



OFFICIAL REPORT
AITHISG OIFIGEIL

Culture, Tourism, Europe and External Affairs Committee

Thursday 23 January 2020

Session 5



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CULTURE, TOURISM, EUROPE AND EXTERNAL AFFAIRS COMMITTEE
3rd Meeting 2020, Session 5

CONVENER

*Joan McAlpine (South Scotland) (SNP)

DEPUTY CONVENER

*Claire Baker (Mid Scotland and Fife) (Lab)

COMMITTEE MEMBERS

- *Donald Cameron (Highlands and Islands) (Con)
- *Annabelle Ewing (Cowdenbeath) (SNP)
- *Kenneth Gibson (Cunninghame North) (SNP)
- *Ross Greer (West Scotland) (Green)
- *Stuart McMillan (Greenock and Inverclyde) (SNP)
- *Mike Rumbles (North East Scotland) (LD)
- *Alexander Stewart (Mid Scotland and Fife) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

- Charles Grant (Centre for European Reform)
- Dame Mariot Leslie
- Professor Anand Menon (King's College London)
- Dr Fabian Zuleeg (European Policy Centre)

CLERK TO THE COMMITTEE

Stephen Herbert

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Culture, Tourism, Europe and External Affairs Committee

Thursday 23 January 2020

[The Convener opened the meeting at 09:09]

Article 50 (Withdrawal Agreement and Negotiation of Future Relationship)

The Convener (Joan McAlpine): Good morning, and welcome to the third meeting in 2020 of the Culture, Tourism, Europe and External Affairs Committee. I remind members and the public to turn off mobile phones. Any members who are using electronic devices to access committee papers should ensure that they are turned to silent.

Under agenda item 1, we will take evidence on the withdrawal agreement and the negotiation of the future relationship with the European Union, as part of the committee's article 50 inquiry. I welcome our witnesses: Dr Fabian Zuleeg, who is the chief executive of, and chief economist at, the European Policy Centre; Dame Mariot Leslie, who is a former United Kingdom diplomat and a member of the First Minister's standing council on Europe; and Professor Anand Menon, who is a professor of European politics and foreign affairs at King's College London. We are also joined by Charles Grant, the director of the Centre for European Reform, who is giving evidence by videolink. Thank you all for joining us.

I understand that the European Union's approach to the negotiations is guided by the treaties—in particular, by article 218 of the Treaty on the Functioning of the European Union. What will be the effect of those legal constraints on how negotiations are likely to proceed?

Dr Fabian Zuleeg (European Policy Centre): The negotiations on the EU side are still taking place in the context of article 50, but the focus is clearly now on the future relationship. The question is how comprehensive and detailed the future relationship will be. That will have an implication for the ratification of the treaty. If there is a mixed agreement, there will be a much more complicated ratification process. If there is a different agreement, there is the question whether that can cover what is necessary in the second phase of the negotiations.

The Convener: My understanding—I think that it is most people's understanding—is that the time

to negotiate is extremely constrained. Is it likely that an agreement will be reached within 11 months?

Dr Zuleeg: It is certainly a major challenge. Previously, the European Union has not concluded such a treaty within 11 months. Even if we take into account there being a lot of good will on both sides, which we cannot guarantee, a lot of technical steps must be taken. In my view, it will be almost impossible to conclude the negotiations within that time. If such a conclusion is reached, it will have to be very basic. Many of the negotiations on difficult areas will have to be postponed into the future. Even then, there is no guarantee. If there is a major conflict on an issue, there is simply not the time to work it out. If a month is lost or a couple of months are lost somewhere in the middle of the process because the sides cannot move forward on an issue, the time will not be sufficient.

Professor Anand Menon (King's College London): We can take the example of equivalence in financial services. There are way more than 20 areas in which equivalence has to be assessed, and the two sides have said that they will get to an agreement by the end of June. If we think about the work rate that that implies for the assessors, we can see that the timescale is very tight indeed. As Fabian Zuleeg said, a very bare-bones agreement could be reached by the end of the year if there is the political will and good will on both sides.

We should consider the number of issues that we have not discussed in sufficient depth yet, such as the implications of adequacy decisions on data for collaborations between police forces across borders. One of the big questions is whether, if they want to, both sides can find a way of maintaining something as close as possible to the status quo, which does not involve the Prime Minister asking for a formal extension before the end of June.

The Convener: How prepared is each side? Michel Barnier, who is in charge of the task force, has said that he expects a draft negotiation mandate for the EU to be in place by 1 February. Will the UK have a mandate in place by the same time? Who is better prepared, so to speak?

Professor Menon: On our side, it is very hard to know, because the contrast between what we are doing with the European Union and what we are trying to do with the United States, Australia and New Zealand is striking. The Department for International Trade has been relatively open about all the other trade deals, but the EU negotiation is being handled by a unit from number 10, which is largely impenetrable to the outside world, so the detail of what the UK Government is planning by way of negotiation remains absolutely obscure.

09:15

The Convener: Does anyone else have thoughts on that?

Dame Mariot Leslie: I am sure that that is right. A huge amount of work was done in Whitehall on the previous, 2018 withdrawal agreement. People in Whitehall can dig that work out again, but it seems to me that they do not yet have a transparent political direction from the present Government, under the present Prime Minister, on where it wants to draw the line. It has a range of choices on the degree of closeness to the EU that it wants to achieve in almost every area that is covered by a very long agenda.

In the meantime, those same departments, in many cases, will have to put through implementation legislation inside the UK, which is always demanding for departments and their ministers, and follow the pace of negotiations that will be dynamic and not static. Whatever the British position may be will have to evolve as the negotiations continue. It seems to me that there is a massive task for Government departments—and for number 10 and the Cabinet Office in co-ordinating it—that will put existing capabilities under very severe strain as we go through the next few months.

Charles Grant (Centre for European Reform): I will add something to what Anand Menon said a moment ago. Something that is called a deal will be possible by the end of the year as long as the UK basically accepts all the terms that the EU requires, as Anand Menon implied. If there is an argument about something or a big tiff, there will not be an agreement by the end of the year. If the UK caves in on most of what the EU asks for in relation to level playing field provisions, there can be a deal.

Some of my recent conversations with people in the Government in London suggest that they realise that they cannot do everything by the end of the year. Even if they can do a simple, bare-bones trade deal, they know that research will take much longer for the other deals on security, aviation, road transport, Northern Ireland border issues and so on.

What do we do about the transition? My conversations have led me to believe that people in London know that there will have to be an extension to the transition, but that it will not be called that. The Prime Minister will be able to say, “We’re not extending the transition: we’re leaving the transition at the end of the year,” but, in practice, means will be found, because there will be a desire on both sides to find means with some legal base—Fabian Zuleeg probably has a better view than I do on which legal base it could be—to allow parts of the transition in many sectors to be

extended for an additional period. That will ensure that there is not a cliff edge on, for example, aviation at the end of next year. The British ministers whom I have spoken to believe that they will need to extend the transition, but it will not be called that. It will have to be called something else.

The Convener: Right. That is interesting.

Professor Menon: I agree with that. Charles Grant is probably right to say that a fix will be found in areas such as aviation, because it would be in neither side’s interest for that to stop or be seriously disrupted. However, an issue on the EU side is that, if the British Government wants a trade deal that is so thin that the difference between its economic effect and the economic effect of no deal will be fairly small, what incentive will the EU have to find ingenious legal devices in its legal system to give us a break and extend the transition without extending it? In other words, it would have to be worth it for the EU.

If we offer something that is genuinely deep and has real economic impact, it will be more likely that the EU will go for it than if the Government signals that, actually, all that it wants is something that is relatively thin.

The Convener: Do you believe that that is what the Government wants?

Professor Menon: My sense is that the Government wants something relatively thin. It is remarkable, after more than three and a half years and an election that was meant to be about the subject, how little detail we have about what we are proposing to do.

The Convener: All right. Thank you. Donald Cameron has a supplementary question.

Donald Cameron (Highlands and Islands (Con): I have two brief questions on the EU’s approach to the negotiations. First, do you see the EU27 demonstrating a united front, as we saw in the withdrawal negotiations? If not, where might the strains be between the various member states of the EU?

Secondly, we have seen a changing of the guard in EU personnel, with a new Commission president. Do you see that making any difference?

Dr Zuleeg: There is a difference between the EU27 being united in the process and the EU27 being united on different issues. I expect that we will see in the process exactly the same kind of unity that we have seen until now. It is still all run through the European Commission’s task force for relations with the United Kingdom, but many of the innovations that were introduced have been kept. Therefore, there will be continuous dialogue between the capitals and Brussels, and everything will be agreed on an on-going basis. There is also the expectation that the negotiation mandate,

which will be agreed among all the member states, will be ready very quickly.

We are moving into the next phase, and there are a lot of different interests. It is inevitable that the member states will have different interests, particularly in the discussion about the economic relationship. Every member state's economic relationship with Britain is different, so there will be different priorities. For some member states, fisheries will be very important, whereas other countries have no interest in fisheries. Some countries will have sectors that produce in the UK, but that will not be the case for other countries. There will be such differences, and they will make it more difficult to reach an agreement.

It could have been argued in the first phase that any division in the EU27 would have helped the UK. In the second phase, all the countries will need to agree to a trade deal in the end, and any particular issues can become road blocks to an agreement. Therefore, every special issue that a member state raises will have to be dealt with.

At the moment, the European Commission is trying to manage that process and constrain the issues that go into the negotiations, but there are domestic politics in every EU member state. Different countries might bring up different issues in the negotiations—that depends on what happens in domestic debates. In the short time that there is, any such issue could make it difficult to get an agreement.

The changing of the guard in the institutions will make some difference. There are different relationships between the party groups in the European Parliament, and we should not forget that, because, in the end, the European Parliament will have to agree the deal, whatever deal there might be. My reading of the European Parliament is that it will be more difficult to get agreement on contentious issues, which a deal might well be.

I think that the European Commission will have the same broad approach to the negotiations that the previous European Commission had. It is clear that, in the end, what matters most to the institutions is ensuring that the member states are happy. At the end of this month, the UK will no longer be a member state, so its concerns will not play a major role in the thinking of whoever is going to lead the institutions.

Professor Menon: On the changing of the guard, it is worth adding that key members of the article 50 task force are now scattered in key positions across the European Commission, in the cabinet of the new President of the Commission and in the directorate-general for trade. I suspect that the links between people who have run the negotiations to date will prove to be very important

and will maintain the sense of continuity with what has gone before.

Claire Baker (Mid Scotland and Fife) (Lab): I want to ask about the possibility of no deal still happening. There were much-publicised changes to the European Union (Withdrawal Agreement) Bill as it went through the UK Parliament, and there were concerns that the Government's agenda was to achieve no deal.

Professor Menon, you talked about our having now moved on to discussions around a thin deal, and you said that it depends on what is in it for the EU. Is there a possibility that we will still reach a no-deal scenario, whether that is brought about by the UK Government or by the EU being unsatisfied with a fairly thin deal and subsequent years of negotiation on sectors?

Professor Menon: I was saying that, if the deal looks very thin, it is less in the EU's interest to start to make special provision for us to find a legal fix to keep things going while we negotiate something that is not, in fact, substantive.

There are all sorts of ways that we could end up with a no-trade-deal outcome. It is worth stressing that, in terms of how disruptive these situations are, having no trade deal is different from having no deal or having no withdrawal agreement. However, economically, they all are as severe: they are the same thing in that they are about trading without agreement between the two sides. We could reach a no-deal situation because the two sides cannot agree, or because they agree and there is a failure to ratify.

On ratification, I absolutely agree with what Dr Fabian Zuleeg said about the European Parliament. However, bear it in mind that, if we end up with a mixed agreement that needs approval by Parliaments across Europe, what is curious about this negotiation is that it is the only negotiation in history whose specific objective is to make trade more difficult. Given that, it is very hard to go home and sell victories—you are selling relatively large or small trade losses.

Politically, I can imagine that potentially being something of an issue in Parliaments around Europe, with people asking why they would sign up to that—perhaps because the difference between it and no deal is not that big or perhaps because a particular Parliament wants to cause problems. There are, obviously, very clear ways in which we could go to the end of the year and end up without any kind of trade deal. Although I do not think that it is the most likely outcome, it is certainly possible.

Dr Zuleeg: I probably agree a little bit on the probabilities in that I think that it is actually the most likely outcome. There is the question of whether, in the end, we have a broadly co-

operative negotiation or descend into areas where it becomes very difficult. For the moment, everyone seems to be assuming that the process will work relatively co-operatively; however, if we get into any real political conflict between the UK and any member state, the whole process might end up with no deal at all. In the end, given what has been put on the table by the Prime Minister, we are talking about the two possible outcomes of either a very thin deal or no deal at all. Anything more ambitious seems very remote now.

In addition, on the question of extension to the transition period, even if we wanted to continue the negotiations in some form, that would require an agreement. Although I am not a lawyer, I understand that that agreement would no longer be covered under article 50. Therefore, you would have to make a new agreement, which would be a mixed agreement that you would then have to ratify. So, even for an extension, you would have to have that very difficult ratification process whereby every part of the European Union would have to agree.

Charles Grant: On Professor Anand Menon's point about why the EU should agree to an extension if the trade deal is so thin as to be hardly different from no deal at all, surely, the answer is for the other areas. Whatever happens with the trade deal, if there is a cliff edge at the end of this year and co-operation on police and criminal issues—as well as other sorts of co-operation—immediately comes to an end, that will be very bad for everybody, including EU countries. I think that the EU countries would have an incentive for finding ways to extend the transition period.

Dr Fabian Zuleeg is right that the legal base will be difficult. I was told yesterday by a senior member of the German Bundestag that their legal advisers say that the Vienna Convention on the Law of Treaties provides possibly quite easy ways to amend treaties—if both sides agree to do so. That is, if there's a will, there's a way.

Fabian's other point is also absolutely right. If there is an acrimonious bust-up on the trade negotiations, it is very hard to see how we will be able to have a productive and happy outcome on the security negotiations at the same time. I do not know whether members of the committee wish to discuss the security negotiations, but I think that they are one of the most important areas to consider.

09:30

Dame Mariot Leslie: It is implicit in everything that we have said that we are talking about deals rather than a single deal, and we are probably talking about more than one deal in the present

set of negotiations, because I do not think that a free trade agreement will be in the same document as a security agreement, both of which are high priorities for both sides. It is already implicit in the political declaration that there will be a continuing series of amendments, changes, deals and subsidiary deals in further areas well after 2020 to amend whatever may or may not have been agreed by the end of this year and to enlarge the negotiations as the process goes on.

It seems crucial that, at an early stage, both sides put in place some of the things that will be enablers for everything else in every other area—for example, agreements on handling securely classified information and agreements on data protection will need to be there to cover absolutely everything. If those things are not there, it will be very difficult to agree anything else, so the committee might like to look closely at the Commission's negotiating mandate and how it starts the negotiations—that will probably happen in March—because it will have the whip hand when it comes to sequencing and how it wants to address those issues in the negotiations. That will give a clue as to where the UK will have to give and when.

I am afraid that the committee will be busy for some years to come following what will be not just one negotiation.

Claire Baker: It is well recognised that the UK Government is interested in trade deals with America, Canada and New Zealand. If we end up in a thin-deal situation, which would largely involve a trade deal on goods being reached by the end of the year, but with agreement remaining to be reached on a number of other areas, in what ways would that restrict the ability of the UK Government to seek other international deals? Would that create problems for the UK Government's ability to broker other deals?

Professor Menon: It would create a chicken-and-egg problem in the sense that, if the UK Government was left still negotiating services, agriculture or whatever else, such that it was uncertain about what regulatory arrangements it would come to with the European Union, that would have an impact on our ability to negotiate with any other negotiating partner, because it would want to know what those arrangements were. It is extremely hard to conduct the two negotiations simultaneously, because the concessions that we might need to get a deal with the United States might be rendered impossible by the deal that we have done with the European Union.

Therefore, although, politically, it makes sense to be seen to be doing different sets of negotiations simultaneously, practically, that is

incredibly difficult, because there are trade-offs involved between them.

Stuart McMillan (Greenock and Inverclyde) (SNP): We have already touched on the changing of the guard from the European Union perspective, but it is widely anticipated that the UK Government will make changes to its Government departments. As a consequence, new personnel will come into play. Do you think that those UK Government changes will indicate how serious the UK Government is about obtaining successful deals with the European Union within the 11-month timeframe that we have left?

Professor Menon: There is no such thing as a new idea in politics. In effect, we are reinventing EGIS, which was the old system by which we co-ordinated EU policy. Those changes will have an impact, because they are all about prime ministerial authority over the process of negotiations with the EU. The big variable, which will determine how effective the system is in the future, is whether the task force in number 10 co-operates fully and openly with the new unit in the Cabinet Office. The last time round, there were complaints that the negotiating team did not share information as fully as it ought to have done, which made things hard for the rest of the civil service. The detailed modalities of how that works in practice will be crucial, but it will have a massive impact on how things are run in the future.

Dame Mariot Leslie: There is also the obvious point that all change is disruptive. The time of permanent secretaries, senior officials and so on will be taken up with changing their logos, building up their teams and developing a new culture and ways of working, at a time when they have a huge substantive agenda on their desks. That is bound to add some grit into a system that is already straining.

Every Government has the prerogative to sort itself out as it wants to, but it seems that none of us has a good sense of quite what the working methods and culture of the new Government will be. It is signalling that it wants to be very different from how Governments were in the past. Many of its approaches to politics have been different from things that we have been used to, in parliamentary terms. It remains to be seen whether that will increase capabilities or decrease them in the medium term.

One useful thing for this committee and Parliament is that, although the British Government does not look as though it intends to be very transparent about how it sets about the negotiations, the Commission, on past form, will be, as will the European Parliament, so we will get steady updates from the EU on what is being negotiated with the United Kingdom as we go along.

Professor Menon: It is worth emphasising that one way in which this Government is different from its predecessor is that it is able to agree with itself on Brexit, at least in the short term. The lack of that ability was, of course, a fundamental constraint on the previous Government's dealings with Brexit, but that will not be an issue now, at least for the short term.

Charles Grant: The Department for International Trade—or what is left of it after the Government reshuffle—will be negotiating trade agreements with America, Australia and New Zealand, but number 10 or the Cabinet Office will be negotiating with the EU. I hope that there will be some good co-ordination between the two.

The biggest difficulty for Whitehall is in getting the system of priorities in place. Mrs May was not really able to knock heads together and put somebody in charge of the kind of star chamber process by which we say, "We'll give this to fish and not give that to cars," or, "We'll give this to farmers and not give that to the pharmaceutical industry." I am not aware of any system of prioritisation being worked out, but the UK needs to do that very quickly, because you cannot go into a negotiation unless you know what your priorities are. As yet, I do not think that that has happened.

Stuart McMillan: Are there any areas where there could be some quick wins for both sides, which could show that there is a seriousness to obtain deals? I am thinking of the Erasmus+ scheme, which the committee has done work on, and horizon 2020.

Dr Zuleeg: The chance of anything being agreed in advance of the main negotiations is very slim indeed, in both technical and political terms. In technical terms, any kind of agreement on areas such as research or Erasmus+ will depend on the EU first agreeing the next multi-annual financial framework. It is impossible to negotiate with third countries on participation in programmes when the programmes are not yet defined. For the moment, at least, we do not have a multi-annual financial framework agreement. Even when we get that, it will still have to be ratified and translated into the actual programmes. Co-operation with third countries in those programmes will come way down the line. We are not talking about anything being possible even this year; we are talking about way into next year.

Politically, there might be a shared interest in particular issues, but it comes back to what I said about all the different interests. When you look at the horizon programme and research money, you can see that a number of countries would certainly have a problem with the UK having a similar position to that which it has now. I would expect that some countries would want the UK to net pay into horizon if it wants to participate.

Those are much more difficult negotiations, which will not be agreed beforehand. The EU is saying that we have to agree on the core issues before we even start getting into some of those more marginal discussions.

Professor Menon: We should bear in mind that the interests are complicated. Some universities on the continent hope that the situation of ambiguity persists, because they can lure people from this country to theirs with the promise of European research money.

Fundamentally, the political issue for me is the notion of sequencing. We should remember that the political declaration says that the first two things on which we will reach agreement are financial services and fisheries. That will not be easy, and it is not obvious that there will be an agreement on those things. If, as looks likely, the EU says that it wants to get them out of the way first, there will not be any quick wins in view.

Charles Grant: Fish could be the most difficult part of the entire negotiation. Some member state Governments have told me that they will not agree to a deal on anything unless the British give in on fish quite quickly. I have heard a senior Government person in London say, "We may have to give in on fish. We may have to give the EU access to our waters, or we will not get anything for the City of London."

For Scottish people in particular, that will be a very important issue. There is a strong point of view in London that British fish can be sold to get a better deal on financial services. The EU will be very hard on that. It is true that only about a third—or less—of member states care about fish, but this is a test of solidarity. Even if countries such as Hungary or Poland do not have fishing fleets, or do not have much of a fishing fleet, they will feel the need to show solidarity with countries such as Denmark, Belgium, France and Spain that care about fish. Fish could be the first and nastiest part of the negotiation.

The Convener: You said that the information was given to you by a senior person in London. Was that quite recently?

Charles Grant: It was within the past week. He did not say, "We will sell Scottish fish to buy financial services access"—it was not that brutal. He just said that the kind of thing that we might have to do is give EU boats access to our waters, otherwise we will not be able to get anything on financial services. He implied to me that he thought that such a trade-off or bargain, which has, in fact, been suggested by Phil Hogan, the EU trade commissioner, was at least quite plausible and something to be seriously considered.

The Convener: Was that a member of the negotiating team or the Government?

Charles Grant: It was a senior official in the Government. I will not say more than that.

Dr Zuleeg: That highlights a very important point in the negotiations. We are now moving to some form of trade negotiations, so it is important to find out what the UK's offer is. What are the areas where the UK is willing to concede and accept EU demands, and in return for what? As long as the UK is not clear about what its offer is, the negotiations will not go anywhere. For the EU to have something to negotiate with, there has to be a clear understanding of what the UK's priorities are and what it is willing to give up.

Dame Mariot Leslie: The UK has long entertained the hope that it has an offer on security that the EU will find irresistible, and that that will be its trump card. That is why the sequencing question is important. If I were an EU negotiator, I would say, "We hear you. We hear your security offer, but we are going to deal with fish before we discuss that." I do not think that the UK will have a lot of leverage on sequencing to allow it to play that security card early, in the way that it might wish to.

Incidentally, security is not simple for either the EU or the UK, so there is a clear mutual interest in having a really good, deep relationship in that area. Inevitably, with defence industries on both sides, there are very difficult issues of competition and national interest, and there are links to trade negotiations, service issues and data protection issues. I think that it will be a very difficult negotiation. If there had been very good will from the start, security could have been dealt with in the course of the year, because the mutual interests are very high. However, the technical interests are also so high that I cannot see it being dealt with adequately in the 11 months that we have left, particularly since the negotiation will require ratification by member states.

The Convener: But you think that trading fish for financial services would be easier to achieve.

Dame Mariot Leslie: That is a bagatelle compared with some of the defence interests. I am being unfairly facetious—it will be very difficult.

09:45

Professor Menon: It is worth pointing out that one interesting question in relation to the talks is whether it is possible in practical terms to be very close security partners if you are turning into intense economic competitors. There are obvious crossover areas, such as Galileo, in which big commercial interests are at stake, and it might be

in the interests of some member states to say that the UK cannot be part of those areas.

I think that having a competitive economic and collaborative security relationship will be very hard, so negotiating on defence and other areas will be extremely hard.

Dr Zuleeg: We should not forget that the European Court of Justice is one of the parties in the negotiations. Many of those areas touch European Union competences. In relation to the number of assessments that need to be made, the European Commission makes those unilateral assessments, which are open to judicial review. Therefore, we might well end up in front of the court on, for example, questions about equivalence—and whether the court will accept equivalence is an open question. That adds to the complexity of the negotiations. Even if there is good will, some things might just not be legally possible.

Mike Rumbles (North East Scotland) (LD): Good morning. I am also a member of the Rural Economy and Connectivity Committee, so I was very interested to hear the responses to the question on fisheries. I want to park that and focus on the impact on Scottish agriculture. The European Commission President has said:

“We are ready to design a new partnership with zero tariffs, zero quotas”.

Forty per cent of Scottish food and drink exports are to the EU, including 88 per cent of Scottish beef exports and 95 per cent of Scottish sheep meat exports, so it will be incredibly important for Scotland’s rural economy that we get an agreement by the end of the year. How realistic is that? What are the implications if we do not get an agreement?

Professor Menon: I suspect that what the European Commission meant was that the UK can have zero tariffs and zero quotas but that there are a whole host of regulations that it will need to sign up to, too. In fact, even if it did not say that, in order to keep trade moving as frictionlessly as it does now, it is not enough to have no tariffs—there needs to be agreement on the rules.

Mike Rumbles: But we have the regulations now, so the rules are the same, are they not?

Professor Menon: Yes, but that is not what concerns the European Union. It is not concerned about where we start from; it is concerned about where we intend to end up. It is not enough for us to say that we are the same now. It is quite clear that the UK Government wants to have the right to diverge. That rings all sorts of alarm bells, with the UK immediately starting to be treated as if it has fully diverged if a system cannot be found for agreeing that it has not. That is the key thing.

A lot will hinge on whether, in a sector such as agriculture—about which we have heard not that much, as yet—the UK Government is willing to say, “Okay. Although on financial services we want regulatory autonomy because the Bank of England does not want us to be under EU rules for financial services, we might make an exception for agriculture.” I have heard nothing that would indicate such flexibility.

Mike Rumbles: Has the UK Government not said that it will not reduce standards in agriculture because of that issue?

Professor Menon: Again, it boils down to a question of trust and relying on the other side trusting you to maintain that position. However, that is not how the European Union works. It will say that that is fair enough, but that it wants to have an oversight mechanism. The EU might come up with an extremely clever oversight mechanism that works for it and is not the European Court of Justice, though I am yet to be convinced that that is possible. Therefore, unless we have a system and process in place, the EU is likely to assume divergence.

That is the fundamental lie to the claim that, because we are starting in the same place, it will be easy. If you ask anyone in Brussels, they will say that the UK Government has spent the past three years talking about divergence and regulatory autonomy. The issue is about where the UK Government is headed to and what guarantees we have about the future.

Dr Zuleeg: From an EU perspective, the moment that the transition ends, the regime is less safe than it was before. Up until the end of transition, there is a common enforcement mechanism, with common governance and, as the final stage, the European Court of Justice.

Therefore, whatever a country in the European Union might or might not want to do, there is common governance that enforces the common rules. The moment that the UK is outside that mechanism, it is by definition not as reliable as it was when it was inside the European Union. Therefore, for all those areas where there has to be enforcement, a governance mechanism has to be found that reassures the European legal system that what is happening on the UK side is, in practice—in terms of what the courts actually hand down—of the same standard and level as what happens in the European Union.

On top of that, there is no guarantee that individual country interests will not come into the issue, although we cannot foresee what is going to happen on that. Agriculture is probably the biggest sticking point in international trade negotiations—it is always the most difficult issue. It is also the issue on which the EU’s and UK’s relationships

with third countries will be important. For example, what happens when the EU concludes a trade deal with New Zealand? Mike Rumbles mentioned lamb, which is clearly one of the issues that New Zealand will expect to be covered in the trade deal between the EU and New Zealand. The question is what implications that will have for trade between the UK and the EU.

Mike Rumbles: Just to follow up on that, if New Zealand has a trade deal with the EU, it will not be subject to rules from the European Court of Justice, and I assume that the EU and New Zealand will not set up another mechanism for enforcement. Surely a trade deal between the EU and a third party does not rely on setting up another body for regulation. If New Zealand does not abide by its agreement with the EU, the answer is very simple: the EU stops that agreement. Surely the same will apply with the UK: if we do not abide by an agreement that has been reached, that agreement ends. We surely do not need another mechanism.

Professor Menon: It is worth bearing in mind that we are starting from a very different position from that of New Zealand. At the moment, we trade in agriculture with the European Union as if we were trading inside the same country, which is not how New Zealand will trade with the European Union even if it gets a trade deal. What we are saying is that the situation would not be the same as the status quo, because there would be more friction in the trading relationship than there would be if we were inside or if we agreed to sign up to the same rules. It is a qualitatively different sort of trading relationship.

Mike Rumbles: That will come as news to our farmers.

Charles Grant: When New Zealand lamb enters the EU, it has to go through physical inspection points. The EU has strict rules on physically inspecting all incoming farm and animal produce. The one country that has been exempted from those rules on physical inspections is, I believe, Switzerland, which is because the Swiss have basically signed up to the entire EU rulebook on plant and animal health and have agreed to update their rules when they need to do so. The best deal for British farmers would be some sort of Swiss-type deal, but it would be politically very difficult for the Government to agree to follow all the EU's rules on plant and animal health. If it does not do so, there will be physical inspections on Scottish lamb exports into the EU post-Brexit.

Dr Zuleeg: The question is also about the economic interests of farmers in the EU. For example, if lamb is being imported from New Zealand, that might be traded off against other areas in the negotiations, and the EU might not have an interest in allowing the same kind of

access for lamb from the UK, which after all will be a third country. Normally, every trading bloc, including the EU, has restrictions relating to agriculture—there is not open trade; there are quotas and tariffs even after a trade deal. When you look at international trade, you find that the area is littered with exemptions. Agriculture is not an area where the presumption of free and open trade normally applies. That is much more common in goods than it is in agriculture—in agriculture it is far more limited. Therefore, if the UK wants to have something that is close to the status quo, that requires a lot more than simply saying, “We do not want any tariffs or quotas.”

Dame Mariot Leslie: It is also worth remembering that what Michel Barnier actually said—more than once—was that there should be “zero tariffs, zero quotas and zero dumping”.

That is diplomat speak—it takes one to know one—and it means that you can get the zero tariffs and the zero quotas only if you go for the zero dumping, which means, as others have said, “You take on our rulebook,” because Europe would regard any animal health measures, phytosanitary arrangements or other things that do not meet its regulatory requirements as amounting to an attempt to undercut competition and, therefore, dump. That is where the dilemma lies for the British Government and, therefore, for Scottish farmers. If we take the European Union rulebook, we will have a great deal of trouble doing a deal on agriculture with the US, which will have agriculture very high up its priorities. On the other hand, if we take the US rulebook and adopt the sort of phytosanitary and other arrangements that the US would like, the EU will regard us as being in the dumping category, which will make it difficult to do the tariffs and quotas deals on agriculture with the EU.

Mike Rumbles: Our farming organisations—by which I mean the Scottish ones, such as NFU Scotland; I cannot speak for the rest of the UK—take the view that the issue should not be a problem, because Scottish farmers want to keep the high standards of EU regulation in animal and plant health. If the industry in Scotland wants to do that, and the Government has said that that is what it wants as well—so, everyone agrees that that is what they want to do—I cannot see what the problem is going to be.

Dame Mariot Leslie: The problem will be that, unless there are auditable arrangements for checking that inside the UK, which the EU can inspect and agree, the EU will insist on having regulatory checks at the border, and it does not look like the UK Government wants to have anything like that apparatus in place inside the UK, partly because of its wish to do agriculture trade deals with other countries. That is the horns of the

dilemma. Whatever extremely high standard Scottish farmers might meet—I know that they do—that will not help if their sovereign state, which is the UK, has in place a regulatory framework that does not meet the regulatory requirements of other countries' trade deals.

Ross Greer (West Scotland) (Green): I want to go back to the issues to do with sequencing and timetabling, particularly with regard to what Claire Baker mentioned earlier.

The UK Government's line is still that trade negotiations with the EU and the US will be conducted in parallel this year, and that it intends to publish both sets of objectives at the same time next month. In Davos, over the past few days, the Chancellor of the Exchequer stuck to that line until the end of his contribution on a panel at which he was sitting alongside the US Secretary of the Treasury, when he said that he wanted to get the EU deal done first. Do you believe that that reflects the growing recognition of reality on the part of the UK Government, or is there still an intention to try to run those sets of negotiations in parallel, as if they were similar undertakings?

Professor Menon: To be honest, we do not know whether the chancellor misspoke. The reaction to his comment from the US side was interesting, too.

The British Government finds itself caught in a hard place here. If you look at the forecasts that the UK Government has done, you can see that the economically more important relationship is the relationship with the European Union. Whether that fact transfers into the politics is far from clear. The Brexit saga is a story of the triumph of politics over economics, and that shows no sign of stopping, to be honest.

Ross Greer: The objectives of the US side in the negotiations have been described at length by a variety of sources, but the UK objectives are still unclear. Earlier, you said that, given the timescales that are involved, any deal that could be done with the EU before the end of this year would be relatively thin. The US intentions are for a deal to be agreed before the presidential election in November. That is vanishingly unlikely but, if it were to come about, it would presumably be incredibly thin, too. What would a bare-bones US-UK trade deal look like? What are the few areas that could conceivably be agreed before November?

10:00

Professor Menon: The quickest area to agree is tariffs. It is quick for two reasons. The first is that tariffs between the UK and the EU are pretty low across the board, apart from some areas. About two and a half years ago, we conducted a study in

which we modelled what would happen in the event of the UK and the US scrapping every tariff on trade between the two sides, and the net benefit to the UK economy was about 0.3 per cent of gross domestic product. There is relatively little in the way of gains there, but the process is easy, because tariffs are quite low. The second reason why it is quicker is that it is a lot easier than doing the hard stuff, which is services. That involves coming to some sort of agreement on regulations. The prospects of getting some kind of deal in that regard strike me as vanishingly slim.

Dr Zuleeg: Given my experience of the EU and the US, I would find it incredibly strange if the US did not put agriculture on the table. Clearly, that opens up a number of issues. I cannot see that, with agriculture being involved, you could come to any kind of meaningful deal, even if the UK was willing to make some of the compromises that would be entailed in that regard. I think that what you were talking about is more of a political statement than the reality. For a real trade deal, you would also have to consider ratification in the US, and it is Congress, not the President, that would have the decisive role in that. It is also worth noting that that would be taking place in the middle of a presidential election campaign, in which all those sorts of discussions become political footballs. I do not see that anything meaningful will be achieved. There might be some form of announcement to try to create the impression that there is progress but, in reality, there is nothing that can be agreed by the end of this year.

Ross Greer: Charles Grant mentioned the need for quite a high level of co-ordination, given that the negotiations will involve not only separate teams but separate departments leading on negotiations—there will be a team inside number 10, as well as the DIT, which will be running the US negotiations. Is that situation anything like a normal one for the conduct of trade negotiations between countries? At this point, we are still being told that the objective is to arrive at a comprehensive agreement. Do countries typically have different departments leading on comprehensive negotiations?

Dr Zuleeg: It is difficult to say, from the point of view of the European Union, because it has conducted trade negotiations through the Commission, as the competences lie with the European Union. However, clearly, when you have international negotiations, you need someone who conducts those. Every country has some form of trade representative in those negotiations, but that does not reduce the need for co-ordinating the domestic position. I would say that, actually, the challenge is greater than simply coordinating what is happening between departments. To have a trade deal that works and is acceptable, you need

to have much broader involvement. In some countries, there must be the involvement of other sub-state actors, and a host of different interests, from business to non-governmental organisations to civil society bodies, must also be involved in the negotiations, because experience tells us that, if the European Union negotiates something without that sort of engagement, there is no public acceptance, which means that ratification becomes an issue. Over the past few years, the European Union has learned a lot about how to conduct those kinds of negotiations. It is now much more open and it does a lot more to involve those various actors. That is something that the UK will also have to consider. The issue of co-ordination is enormous.

Professor Menon: I will add a couple of things. First, if you talk to business groups, they will say that they get good access to the DIT for discussions and consultations on all the other trade deals—New Zealand, Australia, the United States—but none when it comes to the EU deal, which is being handled differently, so there is a contrast. The paradox at the heart of that is that the institutional structure speaks to the primacy of the EU negotiations, because they are led by number 10, but the politics does not accept that primacy, so there is a slight tension between what the politicians say and the nature of the structures that they have put in place.

Ross Greer: I have one final question, convener, if there is time.

There have been reports in the past couple of days that the EU is not prepared to offer the UK conformity assessments. If you dig into those reports, they say that the EU is not prepared to offer conformity assessments unless they are for a full level playing field agreement. Could you elaborate on what might be motivating that relatively hard line in negotiations, if indeed you believe those reports to be true?

Dr Zuleeg: For the moment at least, I would take all those reports with a pinch of salt; those are positions that are being developed. It is also a question of what will be agreed with the member states and what kinds of positions the EU will take on certain areas, so there is still some scope.

Politically, there is little scope that the European Union will accept any kind of trade deal with the UK unless the UK signs up to level playing field conditions. That is a minimum requirement; it has a very high priority in a number of important capitals. In many ways, I would put it in a similar manner to the fisheries question: unless the UK concedes on the issue at the beginning of the negotiations, there will be no scope to reach a trade deal by the end of the year.

Alexander Stewart (Mid Scotland and Fife)

(Con): You have identified that the timescales are tight in most areas of the process. I will look at the movement and mobility framework that may be discussed. How important do you think discussions on immigration will be to how that progresses over the next 11 months? If that is the case, what will the EU be looking for in those negotiations when it comes to mobility and movement? We will have short-term visits for business or leisure, but when it comes to the other side of that issue, what will it be looking for?

Dr Zuleeg: It is important to look at the different aspects of that issue. There is agreement in the withdrawal agreement on how the question of EU citizens who are in the UK, or are going to come to the UK during the transition period, is handled. In a sense, from an EU perspective it is simply an implementation question. There is also the question of movement in the Ireland and Northern Ireland common travel area—when we have the implementation of the protocol, there will be discussion on that.

When it comes to the movement of UK citizens to the EU and EU citizens to the UK, if those arrangements are permanent, they will be governed by national immigration laws; there will not be a European dimension to that. When it comes to business, that is one of the big unanswered questions, because the free movement of people for the purpose of conducting business gets into trade in services. The question is whether there will be some form of arrangement but, it has to be said, within the EU arrangements have been tightened up for that. If you are travelling within the EU for the purposes of providing a service, there are now certain procedures that you should follow such as registering with social security authorities. If we get into that area, it becomes more difficult, but the presumption on my part is that that will be wrapped up in the negotiations on services, which will not take place this year.

Professor Menon: I see little, if any, prospect of anything being done on this in the negotiations this year; in fact, I see little, if any, prospect of this country having its new system in place and working by the start of next year. There is an awful lot to do here.

As Fabian Zuleeg said, there are two different issues. We are struggling to get the system for EU citizens who are already here sorted and working well. We then have to get a system in place to deal with those who arrive after that date—the new points-based system. That is not going to be in place and working properly by the start of next year. However, I do not think that we will start negotiating anything on mobility with European Union nations in the trade deal.

Alexander Stewart: So you anticipate that all that will have to be kicked further down the road, and that there will have to be renegotiation, or a timescale that is much later than what is being proposed at present.

Professor Menon: Yes—if it figures in the negotiations at all and both sides do not simply put in place their own systems. Fabian Zuleeg can correct me if I am wrong, but I think that, for the European Union, it is a question of free movement in its deals with—say—the European Free Trade Agreement countries or, to a certain extent, with Switzerland and Ukraine. However, apart from that, EU trade deals do not, in general, touch on movement of people, do they?

Dr Zuleeg: Not substantively.

Dame Mariot Leslie: From the point of view of your constituents who have an interest in this, it seems to me that there are perhaps three very obvious points where it bites. The first is people simply going on holiday. This year, there will not be any difference, but next year, hard baked into it is a change in status and in the ability to travel freely. If it happens in the way in which both sides want for short-term holiday visits, there will be no change—there will be, in effect, visa-free travel, possibly with UK citizens having to get a Schengen pass that will last them a considerable length of time. However, there will be a cliff edge at the end of December if—and I am sure that it is correct—the service issues to do with mobility are not negotiated this year.

There will also be a cliff edge for the recognition of professional qualifications that could well affect some of your constituents, as well as a cliff edge for establishment, and a cliff edge for being able to offer services across borders and being able to travel to and fro freely. Without something in place, individuals will have to fall back on the national third country rules of whatever country they are dealing with, and that might be 27 different sets of rules.

Alexander Stewart: As Mariot Leslie identified, they may all be different rules, depending on which country you are involved with.

Professor Menon: Bear in mind that, even if you are a tourist, your rights to access certain basic services—such as healthcare—or your right to take your pet will be fundamentally different once transition has ended.

Annabelle Ewing (Cowdenbeath) (SNP): I will pick up on a few of the issues that have been raised thus far. We have talked about fishing, on which Charles Grant has been able to bring some interesting information to the table this morning. Obviously, some of us suspected that it would, of course, be the case that Scotland's fishing industry would, once again, be traded away. I

looked at a comment that was made by the 1973 UK Tory Government, which said that, in the light of Britain's wider European interests, "they"—meaning Scottish fisherman—"are expendable". Sadly, some 47 years later, we seem to be in exactly the same position.

Taking that as a negotiating imperative—clearly, it is—and taking into account the fact that the UK Government has locked itself into 31 December 2020, I was interested in Charles Grant's comment about how it will try to dress up not asking for an extension. However, as far as the EU is concerned, how will that work? We have just talked about various cliff-edge issues that cannot be dressed up by some piece of paper, unless it is meaningful for affected individuals; for example, such that it means that they can take their pet abroad or travel without undue restriction. What has to give in terms of the July trigger date? I am not really following this. You can spin, but if people's reality is absolutely the obverse of the spin, how do you dress that up? Perhaps Charles Grant will want to kick off, as he brought up the subject.

10:15

Charles Grant: I do not think that there is much chance of the provision to allow for an extension to be agreed before the end of June—as is contained in the withdrawal agreement—being activated by the British Government and the EU, because Boris Johnson has said that he will not do that and has legislated to prevent himself from doing it. He would get into serious political trouble with his party if he reneged on that promise, regardless of the pressure from business—which would be enormous—for him to do so. I do not think that that is on the cards.

What is on the cards is what I said earlier. If, in the autumn, it becomes clear to everybody that, in practice, we need a de facto extension in many areas of the relationship, the hunt will be on to find a relatively painless legal mechanism through which to do that. Of course, if there is ill will, that might not happen, but if there is good will on all sides, it will happen. The lawyers will find the right way to do it. It will not be called "transition period" or "implementation period", but something else. In effect, it will cover many areas of co-operation, including police co-operation and mutual recognition of professional qualifications, which Mariot Leslie mentioned. There will be a desire for an extension in areas in which both sides would suffer from a cliff edge.

There will be the difficulty of payment. The EU will not give the British a free transition—even if it is not called "transition"—without the British paying for it. That will be very difficult. The EU will insist that the European Court of Justice play a role in

any quasi-transition on which both sides agree, but the UK will have to be a rule taker, which will be very uncomfortable for the UK. The question is whether both sides will be able to disguise the extended transition so that it does not look too unpleasant, painful and expensive. Will they be able to find ways of massaging the reality so that it does not look as bad as it really is?

Professor Menon: It is worth flagging up two things that have already been mentioned. First, the legal basis on which the European Union could do that remains very unclear to me, and there is a debate about the matter among lawyers. The second point relates to what Fabian Zuleeg said earlier about ratification. If we need an agreement to extend without extending, as it were, that will have to be ratified, and that will not necessarily be straightforward.

Dr Zuleeg: Perhaps we should not use the term “the extension of transition”, because it will not be an extension of transition. Unless an extension is agreed before June, there cannot be an extension of transition, because there is no legal basis for having one. The provision on a transition is there only because of the agreement under article 50.

A new agreement and a new legal basis could be established, but that would require actually agreeing on something. Then, in many ways, we would be trying to pre-empt an agreement. If there was a mixed agreement, ratification would be required, and all the member states and places such as Flanders and Bologna would have to agree. They would have to agree not simply to a technical deal, but to a substantive new deal.

On top of that, we would have to see how far that would be compatible with international obligations, particularly those that exist under World Trade Organization rules. If the UK is offered preferential access under its most-favoured-nation status, a number of countries might well try to use that as the legal basis for making their access to the EU more favourable. The EU would certainly not allow all the third countries with which it has trade deals to come in on favourable terms, as the UK would have in the transition.

There will be technical difficulties, particularly in relation to trade issues. On some of the other issues that are within the competence of the European Union, mini deals might be possible. However, on the big issues such as trade deals, I fail to see how that would be practically possible, how the legal basis would be put in place, and how the agreement would be ratified by all the member states in time for the end of the year.

Dame Mariot Leslie: Fabian Zuleeg might want to comment on this, because he knows more about it than I do, but it is worth remembering that

when last we were faced with a potential no-deal cliff edge, the EU unilaterally produced crisis-management contingency plans to mitigate temporarily the effects in some areas, including aviation. Again, it would be open to the EU to have contingency plans in the limited number of areas in which it thought that having such plans would be essential to stop chaos. I guess that, if necessary, the EU would take the risk of there being challenges from other countries in the WTO and simply say that it was a temporary and time-limited emergency measure to stop planes falling out of the air.

Annabelle Ewing: What would that “temporary and time-limited emergency measure” look like?

Dame Mariot Leslie: It would look very like the measures that the EU took and announced 18 months ago.

Annabelle Ewing: I am sorry to interrupt again, but what period of time are we talking about?

Professor Menon: The periods of time varied. The common feature was that the European Union reserved the right to withdraw any or all of them at a time of its choosing.

Dr Zuleeg: The measures were, essentially, unilateral measures by the EU, so the focus was on areas in which the EU could take certain actions and allow certain things, where that was strictly in the EU interest. It was clearly about making sure that, wherever possible, the negative effect on EU citizens could be mitigated. However, there are severe limits to that.

I return to a point that I made earlier. I think that many of these things will end up in front of the European Court of Justice, where we have a different situation, because if the court strikes something down, it cannot stand. That is the rule of law within the European Union. People are making assumptions about what might be acceptable to the court in many areas, but I would not be confident that, if it comes to testing that in front of the court, it will simply go along with those assumptions. The court is independent: it is responsible for upholding the treaties and it will do that no matter how inconvenient it might be for member states.

Charles Grant: I was told last night that the legal service of the German Bundestag is pointing members of the Bundestag to article 39 of the Vienna Convention on the Law of Treaties, which says that

“A treaty may be amended by agreement between the parties.”

According to the lawyers in the Bundestag—this is second hand; I got it from a member of the

Bundestag last night—it is possible, de facto, to extend parts of the transition quite easily using article 39 of the Vienna convention. I am sure that to do so would be extremely complicated in practice, as Fabian Zuleeg said, but in general, as far as EU lawyers are concerned, where there is a will there is a way.

Annabelle Ewing: Yes. I think that the President has shown that. That is an interesting reference. It is, obviously, a question of political will, but whether there is such political will remains to be seen.

I will turn to financial services, which is a very important sector for the UK Government. I think that Professor Menon mentioned there being equivalence in about 20 areas by July. What are the chances of that—not least given that the UK Chancellor of the Exchequer came out this week saying that, in broad-brush terms, there will not be any alignment? That is not going to be the UK Government's negotiating approach across the board. How can those things be reconciled?

Professor Menon: Equivalence is slightly different from mutual recognition. It is simply about the EU authorities saying that the regulatory system that is in place is basically satisfactory. However, the rub—which is why uncertainty would persist even if we got all the decisions on equivalence—is that the European Union, under its normal equivalence procedures, reserves the right to withdraw approval with 30 days' notice, so there is always slight uncertainty.

The Government will have the freedom to change the regulations on financial services, but the EU will have the freedom to say that it is no longer certified as being equivalent. That is a different relationship from the one that we talked about earlier in agriculture, in which regard we talked about joint enforcement. The relationship will make for great uncertainty, if or when the British Government decides to change its rules.

Annabelle Ewing: The two things are certainly not the same, but equivalence would, nonetheless, express a general desire on the part of the UK to be a good citizen and to negotiate in a reasonable manner. The EU has a body of regulations on financial services, many of which are subject to updating as financial products change, and so on. Given the need for, in particular, legal certainty in financial operations, how will it work if the UK suddenly decides not to implement a supplement to the Investment Services Directive and the EU takes its position after a time? What about the legal certainty of the financial transactions that occur on the basis of that sort of non-legal regime? What will happen?

Professor Menon: As I understand the matter, equivalence would not be a question of doing what

Charles Grant said the Swiss have to do, which would be our having to update our law if the EU changed its law. It would simply be about persuading the EU that how we do things is compatible with how it does things. Therefore, it is not quite as stringent as—

Annabelle Ewing: With respect, there are detailed rules on financial services passporting for banks, investment services, undertakings for collective investment in transferable securities investment services, the insurance industry, capital adequacy, large exposures, the manner of conduct of services, and all the rest of it. Given that the financial institutions of the host member states have to comply with that strictly enforced plethora of regulation, unless the UK signs up to it, at some point something must give, if they consider that the UK is taking the dumping approach to which Dame Mariot referred.

Professor Menon: At which point, the EU will turn around and say that it has 30 days' notice—

Annabelle Ewing: That is not really how the financial industry works.

Professor Menon: No—absolutely.

Dame Mariot Leslie: The way that the financial industry works is that people will take their brass plates and put one in the UK and one in an EU member state and have two branches and a holding structure.

Charles Grant: I would distinguish between the impact of all that on the City of London—and possibly on Edinburgh—and on the financial firms. The firms will not be badly damaged. They have made preparations and now have brass plates in many continental cities. They have had to move some of their people there already and will gradually move more as EU regulators force them to do so.

Most of the banks and the fund-management firms that I talk to are relatively relaxed about a hard Brexit. They have made their preparations and they will not be hurt. The problem is that the City of London might be hurt. Edinburgh might be hurt, too, but I admit to not knowing much about its financial services industry.

There will be migration of capital, management and staff from British financial centres to EU centres. That will happen gradually. The numbers will be small at first, but will build up over the years. The firms do not think that they will be too badly hit. They have only the costs of relocation, which is a bit of a bother, but not much worse than that.

Annabelle Ewing: Yes, I understand that many larger financial institutions have already taken measures that they have deemed to be necessary, but there are rules. One cannot just set up shop—

having headquarters elsewhere means having a meaningful base, otherwise they would not get the whole passport.

Do you think that it will take years and years to get in place a comprehensive services deal?

Professor Menon: I would not count on a deal on services for as long as we have a British Government that wants the right to diverge. Services are such a tricky area because they are deeply intrusive—they require co-ordination of domestic regulations in a way that simply scrapping tariffs does not. The British Government is not talking about having a comprehensive deal on services.

Dr Zuleeg: It should also be recognised that globally the single market is the only comprehensive deal on services. Services do not feature very much in trade deals. There might be a chapter on services, but generally it would be rather minimal and, in some ways, pretty meaningless.

Annabelle Ewing: I will rephrase that to clarify what I meant. When do we expect the totality of the services sector—be that in relation to one deal or many mini deals—to be covered? What is your prediction? Look into your crystal ball.

Professor Menon: Never.

Dr Zuleeg: That is very unlikely because many different horizontal issues are involved in services. For example, there would have to be a comprehensive agreement on data protection, something on the mobility of people supplying services, and there are also areas to do with qualifications. It is very difficult. That is why services have been an extremely tricky matter in the single market framework. I would not expect to get from the trade negotiations anything that would come anywhere near that.

Professor Menon: I point you towards the Royal Institute of British Architects, which has done some interesting work on what a services agreement would mean for it across Europe.

I also underline the fact that one of the problems is that the line between goods and services is not wholly clear. For a manufacturer such as Rolls-Royce, a large volume of its sales is in services—in service packages for the goods that it sells, and things like that. It is not simply a question of law firms being hit; many manufacturers are very leery about the absence of provisions for services, because that will hit them quite badly, as well.

10:30

Annabelle Ewing: I take that point. I will give the last word to Brussels. Mr Grant, what is your prediction?

Charles Grant: I agree that a services deal is not going to happen. Fabian Zuleeg is right—the only serious services deal that has ever been made is the one for the single market, and even it is very imperfect, because there are many service industries in which there is no effective single market. I do not see the UK agreeing to free movement, which means that the EU will not agree to any significant deal on services.

Kenneth Gibson (Cunninghame North) (SNP): I am interested in exploring how the European Union's attitude and approach to Scotland is evolving. Scotland has shown itself to be open to European institutions and welcoming to European citizens, and the country voted overwhelmingly to remain, as you know. In the current devolved context, if Scotland moves forward to independence, how is that likely to be perceived by European nations and the European Union?

Dr Zuleeg: We have to recognise the current situation—the status quo. I am afraid that, if nothing changes constitutionally for Scotland, the good will that is there will not make much of a material difference. Scotland will leave with the rest of the UK, and it will not have a particular role in the negotiations unless the UK Government chooses to emphasise particular issues of importance to Scotland. However unfair that might be, ultimately, if the UK leaves the European Union, Scotland will be part of that.

The question of independence is the subject of a different debate, and I would not expect the European Union to engage in that debate unless it becomes more concrete than it is at the moment. There are some sympathies for the position that Scotland finds itself in, but practical questions would be raised. I would not expect the European Union to engage with that question unless it becomes a real possibility.

Professor Menon: I would be wary of expecting the same kind of flexibility from the European Union for Scotland as it has shown towards Northern Ireland. Some people have drawn that analogy, saying that the EU has made special provisions for Northern Ireland and watered down the indivisibility of the free market and has said that there is a degree of ambiguity around the Northern Ireland deal. There are specific reasons for that—not least the EU's role in the Good Friday agreement and the fact that the vital interests of an existing member state were engaged in the case in Northern Ireland. I would not assume that the same level of flexibility that is apparent for Northern Ireland would be apparent for Scotland in the future.

Kenneth Gibson: As you know, Scotland is being, in effect, excluded from current negotiations—certainly, the devolved Government

here is. How can the Scottish Government deepen its relationship with Europe? There is an element of frustration, because we are pro-Europe and we want to engage more fully with Europe. How can we do that in the current context?

Dame Mariot Leslie: A lot of good will was generated in the European Parliament and in European capitals by the vocal pro-Europeanists of Scotland in the context of the Brexit debate and the referendum, but the visibility of that will evaporate as member states move on to the next stage, which is negotiation of the future arrangements. We will no longer have Scottish members of the European Parliament making their case there.

I am sure that the Scottish Government will continue to engage as much as it possibly can not only with European Governments but with other European institutions, universities, researchers and people in civil society. A lot of Scottish civic organisations will continue to do that, too, and ought to be encouraged to do so—such engagement will be absolutely vital. However, I am afraid that Fabian Zuleeg is correct in saying that Scotland will not have much purchase in the matter under the current arrangements.

Scotland ought to be thinking hard about the areas in which there might be European institutions—those sitting alongside the EU rather than being part of its institutional structure—where Scottish professional bodies and this Parliament could proactively pursue contacts. The Scottish Parliament could do that through its relations with the European Parliament, for instance. If that does not happen, those contacts will simply wither, because the other side will not see them.

Towards the end of the political declaration, there is a paragraph that deals with structures. It talks about both parties encouraging contact and dialogue between the European Parliament and the Westminster Parliament—there is no mention of the devolved Parliaments in that context. However, given that the future arrangements will involve matters that are devolved to this Parliament and the Scottish Government—as well as to the National Assembly for Wales and the Northern Ireland Assembly—it would seem to be worth considering how this Parliament is going to pursue relations with the European Parliament and what structures might be in place in that regard.

Obviously, it is worth continuing to make the case for a Scottish interest in horizon 2020, Erasmus+ and all the other programmes. You have to go on making that noise. It might not be heard and acted on immediately, but, like water dripping on stone, it continues to have an effect.

Scottish universities will continue to have contact with European universities. However,

there is no doubt at all that, under the current constitutional arrangements, Scotland will become much less visible and will have less leverage in Europe, and the leverage via the UK institutions at present looks limited, as a matter of political will.

Kenneth Gibson: So, in reality, Scotland is likely to become increasingly marginalised within Europe and to have a lot less influence than, for example, one of the German Länder.

I appreciate that the European Union will not want to comment directly on the issue of Scotland moving forward to independence, but I take it that, provided that there is a constitutionally agreed referendum between Scotland and the UK, the hostility towards that would be much less than it was perceived to be in some quarters in 2014. Would that be right?

Charles Grant: The key thing for the EU will be the question of legality. The reason why the EU has not taken Catalonia's side in the past couple of years is that the Catalans are pursuing a course of action that the EU perceives to be illegal. As long as Scotland moves towards independence according to the constitution and in co-operation with Westminster—that is, as you said, in the context of another referendum that both sides agree on—the EU will look benignly on Scottish independence. As you are aware, in the past five years or so, the Spanish have rather shifted their line from being totally hostile to the idea of Scottish independence to being not necessarily hostile. As long as Scotland pursues a law-abiding route to that end, I think that the EU will be welcoming of Scotland inside the EU.

Dame Mariot Leslie: I think that that is right. As a former diplomat, I would say that the reality is that no other country that is worth being recognised by—including the major powers such as the USA, Russia and so on—would jump the gun and recognise an independent Scotland until London had recognised it, but that, at that point, a queue would rapidly form, made up not only of European countries but of countries beyond the EU. For an independent Scotland to be able to exercise its sovereignty, including by applying to join international organisations, a constitutional process that was recognised by our present sovereign state—the United Kingdom—would be an essential step.

Further, since 2014, two things have changed. The first is that, as Charles Grant has mentioned, the EU now has a much more benign attitude to Scotland because of the approach that we took to Brexit. The second is that, as the UK would no longer be inside the European Union, not wishing to tread on the toes of an existing member state is no longer an issue that would play with the rest of the EU27.

Kenneth Gibson: That last point is exactly the one that I was going to make, so thank you very much for pre-empting it.

With your indulgence, convener, I would like to ask one other question. We have not yet touched on security concerns, which are Dame Mariot's area of expertise. I ask her what her concerns are in that area, for the future and for where we are now. Those might be about security overall, but they might also include matters such as Europol and the European arrest warrant. I am not asking simply about the military or strategic approach—I understand your former relationship with the North Atlantic Treaty Organization—but about law and order, which many people are concerned about given the multinational nature of organised crime.

Dame Mariot Leslie: Convener, I am conscious that that is a huge subject but, because time is short, I will try to deal with it briefly, if I may.

The Scottish Parliament and the Scottish Government have serious devolved responsibilities in certain areas of the law and order portfolio, such as in criminal justice, policing, wider aspects of jurisprudence and certain aspects of civil preparedness. There are other areas in which Scottish citizens have interests at stake, from the wider world context.

The sad thing about Brexit is that it reduces the capabilities of not only the United Kingdom but the European Union, western Europe and the whole of Europe more generally. It diminishes our sense of solidarity and puts in place obstacles to the aspects that Mr Gibson has mentioned, such as Europol, the European arrest warrant, Eurojust, access to databases and so on. It removes from the EU the substantial body of diplomatic understanding, knowledge and networks and of intelligence understanding and networks whose assessments, in modified form, the UK was able to share with its European partners. It also diminishes the link between the EU and NATO, for which the UK was often a linchpin, including in the position of the deputy supreme allied commander in Europe, who was dual hatted between the EU military committee and the NATO military committee.

Therefore, all round, our capabilities will be diminished—very sadly, at a time when the world is becoming less secure because of factors such as the growing trade wars between the US and China, conflagration in the middle east and a Russia that is more challenging than it was.

It is bad news all round, but aspects of it impinge directly on the competences of the Scottish Parliament and the Scottish Government, which have a devolved interest in checking what is happening and being involved in both legislative consent and considering the effectiveness of

Scottish institutions and responsibilities in that area.

Kenneth Gibson: Thank you very much for that comprehensive answer.

Donald Cameron: I, too, have questions on security, some of which you have already covered.

How hard is it to disentangle the negotiations on security from wider economic ones? Could the security area be looked at exclusively, or is it just impossible to separate it out?

Dame Mariot Leslie: There are areas that could be looked at if there was a will—which, at present, I do not think there is, on either side. Stuart McMillan asked about areas with very quick wins. They could exist in non-security-related foreign policy such as general crisis management arrangements. Frankly, if both sides wanted to do it, a deal on how the United Kingdom related to the common foreign and security policy could be written down and sorted out, and a pragmatic agreement on it could be reached very quickly.

The further we get into the hard defence issues, or the hard security issues—whether they are to do with counterterrorism and exchanges of intelligence relationships and databases; defence, where we get into equipment issues and therefore commercial issues and a range of issues that are closely related to the trade agreements; or quotas, participation, project management or access to financing—we will find it harder and harder to get agreement, because the national interests of some very big member states with very big commercial interests in defence will come into play.

10:45

I cannot see the EU wanting to, or being able to, dissociate the non-commercial, non-defence industry aspects of defence from the other security interests. They have always been bundled, and they are linked. There is a link between capabilities in equipment terms and some of the other capabilities to do with training, readiness, operational headquarters and so on, all of which have been political shibboleths in the United Kingdom, and particularly in the Conservative Party, which is now in government. I cannot see any easy way of separating those defence issues.

Internal security issues, whether they are to do with counterterrorism or organised crime and so on, could be filleted out. They do not have to be bundled with defence. That would very much depend on whether both sides were willing to do that, which comes back to what I was saying about sequencing. I think that, because the EU side perceives that this is where it has the maximum leverage, as we said earlier, it will want to start with issues such as fish quotas and the trading of

goods and not get on to those other areas until it has established a baseline of the UK's willingness to co-operate.

The answer is that there is a lot that could be done. In practice, it will not be. Does this mean that we will suddenly be exposed to a wave of counterterrorism and so on that we would not have been exposed to before? I do not think that anybody should be sensationalist about that. The reality is that, although police, justice and judicial co-operation will have serious obstacles put in its way, when it comes to hard operational co-operation between security and intelligence services, that will continue to happen rather quietly, bilaterally and not under an EU umbrella. If there is an immediate, real threat to the United Kingdom that originates in another member state, I would expect the security and intelligence services to talk to one another rapidly, as they have always done.

Dr Zuleeg: I will add a couple of short points. First, all of this assumes that the negotiations are going well. If we have a breakdown in the main negotiations, it will become virtually impossible to agree on anything else.

Secondly, when we are looking at the overall coherence between the foreign policy of the UK and that of the European Union, it is an open question in my mind whether there will still be the level of coherence that we have at present. When it comes to some of the big, critical questions at the global level, where the US has a very different view from the European Union, will the UK start to side more often with the US than with the EU? When we look at the issues around investment screening or Iran and how we deal with such situations, there is that added complication of uncertainty about how far the objectives of the UK will still be the same broad objectives that the EU has at present.

Professor Menon: I do not want to overegg this, but we should not underestimate the dangers that are inherent in losing access to the databases. We will lose access not just to them, but to any information that we have taken out of them to date, because of EU data protection law. In the fight against terrorism and criminality, that is very significant. In effect, we will become blind if an agreement is not reached. We do not know what the implications of that will be, but I do not think that they will be positive.

There can be any amount of collaboration with other police or intelligence services across the European Union, but they will not be able to share information with us if it comes from the EU databases. That will impede our ability to deal with some of the threats.

Donald Cameron: Absent an agreement.

Charles Grant: Travelling around European capitals, I have detected a shift on this dossier over the past 18 months. In 2018, I was told by senior people in Brussels and member state capitals, particularly in Paris, that no third country could have a close relationship with the EU on security post-Brexit because, if it did, there would be a problem of precedent—"If the British have some mechanism allowing them to plug into our machines and apparatuses, the Turks will ask the same thing, as will the Americans and the Moldovans, and they just have to be kept at arm's length."

There was a lot of push back from member states last year. In the autumn, when I was in Paris, Berlin and Brussels, I was told that they want to create bespoke arrangements that would be offered to the UK to allow it to be plugged in closely to our mutual benefit, and that the EU would not offer those bespoke arrangements to other third countries. There was a lot more pragmatism. I have noticed some of that pragmatism creeping into the Commission now.

For reasons of self-interest, the EU has become more flexible and pragmatic than it was, but the caveat is that, on justice and home affairs matters, the UK will have to accept a substantial role for the European Court of Justice and accept EU rules on data privacy, which would be politically difficult. As Anand Menon rightly said, if the trade talks end in tears, that will mess up the talks on security.

Donald Cameron: Narrowing down to internal security, what do you believe is the scope for continuing judicial co-operation on police and criminal matters, such as on the European arrest warrant? Do you see that positively?

Dame Mariot Leslie: It could be done, but the UK has to want to do it. If it does not want to do it for wider political reasons, just as there are some things on the economic front that it does not want to do for wider political reasons, it will not do it. If it does not do it—I am sure that ultimately it will do it, but it may be a long time before it persuades itself to do it—we will have to fall back on the same arrangements as third countries. That involves a much longer process of putting in a request for information from other prosecuting or police authorities and putting in requests for extradition and so on. There are channels through which you can do that, but it is much longer and less certain in its outcome, because it would depend on the national law in each state and what standard of evidence they would want and whether they regard that particular request as judicable in their jurisdiction. It would be a longer, much less certain process and would have different outcomes depending on which member state we are talking about.

Donald Cameron: Am I right in thinking that Norway signed an agreement in November last year on surrender agreements?

Dame Mariot Leslie: You may be right. All these things are doable, but you have to want to do them.

Donald Cameron: Some matters of internal security fall within devolved competence. How would you suggest that Scotland's interests in that sphere are better protected given that this Parliament has competence over issues such as policing and criminal justice?

Dame Mariot Leslie: First of all, speak up, speak often. We have to keep on asserting that, because the fact that Scotland has a different jurisprudence from the rest of the UK is not well known even in Whitehall, which is quite shocking, let alone elsewhere in Europe. Go on speaking up; the legal profession needs to go on speaking up and so do senior police officers and so on. Go on cultivating every conceivable bilateral link with every conceivable other jurisdiction that you can, and go on through your own political channels persuading Westminster that this is an issue.

Dr Zuleeg: To add to that, what will be important in such a short timeframe of negotiations is that, as much as possible, real solutions are put on the table. Working out some of the tricky legal issues that are associated with that and making a concrete proposal that is compatible with European law would take it a long way towards getting a better reception on the other side. The EU will be waiting for the UK to come up with a proposal and it would not matter from an EU perspective whether it came from Scotland or from London.

However, the issue comes back to the broader point about engagement with the EU. Becoming a third country creates a requirement to have much more engagement—that applies to the UK as a whole and to Scotland. You are going to miss the formal links and the participation in the decision-making processes, so there will have to be more engagement and more being present.

It is interesting to consider the position of Norway, which has a heavy investment in Brussels because the Norwegian Government recognises that, as a third country, it has to do much more than it would otherwise have to in order to get solutions that work for Norway.

Dame Mariot Leslie: As an aside, we have been talking about security, but the issue is equally true of things such as family law—child protection, dual-citizenship marriages, children crossing borders and so on—where there is Scottish jurisprudence that is different.

The Convener: To go back to the issue of getting a deal before the end of the year, the original purpose of the implementation period was to allow businesses to become ready for what would happen after a deal was achieved. What has come across clearly today is that there is no certainty around that. We have talked about different deals and thin deals, and no deal at all on services. What advice can you offer to businesses? What should they be preparing for?

Professor Menon: One of the obvious answers to that is that, if we are right about the kind of deal that will be negotiated, a lot of the no-deal planning will be useful, because it involves planning for a number of checks at borders.

It is worth bearing in mind that there are two overarching sources of uncertainty that businesses have to face. The first involves the nature of our relationship with the EU; and the second, given that the Government wants the right to diverge in terms of regulation, is what the Government intends to do domestically. We are not clear on either of those things at the moment, so I feel for businesses as they face those twin sources of anxiety.

I suppose that the best thing that businesses can do is to get themselves ready for the kinds of checks that appear to be inevitable in trade with the European Union.

Dr Zuleeg: To put it bluntly, businesses should prepare for the worst-case scenario. Fundamentally, whether it will be no deal or a thin deal, the probability is that, whatever will be put in place is minimal. From a business perspective, that means that—in almost anything but a very chaotic Brexit—that is the worst-case scenario for which they need to prepare.

What does that mean? The reality is that it is a question of how quickly you take the consequences as a business and not what the consequences are. Essentially, the consequence is that the UK will no longer serve as a basis to serve the European market. Therefore, if a business is in the UK for that reason, it will have to think about how it shifts its operations elsewhere.

The Convener: Are the warnings in operational yellowhammer still relevant?

Dame Mariot Leslie: Yes.

Dr Zuleeg: Yes.

Charles Grant: Yes. I also think that businesses should speak up more than they have done. Although at the moment we all expect a rather hard Brexit, it looks as though the Tory party, for the first time in its history since the 1830s, does not really care what big business thinks. Nevertheless, it is possible that, if businesses speak out more boldly and bravely

than they have done in the past couple years, that could shift public and Conservative Party opinion. It is not impossible to imagine that the Conservative Party might at some point think that it should not kill all the geese that lay its golden eggs.

At the moment, five sectors of the manufacturing industry—chemicals, pharmaceuticals, aerospace, cars and food processing—are heading for a sharp fall. Those sectors, which depend on moving goods rapidly across borders, are heading for a very difficult period. They need to speak up more. By speaking up, it is not impossible that they can shift outcomes. However, as others have said, they need to prepare for the worst.

The Convener: On that rather depressing note, I bring things to a conclusion. I thank you all for coming today and sharing your knowledge and expertise with us. The session has been extremely useful for the committee's work.

11:00

Meeting continued in private until 11:21.

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