider the potential advantages of any of those as against the option of remaining in the EU. On the contrary, we are faced with a real-life need to negotiate a new set of agreements. For that purpose, it is much more useful for the incoming Administration on 9 September to have a very fine-grained analysis before them of precisely what is at stake in relation to each product and service, and to be able to judge, on the basis of that fine-grained analysis and a proper mapping of the facts, what is at stake in relation to tariff and non-tariff barriers against what actually gets exported, and indeed the extent to which inward investment and decisions by UK investors are contingent on the capacity to export to the EU.

We are trying to construct for the incoming Administration a clear picture of what matters, and for what purpose it matters. It is only when you have that fine-grained analysis in front of you that you can go about trying to work out how to trade off, square the circle, or whatever phrase you use, between the desire, which I think all the potential Prime Ministers have, to get the greatest possible access to the single market on the most favourable mutual terms and, as you rightly say and David's initial remarks suggested, the mandate from the British people that came out of the referendum to control the migration of workers. Incidentally, we should be careful not to talk about free movement. I do not think that is an issue, whereas the migration of workers obviously is an issue.

There has been a tendency hitherto for people to wave their arms around a good deal and use various terms rather loosely, such as "passports" or "barriers". You have run a bank and you will understand one part of this inordinately well. You have also been a Trade Minister and will understand other bits very well. It is not until you start looking at the fine-grained differences between, say, selling insurance in Lyon, establishing a branch bank in Cadiz, trying to raise funds from people who have money to invest in a fund management business, who may operate out of London but have European scope, or trying to float on the Stock Exchange something that may be listed here but not elsewhere, or may be listed in several places, that you begin to arrive at an analysis of what really does count and what counts much less.

We are not in the course of the next couple of months mandated to provide any recommendations or decisions; nor would we be capable of doing so in that time. What we can do is provide for the incoming Administration a really clear map of all that so they can look at it and say to themselves, "We want to fulfil the mandate of the British people by controlling the migration of workers. We also want to have the greatest possible effect of continued free trade on advantageous terms. What looks like the best way of reconciling those objects in the light of what we are being told by the other side of the table?"

Personally, I think it is extremely important that we do not prejudge by using shorthand such as CETA, EEA, EFTA, Switzerland, or anything else that shapes that. It will have to evolve carefully in a negotiation that is strategically pursued by people who have a very full understanding of what we are trying to negotiate from the beginning. It is that full understanding we are trying to arrange to be present on 9 September.

The Chairman: Before we leave the point, I want to make it clear that in this case we are not making a purely binary set of appraisals. Other factors would apply: for example, the level, or otherwise, of any putative UK contributions to the EU budget as part of what, for

shorthand, you might call the admission fee to the single market. I am using shorthand in the way you eschewed earlier, but there are other factors that would go into an overall negotiation, are there not? Presumably, those are being evaluated at least in parallel with this.

Oliver Letwin: Yes. There are many other things beside the two central issues of free trade and the movement of workers. As you rightly say, one of them is the question of contributions, but there are many others. Co-operation in a range of fields is of enormous importance to us and to our European allies. All those need to be discussed in parallel with the central conundrum. In the case of all of them we are producing options papers and fine-grained detail on what is gained at the moment by the arrangements that are in place, and hence what options there are for trade-offs in any one of those fields. That is why we are drawing on the whole of the resources right across Whitehall. A good deal of work has been done in various departments on those issues. Of course, some of them are multidimensional—for example, the question of the CAP.

The Chairman: I declare an interest in that.

Oliver Letwin: That involves manifestly the question of contributions, regulation and trade. The three have to be combined in some way in an approach to whatever the successor to our participation in the CAP is going to be. That itself deserves a full, fine-grained analysis and set of options presented to the incoming Administration. We are trying to make sure that the incoming Administration can look at the whole panoply of different concerns and see them in the round before decisions are made about how to proceed strategically.

Lord Green of Hurstpierpoint: What you have described is entirely desirable—the fine-grained analysis of the various sectors and the implications of different models. I fully appreciate that. It sounds to me as though you are preparing in effect for what is conventionally described as EEA-minus. Exactly how much minus depends on the result of the fine-grained analysis and other political decisions, but would you be prepared to make any comment on the pros and cons of the two other models bandied around in the public domain, one being CETA and the other being the WTO fallback, as desirable or otherwise potential outcomes?

Oliver Letwin: I did not intend to suggest the particular model you are describing. The EFTA agreement and the EEA agreement grafted on to it both contain the four freedoms as fundamental principles.

Lord Green of Hurstpierpoint: That was why I mentioned EEA-minus.

Oliver Letwin: That leads to the very interesting question of what is fundamental and what can be subtracted. I am, therefore, not suggesting that that is necessarily a good starting point;

nor am I suggesting that it is not a starting point. Much the best thing is to build this from the bottom up but to understand what counts. I would say the same in relation to the others. Obviously, the base case, if no agreement were reached, is the WTO rules. That is clear. We do not need to do any work to establish that. We need to lay out, therefore, the issues that would arise in specific sectors of the economy, in particular those that are most important to the economy, if there were a fallback to WTO. That is a non-trivial issue in itself. For example, it may be that tariffs going both ways, not only those on our exports but on our imports, are of particular interest to the automotive industry, whereas questions of regulatory protection are of more interest in some of the professional services. Until you go through it case by case, it is not obvious where you get to on the fallback WTO option, but whatever Administration there is and whatever their strategy, if they are trying to improve on the WTO, a good starting point is to understand how bad that would be from points of view A, B, C or D and which of those bits most matter, and then to try to construct a strategy that leads to the smoothest and most successful means of ensuring that you get solutions to the things that matter most and removes the barriers that would matter most if you were in a WTO world. That attitude of mind, rather than leaping for a package solution, is more likely to enable the next Administration to make a success of this.

David Lidington: When we were drafting the government paper on alternatives to membership, one of the questions we posed to ourselves was: how do we represent the very diverse range of free trade agreements the EU already has? We fixed on Canada as the illustration because it was and remains the most ambitious and recent such example, but we could have chosen one or many others that would have had different elements within them. On WTO, it is very important that that is considered because, absent an agreement within the time specified under Article 50, WTO is what we would default to on exit. The points of principle set out in the government paper are still true. There would be some greater freedoms. There would be no question about our ability to set our own immigration rules and our freedom to seek bilateral free trade agreements with any country or regional group in the world that we wished. On the other hand, the WTO rules deal primarily with goods and very little with services—80% of our economy—and those rules rely heavily on the principle of non-discrimination. If perforce we had to revert to WTO rules but the Government decided that they wished to maintain zero tariffs with the EU 27, they would at the same time have to have a zero tariff with other WTO members, such as China, Brazil or the United States. Similarly, if, absent a UK-EU trade agreement, we went back to WTO rules alone, the EU

could not allow zero tariffs for UK trade without also accepting zero tariffs on trade with other members, such as the big agricultural producers in Brazil, Australia or China. The next Prime Minister will have to make the obvious political judgment about the chances of getting a good outcome for British business under WTO rules.

Q4 The Chairman: We have probably squeezed this particular lemon pretty extensively, but can I check with the two Ministers? You very much cast your account of the studies under way in terms of the trade benefits and problems or of access issues. Is another factor the question of negotiability—what is acceptable to colleagues? Is it suggested that that will come in as a political appraisal later on, or are you working on it as you go through?

Oliver Letwin: David, unlike me, knows an inordinate amount about what has proved acceptable in the past. I have the advantage of not knowing any of that. Therefore, I and my officials, at my request, are approaching this from the point of view of making no assumptions at all about what is or is not acceptable in advance. We are trying to do something that is more or less unprecedented, and it is extremely important that we do not engage in self-censorship and that the work that we do before 9 September in no way constrains or hampers the new Prime Minister and Cabinet. They need to be able to look at the scene as a whole, work out a negotiating strategy and end point that they think is plausible and then make judgments as they go along the way about how to adjust it, if at all, as they find a response coming. We are very much not trying to play the game of working out in advance what might be acceptable.

Baroness Armstrong of Hill Top: In these calculations, will you look at the effect on place? I was very interested in David's comment that 80% of our trade is in services.

David Lidington: It is 80% of our economy.

Baroness Armstrong of Hill Top: In the north-east that is not the case; 56% of Britain's manufacturing trade is in the north-east. Looking at the effects of these issues needs to take account of place—the effect on place.

Oliver Letwin: That is obviously true, and I have already asked that, as we do these analyses, we should look at their effects where they are concentrated in particular places. That becomes doubly important because part of our aim—the aim of any one of the current potential Prime Ministers—is, as I understand it, to maintain the union of the United Kingdom, and therefore we are particularly conscious of things that affect people in the devolved Administrations and nations of the United Kingdom. We are also very conscious that there may be parts of the economy where the effects would be much more exaggerated and much faster as regards

investment decisions from other parts of the world. Of course, there can be chain reactions that will affect different places as a result of effects on supply chains if there is disinvestment. For all those reasons, we are abundantly looking not just at the barriers and their importance but at the effects they will have on particular bits of the economy and Britain.

David Lidington: The Prime Minister has given a very explicit commitment in the House of Commons that the devolved Administrations and Gibraltar will be fully involved in the work of the new unit, and in his most recent Statement he said that he would find ways in which the English regions and cities could also be involved.

Another thing that is relevant to Baroness Armstrong's question is that one element of the negotiation will have to be about what happens in tidying up existing arrangements, most obviously various spending programmes, which are—

The Chairman: Like ESF.

David Lidington: Yes. They are multi-annual and might take us beyond the date of exit. They will have particular regional importance in the north-east and certainly in Cornwall. I was talking to the Welsh Government this morning, and this is one of the issues that is clearly going to be near the top of their list too. There are also certain sectors, such as universities' scientific research, which benefit from many of the RDF programmes, so that will have to be an element in the negotiation.

The Chairman: Perhaps we should not open it up now, but I presume that issues of contract law and so forth will be involved, where people have undertaken something on the assumption of a five-year income flow and then find that that might be at least in doubt.

David Lidington: Indeed.

Oliver Letwin: The Treasury has already done a considerable amount of work on all this.

The Chairman: I am reassured.

Oliver Letwin: I hope that in the very near future we will have preliminary positions presented to the current Cabinet, because some of that needs to be resolved early.

The Chairman: I am conscious that we are getting quite deeply into this and I am anxious that colleagues do not get misled. Lord Jay has a question, and I will return to Baroness Armstrong on her substantive question.

Lord Jay of Ewelme: To follow up what Mr Letwin said, I got the impression that all the work going on in Whitehall is taking place in something of a negotiating vacuum. Our partners have said that there are to be no pre-negotiations before the negotiations, but presumably our

ambassadors are scurrying around having long conversations to try to get some idea of the context in which we will have to negotiate in a couple of months' time.

David Lidington: Yes. The Commission has made it very clear that it will not engage in pre-negotiation. That was also in the conclusions of the informal meeting of the 27 Heads of State and Government last Wednesday morning. Conversations are taking place and have taken place at both official and ministerial levels to understand where the other is coming from. The other Governments are still very anxious to understand where the present British Government are in their approach to these matters and, through their ambassadors in London, in particular to understand how the various potential Prime Ministers might be addressing the negotiation in the future.

Q5 Baroness Falkner of Margravine: Mr Letwin, I am hugely impressed by the thoroughness of the framework in which you are approaching this, but I do not think that as a Committee we can see very much beyond it, because you are choosing your words very carefully. That may be appropriate from where you sit, but it is our job to find out a little more about the Government's preparation and whether—we know there is no plan B—there is any architecture, or whether the cement is ready to go into the foundations.

I want to ask a question particularly about other partners. Mr Lidington set out clearly in his opening remarks that he thought there were two issues: the economy versus free movement of workers. In squaring that circle—you are unwilling to say which option you want to go for—are you looking, for example, at the Norwegian option where clearly we would have the single market but there may not be a desire to accommodate the free movement of workers? Are you looking at domestic legislative options, perhaps to deal with changes to citizenship law, to reduce the pull for people to come here? Are you having discussions in the financial services industry? You gave us a long exposé of the convoluted framework of passporting rights, the licensing for financial services firms and so on. Are you looking at other options as to whether we might reduce the pull factor in economic terms for people to come here while we allow the free movement of workers? In other words, are you scrutinising domestic legislation?

My final point is also for you, Mr Letwin, rather than Mr Lidington. In the EU Financial Affairs Committee, which is going to the City of London tomorrow for a seminar, I hear a great deal of concern about the ability to pull people from the City of London here for employment. I hear a lot about skill shortages, which apparently you are hoping to fill from the City, while the City itself has already bagged the people you need in your unit.

Oliver Letwin: Let me take the second very specific question first and come back to the first one afterwards. I do not know who in the City told you that we are trying to recruit particular people from the City, but they are under an illusion if they think that we know so far exactly who we are trying to recruit and from where. One of the things I have asked Oliver Robbins, the new Permanent Secretary, to do over the next two or three weeks is to identify very carefully the gaps in our armoury. We are already assembling all the expertise that we have in Whitehall and bringing it into a coherent team, but it becomes evident as we do so that there are aspects of what the next Administration will need to do that simply cannot be done by anybody who currently exists in Whitehall and we will need to look outside. It is not a matter of clicking one's fingers and deciding in five minutes what to do; it is a question of carefully and painstakingly working out what is missing, where it is best obtained and how best to get it. That is the sort of thing the Civil Service is good at doing, and it will be fully up to the job of producing a plan to do that. It is something that we can be getting on with in the later part of July, and in August and very early September, so that the new Prime Minister comes in with at least the ability, if not a complete process under way, to hire in the people most needed in one way or another. It may be by contracting with firms or by hiring individuals. They may come from many different places. That is yet to be determined, but at least the process will be under way by 9 September. I do not believe that there is going to be any global shortage of the people we need, although I accept that some of them have particular skills and the prices may be high. We have to be careful to get the best people at the best value for money. It is not a trivial undertaking.

Coming back to the question of domestic legislation, one of the things that the Civil Service is now doing—a considerable undertaking—is to map the entire array of EU-derived law in the UK.

The Chairman: That is already under way, is it?

Oliver Letwin: That is well under way. We began the process on Monday and it is now eight days later, which on my current timescale is a long time.

Baroness Kennedy of The Shaws: Yesterday Monday.

Oliver Letwin: No, last Monday. Even yesterday Monday seems a long time ago, but eight days is an eternity. The whole Government Legal Service has been mobilised to do this. Many people round the room have been Ministers in many departments and they will know that we benefit from a very fine legal service. I have a vested interest; my wife is part of it. They are mapping not just the easy bits—the statutes and the statutory instruments—but much more

complicatedly, and with much greater difficulty, the elements of the law that operate by direct effect and through jurisprudence. We need a full conspectus. Work is also under way to look at the options for legislation that can preserve legal continuity on day two.

There appears to be consensus among all the contenders to be Prime Minister, and as far as I can make out among all the colleagues and others who have approached me with their views about this, that at least a front-runner option is, so to speak, to nationalise the acquis and make sure that there is complete legal continuity on day one, and that we therefore have the capacity progressively to adjust the framework of law, rather than being rushed into any sudden discontinuities. That gives rise to the question, in relation to the control of the migration of workers: what are the options? That too will be studied, but it is very much a matter for the next Prime Minister and the Cabinet, not for me, to decide which of the options they want to exercise.

Baroness Falkner of Margravine: I should have declared an interest; I have a property in a eurozone country.

The Chairman: I think we have got the point on this, Ministers. You have been very helpful with your answers. As I see it—I will try not to caricature what you said—your hope is that the new Prime Minister will have a full list of the options and a team that can deliver continuing evaluation, and, if necessary, when we move into the negotiations, effect those options, depending on the response of our colleagues. Is that about where we are?

Oliver Letwin: Yes. I add just one other element. As I see it, it is team, options and facts. Facts are at a premium. There has been too much rhetoric around in the UK over the past few months, and now we need to get down to the very serious business of understanding the facts.

The Chairman: Breaking my own ordinance for a moment, the only point you need to have in mind—if not you, others—wearing your Cabinet Office hat more generally, is that, although you will need to recruit from Whitehall, Her Majesty's Government continue. There is a programme to deliver, and you cannot strip government departments' current functions to the bone. Let us just have an acknowledgement that that is an issue.

Oliver Letwin: My very considerable admiration for the British Civil Service has never been greater than at the moment. A very great challenge has been posed for them. Some cynics said that the Civil Service would be resistant or unable to meet the challenge. My experience is the exact opposite. I have never seen a group of people move faster and more flexibly, sensibly and imaginatively than they are moving today. They have completely accepted that a judgment

has been made by the British people that we need to implement. They need to work out how to do that in a way that supports a future Prime Minister to defend our interests.

The other thing that we have already discovered, although the formation of the unit is only work in progress, is the depth of talent around. I do not believe that it will be necessary to denude other departments. It will certainly involve people who are doing important jobs moving into the unit and being replaced by others, but there are others of the highest quality available. The bigger issue by far relates to the elements of expertise we simply do not possess.

The Chairman: Trade.

Oliver Letwin: Yes. Trade negotiation is the classic case. There is no point in pretending that we can do that on an amateur basis; we have to hire bona fide professionals. I was discussing this morning with the Cabinet Secretary and the Permanent Secretary of the new unit that we need a method whereby some people are brought in to train high-flying young civil servants so that they become adept at supporting other people brought in who are aged and experienced experts. It is a question not just of hiring but of hiring and forming a whole cadre of people to do that job, and there will be other such examples.

The Chairman: Thank you for your account of that. I am not sure whether I should declare an interest at this point or refer you to a speech I have just made in the Chamber. I had some experience of being drafted in at short notice, as it happens to invent milk quotas, about 30 years ago. I very much echo what you said about the way Whitehall will step up to the plate. It needs to use the maximum imagination, but you may wish to explore other ideas in the text of that speech. I will not go on about it.

Baroness Prashar: I cannot resist a comment. Minister, I am delighted to hear you talk about how good the Civil Service is and the importance of our impartial Civil Service. It is a long time since I have heard a Minister praise the Civil Service, and I am delighted.

Q6 Lord Whitty: I did not want to leave the trade bit without getting clear in my head the sequence of events. In our consideration, which led to our document about the process of withdrawal, we were told, and we accepted, that effectively there were two parallel negotiations: one on withdrawal and one on concluding a final trade agreement. We had assumed that in time terms they would run in parallel. There have been signals from Brussels, reported in the press, suggesting that in negotiation, rather than in signature, they would have to be in sequence. If that is the case, obviously it is a longer process. I do not know whether you have any comment on that.

The other point is that, in the period when we are still members, clearly all the EU trade treaties still apply to us, presumably including those that have yet to be signed and will be signed in that limbo period, including CETA, which is nearly signed, and possibly TTIP. Is that the case? When we withdraw, presumably none of those treaties applies to the UK and we revert to the default WTO position, unless in the interim we have negotiated some treaty with all the other EU partners. Is all that true?

Oliver Letwin: There are bits of it that David is much better able to answer than I am, but some parts I can answer. It is definitively true that, unless we have signed alternative agreements with any given third-party country, at the time we leave the EU we exit the free trade agreements with those countries. There is no question about that. Of course, it may be entirely possible to negotiate agreements very fast with a range of important trading partners. If I can characterise it in this way, although we have less muscle than the EU as a whole, we have a great deal more flexibility and speed of response at our disposal because we do not have to satisfy 27 others; we can make our own decisions. It may very well be possible to negotiate an array of alternative free trade agreements with some partners at a speed compatible with meeting the deadline for leaving, or it may not. We do not know yet. One of the points the remain campaign made in the referendum was that there was some risk attaching to the amount of time that took, and there still is a risk, but obviously our job now is to minimise that risk and try to produce the greatest possible certainty of trade relationships outside the EU at the same time as within.

The second thing that I can answer, before handing over to David for the third one that I cannot, is that we are preparing the ground simultaneously for the disengagement process and the establishment of a new relationship thereafter. That seems to be the only sensible thing to do. The Prime Minister and the Cabinet coming in will want to look at and understand both of them. What I cannot answer for is how likely it is that the other side will be willing to negotiate both in parallel, which is something David knows more about.

David Lidington: The words of Article 50 imply that there are two stages, because it refers to the fact that the negotiations about departure may take account of the future relationship between the departing member and the European Union. They are two different things, but Article 50 in no way prevents negotiations taking place in parallel rather than in sequence. It is a matter of political choice.

As Lord Whitty says, it is true that there have been some noises off from Brussels suggesting that there would be insistence on a sequence. We would have to leave and only then could

talks on a longer-term agreement be initiated. That is one of the things that will have to be addressed in the negotiations, because it seems to me that there is a potential political link to things such as the use of Article 50 itself. It is fair to say that in other European capitals and institutions there is still a sense of shock at the referendum outcome. Ministers and officials in those places have studied speeches and articles written by leaders of the leave campaign, and that has in their minds led to a fair amount of uncertainty about the tactics a future British Government might wish to adopt. They are keeping their powder dry at the moment, so this is something the new PM will have to address at a pretty early stage.

The Chairman: There have been some very helpful exchanges that have given us a lot of light and shade on what is going on. That has been extraordinarily helpful, and the Committee will need to reflect on it. It has diverted us slightly from some of our simpler questions and I delicately suggest to my colleagues that we should return to them. I do not quite know what your operational arrangements are, Ministers. Can we ask for your time until, say, quarter to six? Would that be possible? We will not go beyond that with you, but if we can encompass the remaining schedule it would be helpful. I ask everyone to exercise a degree of restraint. No one has done that better than Baroness Armstrong, who had a question on citizens and residency.

Q7 Baroness Armstrong of Hill Top: I should declare an interest. I have just acquired an interest in a property in Europe.

The Prime Minister sought to reassure European citizens living here and British people—UK citizens—living in European Union countries that there would be no immediate changes to their circumstances. We heard the Urgent Question yesterday. How are you approaching this? What issues are you taking into account? What assurance can the UK Government provide to UK staff in EU institutions as well as EU staff in our institutions, such as the National Health Service?

Oliver Letwin: On the general point about EU nationals from the other 27 EU countries living in the UK and UK citizens living in other EU countries, there is a clear and joint aim to ensure that the rights of each are protected. The only question is how we go about making sure that happens simultaneously. The really important point is the one the Prime Minister made right at the beginning, which is that nothing has changed. We are fully paid-up practising members of the EU, and will continue to be so until the date of exit. Nothing dramatic is happening to anybody, and, due to the contingency planning and the actions of the Chancellor and the Governor of the Bank, the markets have to a considerable degree stabilised. All the fears that

suddenly something would happen have been calmed, which is very much to the good. We now face the longer-term question about the future, and that needs to be resolved.

As far as people working in EU institutions are concerned, I took the trouble to find out exactly how many we are talking about. I am told that there are 1,357 UK nationals working in the institutions of the EU. As I understand it—David may know more about this—they are very much employees of the EU; they are not secondees. They do not, therefore, depend on the good will of member state Governments. They have employment rights. I have been asked in previous settings whether we would hire them. Many of them may have relevant skills, but it is very much for them to choose because they are not civil servants who we can just hoick back into our Civil Service. I think they are pretty well protected by the rights that they have in principle, but the long-run view has to be one where we protect both our citizens abroad and EU citizens in the UK.

David Lidington: On the staff of EU institutions, there is obviously a question for Whitehall departments about secondees and how they try to look after their interests. President Juncker has delivered a very strong message of reassurance to UK nationals who are career employees of the European institutions. As Oliver said, it is the European institutions with whom their contracts of employment exist.

On the broader point, it is certainly the present Prime Minister's view, but also that of all the contenders for No. 10, that everybody wants clear agreement that EU 27 nationals who are legally in the United Kingdom already should be able to stay, and the same applies to UK nationals in the other 27 countries. There is an unavoidable legal risk in that if we were to tumble out of membership without an agreement having been reached, and the treaties ceased to apply from the date of exit, which is in the wording of Article 50, at that point those rights would no longer exist unless they were reconferred by each of the member state Governments in accordance with their own arrangements. That just indicates that it is important that negotiators are able to get on with this as soon as possible.

I find it hard to believe that any of our partners would want to cause difficulties for UK citizens. Similarly, no British Prime Minister will want to cause difficulties for other EU nationals who are legitimately living here. Some technical issues would have to be thrashed out. There are people here who are not exercising treaty-based rights, which are not unlimited in scope. There are related questions such as third-country spouses of EU nationals and so on. Some technical questions would have to be resolved, but that is what the negotiation needs to settle.

The Chairman: We can probably say that on some of the details we are reassured that you are aware of them and the fact that there are implications. We will almost certainly have a running dialogue in this Committee in some form with you or your successors as these issues develop and become clearer. One of the things we will want to do is try to establish some sort of information exchange so that we can do that in a reasonably brisk way as issues arise and are disposed of.

Lord Jay of Ewelme: To follow up Baroness Armstrong's question, presumably this is one of the areas where the interests of the United Kingdom and those of our 27 partners coincide. Each has citizens in the others' countries, and I imagine that none of us wants the extraordinarily fraught situation that could arise if uncertainty continues. Is it not possible for both sides to say that there will be some sort of framework agreement early on, within which we agree to protect the interests of each other's citizens? To wrap that up in the broader long-term negotiations seems to me extraordinarily unfair to those on both sides. Is there not some way in which this could be dealt with at the very beginning of the negotiations with good will on our side and the other side?

David Lidington: If there is the political will to do that, there is absolutely no reason why it should not happen in the way Lord Jay describes. It boils down to the 27 meeting together under the Article 50 process and deciding that it is what they will agree to accept and proposing to us that we do likewise.

The Chairman: The way I see it, although members of the Committee may wish to question it, is that there is concern that in some sense individuals—I am not suggesting that you have said or implied it—may be used as negotiating pawns in the operation. I note that the Ministers are shaking their heads, and that is the reassurance I wanted.

It would also be fair to say, certainly from my awareness even these days of constituency traffic, that a lot of people are raising these issues with us.

Lord Jay of Ewelme: Yes.

The Chairman: We have probably taken those exchanges as far as we can.

Q8 Lord Jay of Ewelme: I hope this is a fairly straightforward question. I think the UK presidency arises in the second half of next year, just after Malta and before Estonia. It is quite hard to imagine the United Kingdom continuing with its presidency given where we will be in the second half of 2017. Are we likely to announce soon that we will be doing some deal with either Malta or Estonia that they take over from us and we carry on with our negotiations and are not in the rather invidious position of trying to chair the Council at the same time?

The Chairman: Can I interpose? We ought to declare an interest, because at the moment we are charged with, and to some extent have undertaken, some preliminary work on the parliamentary dimension of this, and there is a sort of operational interest in whether we ought to persist with that or draw it to a close.

David Lidington: The issue has not yet been fully resolved, but the points Lord Jay makes are well understood. They came up in the past week when I had conversations with my Maltese and Estonian counterparts, so discussions are ongoing.

Q9 Baroness Kennedy of The Shaws: Is it a good idea that we do not have a Commissioner now that Lord Hill has stepped down? Should he not be replaced and somebody put into that position for the next few months, because not having someone there is to our detriment?

David Lidington: The Prime Minister said that he hopes a new British Commissioner could be appointed as soon as possible. As the Committee will know, a new Commissioner will have to appear before the relevant European Parliament Committee and then be confirmed by a plenary. The next plenary is not until September, so the earliest it could be done would be September this year.

The Chairman: For our concluding questions, perhaps we could turn to the withdrawal process, in so far as we have not already talked about it. There are still a number of questions and we will try to get through them.

Q10 Baroness Falkner of Margravine: Mr Lidington, you must be waking and dreaming Article 50, 24 hours a day, but could you comment on the Government's position vis-à-vis the interlocutors in the European institutions and their views on when Article 50 will be triggered? We know the Prime Minister has said he wants to leave it to the next leader.

David Lidington: I think it has to be a decision for the new Prime Minister; indeed, different candidates for the leadership of the Conservative Party have already said publicly contrasting things about when they would wish to trigger Article 50. Baroness Falkner asked about the view from the institutions and from other Governments. The very firm view that comes through particularly from the institutions, but from most other Governments too, is that Article 50 is the only legal process that is valid in European and international law for a member state to withdraw from the European Union. At the moment they are absolutely insistent—I see no evidence of that position shifting—that they need the Article 50 process as the framework for exit negotiations.

Baroness Falkner of Margravine: You will have picked up from media reports that law firms are lining up to challenge whether it is the Executive's role to trigger Article 50 or whether parliamentary approval needs to be given in line with the European Communities Act 1972. Would you comment on that, Mr Letwin? Do you believe Parliament needs a say in that?

Oliver Letwin: I can certainly comment on that, as I am in the unfortunate position, I believe, that I am about to be a litigant—not, I hasten to add, a litigant in person. The advice that we have from government lawyers is unequivocal: Article 50 as a matter of law is exercised by the prerogative power, full stop. That will be tested in court. I am not a lawyer. We will find out the view of the court. My experience is that very frequently when government lawyers have a very definite view of that kind it turns out to be right, but we will find out.

This is, however, an entirely academic question, because, totally non-controversially—I do not need any kind of lawyer to tell me or the Committee about this—we cannot ultimately leave the EU without very drastically amending or repealing the European Communities Act. There is no doubt about that. Last time I heard, if you want to repeal or substantially amend an Act of Parliament, you have to go through something called Parliament—both Houses. Therefore, there will be long and arduous debates. If anybody suggests that the words “Article 50” are not going to be mentioned in the course of those debates, it seems to me that they are making a very implausible assertion. As a matter of practical reality, as opposed to the important constitutional legal issues, as the Prime Minister has pointed out, Article 50 will be discussed in Parliament. There is no way of avoiding it.

Baroness Falkner of Margravine: The practical reality of triggering it rather than the process of withdrawal is what I was interested in. Do you see the litigation, if there is litigation, holding up the ability of the new Prime Minister to proceed down that road, if they wish to do so speedily?

Oliver Letwin: I do not know what the speed of the litigation will be and I do not know who will be the next Prime Minister, hence I do not know at what speed they will wish to move, but there could be an interaction between the courts and the decision of the Prime Minister.

The Chairman: Now we are on to parliamentary interaction, can I put a supplementary and invite you to comment on it? I think Parliament will also be required under the new arrangements to ratify an instrument of withdrawal and any instrument of association that may follow as part of the negotiations. I think that is right, is it not? You may like to reflect and let us know.

Oliver Letwin: I do not know the answer to that question, but as Parliament will have had to enact the change of the ECA I would regard it as an academic question. Nevertheless, we should know the answer, and we will find out.

The Chairman: You can let us know. Baroness Kennedy has a question on the process of parliamentary engagement.

Q11 Baroness Kennedy of The Shaws: This is one of the issues that has been exercising me. I have been involved in the whole business of legality and whether the prerogative powers are really vested in the way they are, or whether Parliament has a role. I want to understand the answer you have just given. As we all agree, there would have to be repeal of the European Communities Act, but what is the sequence? Are you saying that would have to be done before triggering Article 50?

Oliver Letwin: No. On the advice I have received, assuming the courts uphold that view, Article 50 itself can be triggered by the prerogative power—by Ministers—at any time, with no reference to Parliament, but, as you and I agree, in order finally to leave the EU we need to repeal, or hugely amend, the European Communities Act. In order to do that by the time we propose to leave, one needs to start what is quite a long parliamentary process at an early stage, which is why I have already asked parliamentary counsel to begin looking at what is involved in repeal or substantial amendment of the European Communities Act. I feel confident that whoever is the next Prime Minister will want to look at that work and introduce that repeal at a fairly early stage, presumably on a contingent basis in the sense that the bringing into force of the repeal, because of David's point, can in international law terms be done only at a time when the UK has also either expended the Article 50 period or reached an agreement that makes it unnecessary to reach the end of that period.

Baroness Kennedy of The Shaws: That is what I want to press you on—to look at what principles underpin parliamentary scrutiny of the withdrawal negotiations. Quite clearly, when Mr Cameron was renegotiating last year, it was essentially an exercise of executive discretion, but the forthcoming withdrawal negotiations have quite fundamental geopolitical, constitutional and economic implications for the United Kingdom, and—I emphasise—they impact on the rights of UK citizens. Anything involving the rights of UK citizens has to be, surely, a matter for Parliament. I would have thought you would agree that close cross-party parliamentary scrutiny would be vital to all that.

Oliver Letwin: There are two separate issues. There is the question of whether Parliament will inevitably be involved in detailed debate of all the relevant issues. The answer to that is

yes, because throughout the process it will be debating the European Communities Act repeal Bill, or some such. The separate question is what mechanism each House of Parliament wishes to establish to scrutinise the activities of the Executive during that process. I am very well aware that my tenure in office would be very time-limited, even more than it is by present circumstances, if I were to intrude on the privileges of the two Houses in making those decisions. That is not a decision for government to make; it is for the House of Commons and the House of Lords to make decisions about what scrutiny processes they establish.

Baroness Kennedy of The Shaws: What is your response to the idea that a Joint Committee should be established to scrutinise it?

Oliver Letwin: That is a matter for the two Houses.

Baroness Kennedy of The Shaws: For Parliament.

Oliver Letwin: Yes.

The Chairman: Can I go back to one point on the negotiations under Article 50? Our legal adviser has indicated that there does not seem to be much discretion for the other parties—the 27 and the European Parliament—to overlook the possibility of reaching some agreement with us, because it says that the Union “shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union”, which seems to be predictive that there will be such a relationship. That might indeed help your negotiating hand. I notice that you are nodding. Perhaps it is a little more hopeful than some people have said.

Q12 Lord Green of Hurstpierpoint: You referred earlier, Minister, to noises off. It was not noises off; it was the Trade Commissioner who said it. I would have thought that on the basis of this she was plainly wrong in law, and that should give us a bit of stamina and backbone in asserting our right to have parallel negotiations during the two years that elapse from triggering Article 50.

David Lidington: There is certainly nothing in law that prevents parallel negotiations.

Lord Green of Hurstpierpoint: But she was arguing that there was.

David Lidington: That would not be our view.

Lord Green of Hurstpierpoint: Plainly, she was wrong.

The Chairman: We have explored pretty extensively the whole question of the operation of the Union. We can perhaps pass over for the moment issues of resources and so forth, because you have given us some indication of the working. We will no doubt want to return to that in due course.

One point from the past may be relevant, and colleagues may want to chip in on this too. It is the old balance of competencies review, which was a very comprehensive piece of work at the time and set out our relationships. Do you see that now coming into its own, if I may put it like that, not as a negotiating brief but at least a brief for the subjects that will need analysis and development in the context of preparing for the negotiations?

Oliver Letwin: In a word, yes.

The Chairman: Thank you. That is helpful.

Q13 Baroness Morris of Bolton: You have partly answered what I wanted to ask. May I congratulate you on having done an enormous amount of work in what I calculate to be seven working days, unless you are working weekends?

Oliver Letwin: I assure you that the weekends are also being used.

Baroness Morris of Bolton: It is hugely reassuring, and I was indeed reassured, that you feel that you have the right resources. When you are doing your fine-grained analysis of what is needed, are you also looking at whether you have the right architecture to deliver it? We have looked at whether or not the shape of this Committee and our sub-committees might be right, and similarly in the House of Commons. I was intrigued by an article by William Hague in the *Daily Telegraph* yesterday in which he said that we had to do such a big thing that it would need two extra Secretaries of State—one to do the withdrawal negotiations and maybe one to look at trading with the rest of the world. Of course, we would not have that capacity, so we might have to look perhaps at merging some departments of state. In setting out these things, are you also looking at whether we are fit and have the right structures to deliver it as well?

Oliver Letwin: Let me distinguish three separate things. One is the question of which Minister or Ministers or which ministry or ministries are in charge of the various parts of the negotiations to come. That decision has to be made by the next Prime Minister. We cannot prejudge that in any way. Many people around this table have been involved in one way or another in the business of forming Governments, reshuffling them and so on. You have to leave total discretion to the Prime Minister of the day to make their dispositions.

On the second question as to whether we will be in a position to offer a team to whichever department or departments is or are relevant, the answer is yes. The third question, which is separate again, is whether we have yet got the right architecture with UKRep and the articulation with the economic global issues secretariat, and so on. The answer is that we do not think that we quite have; we are not sure that we have. Therefore, David and I and other

colleagues are working with senior civil servants to get that into a shape where we can propose to the present Cabinet something that the future Prime Minister can take forward.

The Chairman: There is a Division in your House. Would you be able to return after that, assuming there is only one?

Oliver Letwin: Yes.

The Chairman: That would be much appreciated.

Sitting suspended for a Division in the House of Commons.

The Chairman: I am very grateful to the Ministers for returning. It is a busy afternoon. We go straight to Lord Whitty's question.

Q14 Lord Whitty: Much of my question was covered in the clear exposition by Mr Letwin on how his unit was set up, but in this Committee we have been concerned that across Whitehall there has been no contingency planning. My hope, and that of others, is that our politically independent Civil Service did some planning nevertheless, without necessarily telling their Ministers. In addition to the work that your unit is going to do on the negotiations, there is another parallel piece of work that can be done only at departmental level; it relates to assessing the current acquis of EU law transposed through the European Communities Act or by direct application. Every department will have to go through that to see what it is going to do at the point when we eventually leave, or preferably prior to that. Is that process going on in parallel with your unit? If it is, the question of resources for your unit, having denuded the departments of their EU expertise, applies to whether departments with a heavy burden of EU legislation can conduct that in time for when we leave, which could be in two years' time.

Oliver Letwin: I think I can give you some reassurance on all that. The first point is that, as I said earlier, the process of mapping the entirety of EU-derived law in the UK is under way. That is being done by the Government Legal Department in each of the departments of state, so people who know the law in that area are at work on it. Once that map is available, various things will flow. The first is that it will be possible, although this in itself is a further significant undertaking, to identify all the explicit or implicit references to institutions or bodies that will no longer be apposite. In some bit of the law it might say the EU Commission X, Y, Z, or the European Court of Justice or the CJEU P, Q, R. Clearly those kinds of references will need to be altered.

The second thing that will flow is that, having made those adjustments, it will be possible to provide, as currently envisaged, as schedules to the European Communities Act repeal Bill, or whatever that thing is called, the entirety of the set of reference changes. The third thing that

flows is that it will be possible in the European Communities Act repeal Bill, if the next Prime Minister and Cabinet so decide—I am making efforts to enable them to do so if they wish—to maintain the entirety of that law in a form that absorbs it into UK law on the day before we leave.

The Chairman: To maintain continuity.

Oliver Letwin: I suppose it is a minute after we leave in order to fulfil international legal obligations. Basically, coincident with leaving you could pull a trigger that would implement a measure, which by then had become an Act with all its schedules, and the day after, therefore, the law in the UK would be exactly the same as it was the day before with all the references changed appropriately. Clearly, there are some other mechanics that in discussion with the Treasury Solicitor and parliamentary counsel I have been asking the Government Legal Department to work up, because we will also need to make sure—your Lordships may have some difficulty with this, but nevertheless—that there is some power for Ministers to bring into effect something that has by mistake fallen out of effect because somebody in the huge mapping exercise missed some small item.

The Chairman: That is music to my ears, because it is exactly the point that we raised with our legal advisers at the time of our investigation.

Oliver Letwin: I am glad of that. I hope you may persuade your colleagues when the time comes not to complain about it being a Henry VIII provision.

The Chairman: I cannot possibly bind my colleagues, but it would very much depend on the context. A manifest absurdity for some unfortunate individual would clearly be not helpful. There is yet another Division. Ministers, you have been very generous with your time. We have two major issues: one is scrutiny, about which we have had some verbal assurances, and the other is the devolved Administrations. In the circumstances, since this has gone on quite a long time, would you feel more comfortable if you went away and explored those issues by correspondence?

Oliver Letwin: I can give you quite a full account in writing of all the engagement processes that we have set up with the devolved Administrations.

Baroness Kennedy of The Shaws: I think the Ministers said they were going to be looking specifically at the impact of these changes on the different regions and nations.

The Chairman: Given the timescale, we thank both Ministers. They have been extremely helpful to the Committee. This will be a continuing dialogue, but I am very glad that it is being undertaken. We look forward to further contacts in due course.