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European Union Committee

4th Report of Session 2016–17

Brexit: parliamentary scrutiny

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The European Union Committee

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Q in footnotes refers to a question in oral evidence.

SUMMARY

The forthcoming negotiations on Brexit will be unprecedented in their complexity and their impact upon domestic policy. The direction of many key areas of policy, affecting core national interests, will be heavily influenced, if not determined, by the outcome of the negotiations. It is inconceivable that these negotiations should be conducted by the Government without active parliamentary scrutiny.

As far as the negotiations themselves are concerned, Ministers have in recent weeks repeatedly ruled out what they describe as parliamentary micromanagement. Instead the Secretary of State, in evidence to this inquiry, offered “accountability after the event”. But there is a middle way between micromanagement, which would undermine the Government’s ability to negotiate effectively on behalf of the United Kingdom, and the exclusion of Parliament from a current and influential part in the process. We believe that Parliament can play a vital role in offering constructive and timely comment on both the process and the substance of the negotiations. Such scrutiny will contribute to a greater sense of parliamentary ownership of the process, strengthening the Government’s negotiating position and increasing the likelihood that the final agreement will enjoy parliamentary and public support.

For parliamentary scrutiny to be effective, the Government will need to provide a regular flow of information to designated committees. We therefore welcome the Secretary of State’s undertaking to this Committee, subsequently repeated in the House of Commons, that the Westminster Parliament will receive at least the same level of information during the negotiations as the European Parliament. The evidence we have received on the way the European Parliament scrutinises negotiations on international agreements suggests that, if Westminster is to enjoy parity with the European Parliament:

- Relevant committees should have access, if necessary in confidence, to a wide range of relevant documents;
- Documents should be supplied in sufficient time for committees to be able to express their views, and for the Government to be able to take these views into account;
- In particular, the Government should respond to any formal recommendations made by committees, and, if recommendations are rejected, explain why;
- Both the Government and Parliament should adopt procedures to safeguard confidential information.

We therefore invite the Government to confirm that these principles should underpin parliamentary scrutiny of the forthcoming negotiations.

The entire nation is entering uncharted territory. Too much is at stake for the Government to seek to limit parliamentary scrutiny to establishing accountability after the fact. A new approach is needed, building on a recognition that for Parliament, just as for the Government, the overriding objective must be the achievement of a successful outcome to the negotiations on Brexit.

Brexit: parliamentary scrutiny

CHAPTER 1: INTRODUCTION

This report

1. This report explores the structures, processes and resources that will be needed if Parliament is effectively to scrutinise Brexit. We have sought to provide essential background to decisions that the two Houses will take in coming weeks and months. We have outlined the key features of the process leading to Brexit, and identified at each stage opportunities for and impediments to parliamentary engagement. We have also made our own recommendations for the House of Lords, drawing on the experience and expertise gained in the more than 40 years this Committee has scrutinised the UK's relationship with the EU.
2. Our short inquiry has focused narrowly upon Westminster, and we have not at this time explored the options for developing closer working relationships with the devolved legislatures, or with the legislatures of the Crown Dependencies and Gibraltar. We hope to return to these issues later in the session.
3. On 6 September 2016 we heard expert evidence from the former Head of the Diplomatic Service, Lord Kerr of Kinlochard GCMG, Professor Derrick Wyatt QC, of Oxford University and Brick Court Chambers, and Ms Jill Barrett, Senior Research Fellow in Public International Law at the British Institute of International and Comparative Law. On 12 September we began a dialogue with the new Department for Exiting the European Union (DExEU), taking evidence from the Secretary of State, the Rt Hon David Davis MP. We are grateful to all our witnesses for their readiness to share their views with us. The conclusions reached in this report are, of course, entirely our own.

The EU Committee's work programme

4. Following the referendum on 23 June 2016, the European Union Committee and its six sub-committees launched a coordinated series of short inquiries, addressing the most important cross-cutting issues that will arise in the course of negotiations on Brexit.¹ The pace of events means that these inquiries will necessarily be short, with only two or three public meetings in each case, and limited amounts of written evidence. But within these constraints, we are seeking to outline the major opportunities and risks that Brexit presents to the United Kingdom.
5. Our inquiries will run in parallel with the work currently being undertaken across Government, where departments are engaging with stakeholders, with a view to drawing up negotiating guidelines. But while much of the Government's work is being conducted behind closed doors, our aim is to stimulate informed debate, in the House and beyond, on the many areas of vital national interest that will be covered in the negotiations. As far as

1 See the European Union Committee's report, *Scrutinising Brexit: the role of Parliament*, (1st Report, Session 2016–17 HL Paper 33).

possible we aim to complete this work before the formal commencement of negotiations in March 2017.

6. **We make this report for debate.**

CHAPTER 2: PARLIAMENTARY SCRUTINY OF BREXIT

Why is parliamentary scrutiny necessary?

7. On 22 July 2016 we published a report entitled *Scrutinising Brexit: the role of Parliament*.² We underlined the critical importance of Parliament’s role throughout the forthcoming negotiations on withdrawal from, and a new relationship with, the EU. We concluded:

“7. Parliament’s role in the forthcoming negotiations on withdrawal from the EU will be critical to their success: ratification of any treaties arising out of the negotiations will require parliamentary approval, while national legislation giving effect to the withdrawal and new relationship will need to be enacted by both Houses.

“8. Parliament has a duty to scrutinise and hold the Government to account for decisions that will profoundly affect the United Kingdom. It will also be a vital forum for public debate and challenge, on the many issues that will arise in the course of negotiations.

“9. Finally, effective parliamentary scrutiny will help to ensure that there is an ‘audit trail’ for future generations.”
8. We were pleased that Mr Davis, the recently appointed Secretary of State for Exiting the European Union, referred to and substantially endorsed our conclusions in evidence before us:

“I have read your report. As you know, my view on parliamentary accountability is very firm. It is a good in its own right and does not need justification by our saying that it will make this or that process better. The simple fact of parliamentary accountability is a good thing. Because of my stance, I want to engage with and consult Parliament as widely as possible, consistent with doing the job of delivering the national interest in the negotiation.”³
9. The Secretary of State’s broad welcome for the general principles underpinning parliamentary scrutiny of the negotiations was accompanied, though, by a significant difference of emphasis. Mr Davis saw parliamentary scrutiny as largely retrospective, and his commitment to support such scrutiny thus came with significant caveats:

“I can entirely see accountability after the event—that is very clear—and not very long after the event either; I am not talking about a year later. In advance, I do not think that it is possible for parliamentarians to micromanage the process. That would not give us an optimum outcome for the country.”
10. None of the evidence we have heard in this short follow-up inquiry challenges, either explicitly or implicitly, the Secretary of State’s proposition that parliamentarians should not ‘micromanage’ sensitive negotiations. Professor Wyatt stated in terms that Parliament “should not seek to micromanage

2 European Union Committee, *Scrutinising Brexit: the role of Parliament*, (1st Report, Session 2016–17 HL Paper 33)

3 [Q 12](#)

the negotiations in a way that would deprive Government of room for manoeuvre”.⁴ We agree.

11. But there is a middle way, between micromanagement at one extreme, and accountability after the fact at the other. Jill Barrett argued that Parliament could proactively help the Government secure the best outcome:

“I heard the Secretary of State for Exiting the EU say yesterday that his aims were to make sure that the Government ‘take the time’ necessary ‘to get it right’ and ‘to build a national consensus’ for the terms of exit. It seems to me that those are quite good objectives for parliamentary scrutiny as well, not only to hold the Government to account for doing that, but to help to ensure that the Government get it right and build national consensus.”⁵

Professor Wyatt agreed: “This may sound paradoxical, but an overarching objective of scrutiny of the Brexit negotiations should be achievement of a successful outcome to the negotiations.”⁶ Again, we agree.

12. We understand the temptation for the Government, faced with the challenge of Brexit, to make life simpler by minimising Parliament’s role. But there is a risk that, in so doing, the Government may not only overlook the value that Parliament could add to the process, but could also inadvertently resurrect what Lord Kerr characterised as the spirit of ‘Sir Humphrey’:

“There is absolutely no doubt that the chief impediment [to giving Parliament an enhanced role] will be Her Majesty’s Government. They will move seamlessly from saying, ‘I am sorry. We cannot tell you what our position is, because we do not yet have a position’—the unripe time defence, very popular in Whitehall—to national security, ‘I am sorry. We cannot tell you what our position is because we are now in a negotiation. We cannot give our hand away’. The chief impediment will be Her Majesty’s Government.”⁷

13. There have already been worrying signs that the Government may be treading this path, notably the repeated refusal by ministers, including Mr Davis, to offer what they describe as a “running commentary” on Brexit.⁸ Such remarks fail to do justice to the unprecedented complexity and importance of the negotiations leading to Brexit. In the words of the Secretary of State, it is “likely to be the most complicated negotiation of modern times. It may be the most complicated negotiation of all times”.⁹ It will also have a profound impact upon almost all aspects of domestic policy. Professor Wyatt noted that it would “reach deep into the domestic policy-making sphere”—in written evidence, he illustrated his point by citing the Prime Minister’s comments on “the power of the Government to block unwelcome foreign take-over bids”. Lord Kerr similarly distinguished Brexit from the run-of-the-mill of international treaties:

“This is not the Montreux Convention or the Antarctic Treaty. We are talking about something that, as you have just said, will affect almost

4 [Q 8](#)

5 [Q 8](#)

6 [Q 5](#)

7 [Q 5](#)

8 [Q 13](#)

9 [Q 14](#)

every area of public life in this country ... Vast areas of domestic policy will be affected, and policy choices possibly foreclosed ... by this negotiation. Therefore, it follows that this is a treaty where there absolutely needs to be very full parliamentary scrutiny.”¹⁰

14. Governments are normally subject to full parliamentary and democratic scrutiny in determining domestic policy. But one consequence of Brexit is that many key aspects of domestic policy could potentially be determined not by Parliament, nor by putting manifesto commitments to the electorate, but in negotiations conducted behind closed doors by Ministers and officials. This was in fact acknowledged in the speech made by the Prime Minister on 2 October 2016, in which her affirmation of Parliament’s new-found sovereignty was accompanied by a resounding caveat:

“Parliament will be free—subject to international agreements and treaties with other countries and the EU on matters such as trade—to amend, repeal and improve any law it chooses.”¹¹

15. Reflecting on the complexity and long-term impact of the negotiations leading to Brexit, Lord Kerr, Professor Wyatt and Ms Barrett agreed that Parliament must play an active role in contributing to their success, rather than merely seeking to establish accountability after the fact. Professor Wyatt also outlined many of the elements that, we believe, must feature in parliamentary scrutiny of Brexit:

“Scrutiny should ... have a procedural aspect and a substantive aspect. The procedural aspect is: who are the Government talking to? Are they consulting the right people? Are they consulting them in the right way? Are they keeping lobbyists in the right place? ...

“Scrutiny should also be substantive. It should offer fact-based, constructive criticism of the Government’s conduct of the negotiations and invite the Government to think outside the box and to test their internal advice. Indeed, scrutiny should itself test the Government’s internal advice.

“Scrutiny should remind the Government that the referendum result has placed limits on their negotiating position. It should influence the negotiations in the way that reliable information and high-quality policy analysis will always influence a wise and prudent negotiator.”¹²

Conclusions

16. **The forthcoming negotiations on Brexit will be unprecedented in their complexity and their impact upon domestic policy. The direction of many key areas of policy, affecting core national interests, will be heavily influenced, if not determined, by the outcome of the negotiations. While the Government has an obligation, following the referendum, to deliver Brexit, it seems to us inconceivable that it should take the many far-reaching policy decisions that will arise in the course of Brexit without active parliamentary scrutiny.**

10 [Q 5](#)

11 Theresa May’s Conservative Party conference speech on Brexit (2 October 2016): <https://www.politicshome.com/news/uk/political-parties/conservative-party/news/79517/read-full-theresa-mays-conservative> [accessed 4 October 2016]

12 [Q 8](#)

17. **We agree with the Government, and all our witnesses, that Parliament should not seek to micromanage the negotiations. The Government will conduct the negotiations on behalf of the United Kingdom, and, like any negotiator, it will need room to manoeuvre if it is to secure a good outcome.**
18. **At the same time, we do not regard the principle of accountability after the fact, however important in itself, as a sufficient basis for parliamentary scrutiny of the Brexit negotiations. Instead, we call on the Government to recognise a middle ground between the extremes of micromanagement and mere accountability after the fact.**
19. **Within this middle ground, Parliament, while respecting the Government's need to retain room for manoeuvre, should be able both to monitor the Government's conduct of the negotiations, and to comment on the substance of the Government's negotiating objectives as they develop. Only if these principles are accepted will Parliament be able to play a constructive part in helping the Government to secure the best outcome for the United Kingdom. Such scrutiny will also contribute to a greater sense of parliamentary ownership of the process, strengthening the Government's negotiating position and increasing the likelihood that the final agreement will enjoy parliamentary and public support.**

CHAPTER 3: OVERVIEW OF THE PROCESS OF WITHDRAWAL

The four phases of withdrawal

20. On 4 May 2016, before the referendum, we published our report on *The process of withdrawing from the European Union*¹³. We concluded that, in the event of a Member State deciding to leave the EU, “the process described in Article 50 is the only way of doing so consistent with EU and international law”. That conclusion is now generally accepted.
21. The scope of Article 50 is limited to withdrawal itself—the process of legal separation between the EU and the withdrawing Member State. The only reference to wider considerations is a requirement that the Union, in concluding a withdrawal agreement, should “[take] account of the framework for [the withdrawing state’s] future relationship with the Union”. There is a two-year deadline for the negotiations, at the end of which the withdrawing Member State will cease to be bound by the EU Treaties, unless the European Council unanimously agrees to extend the deadline.
22. The steps that the United Kingdom must take to complete its withdrawal from the EU can thus be broken down into four distinct phases:¹⁴
 - Phase 1: preparation, leading to the adoption of a set of negotiating guidelines by the Government, and the issuing of a formal notification under Article 50 TEU of the UK’s intention to leave the EU.
 - Phase 2: formal negotiations under Article 50, covering a) a withdrawal treaty, and b) the framework of a future relationship. The framework may or may not be enshrined in a legally binding treaty. Although not foreshadowed in the wording of Article 50, negotiations on the framework could potentially give rise to a transitional agreement, intended to secure a smooth transition to the future relationship. It is also possible that more detailed, but informal, discussions on the future relationship will take place in parallel with the formal negotiations on withdrawal.
 - Phase 3: ratification of any agreements reached.
 - Phase 4: implementation of any agreements in domestic law. At the same time, it can be expected that there will be continuing negotiations with the EU, with a view to implementing the framework agreement on the future relationship. These negotiations may lead to further rounds of ratification and implementation.
23. While these stages may be logically distinct, their precise sequencing is unclear, and in practice they may overlap. In the following chapters we describe the stages in more detail, and identify, for each stage, the key points at which decisions will be sought from Parliament, as well as the opportunities for, and obstacles to, parliamentary scrutiny more broadly. We focus in particular on the second phase, the negotiations themselves—the phase in which, as we described in Chapter 2, the arrangements for parliamentary scrutiny are least clear, and during which Select Committees could potentially play a key role.

13 European Union Committee, *The process of withdrawing from the European Union* (11th Report of Session 2015–16, HL Paper 138)

14 House of Lords Library, *Leaving the EU: Parliament’s Role in the Process*, Library Note, [LLN 2016/034](#), July 2016, which, although using different terminology, identifies four substantially similar phases.

CHAPTER 4: PHASE 1—PREPARATION

Assessing the options

24. The forthcoming negotiations will range over all aspects of EU shared and exclusive competence—which means, as the Secretary of State emphasised, that they will cover “nearly the entire bandwidth of government”. Asked how the Government would formulate a negotiating strategy across such a wide front, he told us:
- “Pretty much every department of government is tasked by my department to go out and talk to its stakeholders about, first, what the risks are, secondly, what the opportunities are, and, thirdly, what policies mitigate the risks and maximise the opportunities.”¹⁵
25. The Secretary of State was describing “a two-way process”: he was clear that it was “a bit more than consultation”. Instead, he repeatedly used the word “engagement”, in a range of contexts. He wanted to engage with Parliament, with political parties, with stakeholders representing business, with the Trade Unions, and more generally with a divided electorate: “to a very large extent, this vote was by the British industrial working class ... outside the metropolitan south-east. It is very important to understand exactly what they want out of it.”¹⁶
26. Once departments had reported their findings to DExEU, there would be a “quantitative assessment of what we think the advantages and disadvantages are”. The Secretary of State emphasised that in undertaking this assessment the Government would adopt an “empirical” or “mathematical” approach to identifying the over-arching national interest. As well as empirical analysis, political choices would be made on certain key issues, such as the target level of inward migration: “The Cabinet will have to come to that conclusion.”¹⁷
27. The preparatory phase will also allow the Government, in the words of Professor Wyatt, “to engage in bilateral contacts with the Governments of member states. These are not negotiations, but they are talks about negotiations. One of the Government’s aims might be to influence friendly national Governments”.¹⁸ It appears that such ‘talks about negotiations’ may already be underway, to judge from the Prime Minister’s recent visits to Germany, France and other EU Member States.
28. The Secretary of State told us that there would be only a limited flow of information from Government to Parliament during this initial phase, while the Government is preparing its negotiating objectives:
- “Before Article 50 is triggered, there will be a frustrating time, because we will not say an awful lot. We will say a bit; we will lay out guidelines but, as the Prime Minister said, we will not give a running commentary on it, because that would undermine our initial negotiating stance from the beginning.”¹⁹

15 [Q 13](#)

16 [Q 19](#)

17 [Q 14](#)

18 [Q 1](#)

19 [Q 13](#)

29. At the same time, the preparatory phase represents an opportunity for Parliament to debate the issues that will arise in the course of the negotiations, and potentially to help build a national consensus. The breadth of the Government’s engagement with stakeholders, and the involvement of so many Departments of State, means that almost every Select Committee across Parliament has an opportunity to contribute. Many have done so, and we have ourselves launched a coordinated series of inquiries addressing some of the key issues that will arise in the course of Brexit. Our aim is to identify, under each issue, the main options open to the Government, and the key risks and opportunities, to inform and facilitate parliamentary and public debate, and thereby to influence the Government’s formulation of a negotiating strategy.

Agreeing the negotiating guidelines

30. At some point, probably in early 2017, the Government will complete its preparatory work and, as Mr Davis told us, “we will have some clear public negotiating guidelines”.²⁰ He was not explicitly asked, and did not specify, how these guidelines would be published, what level of detail would be provided, or what role, if any, Parliament would have in debating and agreeing them. While he made it clear that he would be “astonished if there were not public debates about the rights and wrongs of various elements of the strategy that we pursue”, he did not appear to envisage that the Government’s negotiating guidelines would require formal parliamentary approval.²¹

Notification under Article 50 TEU

31. After deciding on its negotiating objectives, the Government will formally notify the European Council, in accordance with Article 50 TEU, of its intention to withdraw from the EU. Article 50 does not seek to dictate the internal process leading up to that notification: all it says is that the decision to withdraw will be reached by the withdrawing state “in accordance with its own constitutional requirements”.
32. We are aware of the recent report by the Constitution Committee, entitled *The invoking of Article 50*.²² We are also aware of the application in the High Court made by Gina Miller and Dier Tozetti Dos Santos, seeking a declaration that the Government should not issue a notification without an Act of Parliament, and of the Government’s insistence that no such parliamentary approval is required. We await the Government’s response to the Constitution Committee report, and the result of the litigation, with interest.

Conclusions

33. **Across Whitehall, the Government is engaging with stakeholders, and analysing their views, with a view to drawing up guidelines for the forthcoming negotiations. We understand that during this period of intense activity the flow of information from Government to Parliament will be limited.**

20 [Q 12](#)

21 These issues were the subject of a debate in the House of Commons on 12 October 2016, [Volume 615](#). There was insufficient time to take account of that debate before this report was sent to the press.

22 Constitution Committee, [The invoking of Article 50](#) (4th Report, Session 2015–16 HL Paper 44)

34. **Parliament can, nevertheless, make a significant contribution to the development of the Government's thinking, using conventional means such as debates and Select Committee inquiries. We are ourselves seeking to contribute to the process by undertaking a coordinated series of inquiries addressing many of the key issues that will arise in the course of Brexit.**
35. **The Government has not yet indicated how it will publish its negotiating guidelines, whether they will be debated in Parliament, or whether they will be subject to formal approval by one or both Houses. Given the requirement that Parliament should approve and ultimately implement any agreement that emerges from the negotiations, we believe it would be in the Government's and the nation's interest for both Houses to be given an opportunity to debate and approve the negotiating guidelines, at least in outline.**
36. **We note the recent report of the Constitution Committee on the role of Parliament in issuing a notification under Article 50 TEU, and await the decision of the courts on the application brought by Gina Miller and Dier Tozetti Dos Santos.**

CHAPTER 5: PHASE 2—FORMAL NEGOTIATIONS

Negotiations on withdrawal

37. The formal negotiations under Article 50 will address two key areas: the terms of withdrawal, and the framework for the future relationship between the UK and the EU.
38. The formal negotiations on withdrawal will be akin to negotiations on the terms of a divorce. Lord Kerr, who as Secretary General of the Convention on the Future of Europe from 2001 to 2003 is credited with drafting Article 50, told us:

“The discussion about the divorce will be nasty and brutish—all money negotiations are—but short. Two years is ample time for a discussion about the budget, acquired rights, pensions, properties and institutions—where the European Medicines Agency, the European Banking Authority and the other institutions that are based in this country will go.”²³

Thus the withdrawal negotiations may turn out to be limited in scope, focusing on the key practical issues—division of assets and ongoing liabilities—that arise in any divorce. There is no inherent reason why this component of the wider UK-EU negotiation should not be completed within two years.

39. It can also be assumed, as Lord Kerr stated, that the withdrawal negotiations will cover certain issues that are intrinsically connected to the process of divorce. In particular, they will cover the ‘acquired rights’ of those nationals of the UK and the other 27 Member States who live in each other’s countries: it is inconceivable that withdrawal should be completed without providing legal certainty to between three and four million UK and EU citizens. The options for addressing these ‘acquired rights’ are currently the subject of an inquiry by our Justice Sub-Committee.

Negotiations on the framework for future relations

40. The second limb of the negotiations under Article 50 will relate to the framework for the future relationship between the UK and the EU. The scope of this negotiation, as Lord Kerr told us, is far less well defined:

“The framework negotiation is a much more interesting and complex negotiation. They are legally obliged to have the framework in front of them as they conclude the divorce. Nobody knows what that means. Do not ask me what it means. Presumably, the framework is, as a minimum, principles that will define how close the relationship is between the UK that has left and the EU. Will it be, sector by sector, a commitment to consult, a commitment to inform, a commitment to co-ordinate or no commitment at all—a complete divorce?”²⁴

41. Lord Kerr then suggested a number of areas in which the parties to the negotiation, within the scope of Article 50 negotiations, might wish to conclude detailed and binding agreements, to take effect immediately upon withdrawal. The most obvious was “the area of security—internal security, counterterrorism, anti-drugs, Prüm, the European arrest warrant and

23 [Q 1](#)

24 [Q 1](#)

intelligence”. Other areas mentioned by Lord Kerr included foreign policy, research funding, environmental policy, climate change and energy policy.

42. In practice, negotiation on such a wide range of issues would probably be divided into ‘chapters’, or ‘baskets’, with officials from across Whitehall, supported by the UK Permanent Representation to the EU, participating—as Mr Davis noted, DExEU had “decided not to replicate in my department the immigration policy department from the Home Office or the CAP department from Defra”.²⁵ At the same time, the nature of the negotiation will mean that nothing is agreed until everything is agreed: at some point trade-offs will have to be made, on all sides, between different objectives. The more wide-ranging and complex the negotiations on the framework agreement, the more difficult will be the trade-offs.
43. In each area of the negotiations on the framework agreement the parties—not just the UK, but the EU institutions and the 27 remaining Member States—will wish to avoid damaging interruptions to existing cooperation and coordination, while also minimising the uncertainty, and distraction from other pressing priorities, that would result from a prolonged and excessively detailed negotiation. Squaring this circle will become increasingly difficult as time passes, particularly as the two-year deadline, likely to fall in March 2019, approaches.
44. At some point, therefore, a transitional agreement may be proposed, to bridge the gap between withdrawal and completion of detailed negotiations. Such an agreement, were the time to be running out, could address some or all of the areas that have already been touched on in the context of the framework agreement. It could also extend more widely, possibly even to the future trading relationship between the EU and the UK, negotiations on which, as Lord Kerr told us, “certainly cannot” be concluded within two years.²⁶ In this area above all, as Professor Wyatt told us, a choice will have to be made between extending the two-year deadline (a decision requiring unanimity), to allow time to conclude a full agreement, reaching an interim agreement, or accepting the shock that would result from UK withdrawal without agreement:

“It will not suit us suddenly to have to bounce into WTO terms. Will it suit Germany? Will it really suit France? The dislocation to trade would be considerable, in motor cars, in agricultural products and in services, which would particularly hurt the UK. In addition, there will be the attraction of the UK continuing to pay its £8 billion net contribution to the EU ... For all those reasons, I still incline to say that an extension is likely. I am aware that some commentators have argued that we might have an interim trading regime. I cannot rule that out or say that it is a bad thing. My only doubt about it is whether one would end up taking as long to negotiate the interim trade regime as one would take continuing with the main exercise.”²⁷

Parliamentary scrutiny of the formal negotiations

45. As we noted in Chapter 2, the Secretary of State envisaged the Government providing information after key decisions had been taken, rather than ahead

25 [Q 22](#)

26 [Q 1](#)

27 [Q 1](#)

of time; he embraced the principle of “accountability after the event”, but resisted what he described as micromanagement. We have also given our reasons for concluding that the Government and Parliament should seek a middle ground, which would enable Parliament to monitor and comment on the negotiations in timely fashion, without micromanaging them.

46. Despite his reluctance to grant Parliament an active role in scrutinising the negotiations, Mr Davis assured us that the flow of information from the Government to Parliament would improve once formal negotiations had begun: “I expect it to be a more open process.”²⁸ He also made it clear that the negotiations would not be “a black box out of which a treaty drops at the end.” He envisaged Select Committees in both Houses contributing their views to the development of the Government’s negotiating position by conventional means, using publicly available information:

“If I were on those Committees ... I would be looking to make my own contributions. It is the point we started with: whether a Committee has a view on immigration policy, justice and home affairs or whatever.”²⁹

47. We then asked the Secretary of State whether parliamentarians in Westminster would enjoy the same level of access to information as their counterparts in the European Parliament. His response was clear: “we would not want either House of Parliament to be disadvantaged with respect to the European Parliament”.³⁰ He admitted that the Government was not sure what this commitment would mean in practice (“We have not grounded it all yet”), but he emphatically repeated the point of principle:

“We will certainly match and, hopefully, improve on what the European Parliament sees.”³¹

48. The Secretary of State’s undertaking is significant. The European Parliament is responsible for conducting parliamentary scrutiny of the EU’s international agreements, including trade agreements. Such scrutiny provides the ‘baseline’—the level of oversight that MEPs, including UK MEPs, currently possess in respect of negotiations affecting the UK’s international trade. The Secretary of State was acknowledging, in effect, that no diminution of this baseline level of parliamentary scrutiny would be acceptable.
49. We will seek in due course to explore in detail how European Parliament scrutiny of trade negotiations is conducted, including by visiting Brussels and to talk to colleagues in the European Parliament. Ahead of that visit, we are very grateful to our expert witnesses, in particular Professor Wyatt, for shedding light on certain key points. The following paragraphs draw heavily on Professor Wyatt’s written evidence in particular.
50. While the procedure for EU withdrawal is set out in Article 50 TEU, the negotiations themselves will be conducted in accordance with the provisions of Article 218 of the Treaty on the Functioning of the European Union (TFEU). Article 218, which was adopted as part of the Treaty of Lisbon

28 [Q 13](#)

29 [Q 13](#)

30 [Q 13](#)

31 [Q 14](#). The Secretary of State repeated this undertaking in oral evidence taken before the House of Commons Foreign Affairs Committee, 13 September 2016 (Session 2016–17) [Q146-275](#) (David Davis MP), and in his statement to the House of Commons on 10 October 2016: see HC Deb, 10 October 2016, [col 53](#).

in 2007, sets out the procedure for reaching international agreements, such as trade deals.³² Under Article 218 the EU entrusts the conduct of trade negotiations to the European Commission, represented by its EU Trade Commissioner. The Commission must follow guidelines adopted, in the case of withdrawal negotiations, by the European Council; under Article 218 the Council also adopts negotiating directives, and may “address directives to the negotiator and designate a special committee in consultation with which the negotiations must be conducted”.³³

51. Article 218(10) TFEU provides that “The European Parliament shall be immediately and fully informed at all stages of the procedure”, and since this provision was agreed in 2007 the European Parliament has played an increasingly influential and active part in monitoring trade negotiations. The detailed arrangements are set out in a binding 2010 Framework Agreement on relations between the European Parliament and the European Commission.³⁴ Paragraph 23 of the Framework Agreement states, with reference to Article 218(10) TFEU, that “Parliament shall be immediately and fully informed at all stages of the negotiation and conclusion of international agreements, including the definition of negotiating directives”. Paragraph 24 requires that this information “shall be provided to Parliament in sufficient time for it to be able to express its point of view if appropriate, and for the Commission to be able to take Parliament’s views as far as possible into account”. These provisions are developed in Annex III to the Framework Agreement, an extract from which is given in Box 1.

Box 1: Provision of information to the European Parliament

“2. In line with the provisions of point 24 of the Framework Agreement, when the Commission proposes draft negotiating directives with a view to their adoption by the Council, it shall at the same time present them to Parliament.

“3. The Commission shall take due account of Parliament’s comments throughout the negotiations.

“4. In line with the provisions of point 23 of the Framework Agreement, the Commission shall keep Parliament regularly and promptly informed about the conduct of negotiations until the agreement is initialled, and explain whether and how Parliament’s comments were incorporated in the texts under negotiation and if not why.

“5. In the case of international agreements the conclusion of which requires Parliament’s consent, the Commission shall provide to Parliament during the negotiation process all relevant information that it also provides to the Council (or to the special committee appointed by the Council). This shall include draft amendments to adopted negotiating directives, draft negotiating texts, agreed articles, the agreed date for initialling the agreement and the text of the agreement to be initialled. The Commission shall also transmit to Parliament, as it does to the Council (or to the special committee appointed by the Council), any relevant documents received from third parties, subject to the originator’s consent. The Commission shall keep the responsible parliamentary committee

32 Subject also to Article 207, [Treaty on European Union](#)

33 Article 218(4), [Treaty on European Union](#)

34 Framework Agreement on relations between the European Parliament and European Commission, [OJ L 304/47](#)

informed about developments in the negotiations and, in particular, explain how Parliament’s views have been taken into account.”

Source: *Framework Agreement on relations between the European Parliament and the European Commission, 2010, Annex III OJL 304/47*

52. Finally, in order to facilitate the transfer of what are clearly large volumes of sensitive material, Article 24 of the Framework Agreement states that: “Parliament and the Commission undertake to establish appropriate procedures and safeguards for the forwarding of confidential information from the Commission to Parliament”. These procedures are developed in more detail in Annex II to the Framework Agreement.
53. The European Parliament has duly put in place arrangements to make full use of the rights conferred under Article 218 TFEU, and the procedures described in the Framework Agreement. The Committee on International Trade takes the lead on behalf of the Parliament in trade negotiations, and, as Professor Wyatt noted, the President of the European Parliament, Martin Schulz MEP, commented in a speech in April 2015 that it was now “standard practice” for the Commission to share information with that Committee “on a regular basis”. Professor Wyatt also highlighted the Committee’s recommendations regarding the negotiations on the Transatlantic Trade and Investment Partnership (TTIP), and cited a recent example, a Resolution adopted by the Plenary in July 2015,³⁵ which contained recommendations running to a dozen pages of text.
54. This, then, is the baseline level of European parliamentary scrutiny, against which any scrutiny arrangements adopted in Westminster in coming months will be measured. What is striking is not only that the European Parliament, as Lord Kerr put it, “will have access to all the negotiating documents”, but that it will have such access “at every stage”.³⁶ In Professor Wyatt’s words, the Commission will “let the European Parliament know what it is proposing and ... give that information to the European Parliament in good time for the Parliament to come back to the Commission and for the Commission to act upon that comeback, should the Commission decide that it is appropriate.”³⁷ This, he argued, embodied “a kind of scrutiny reserve”, but one adopted in a spirit of cooperation and dialogue, not confrontation—he drew attention in his written evidence to the “recommendatory and non-combative” tone of the European Parliament Resolution of July 2015.
55. Professor Wyatt’s mention of a ‘scrutiny reserve’ prompted us to consider further the observation in our July 2016 report that committee scrutiny of the forthcoming negotiations might be “underpinned by a new scrutiny reserve resolution”³⁸. Such a resolution would define the terms of engagement between Government and Parliament. It would be analogous to the existing Scrutiny Reserve Resolution, last updated by the House of Lords on 30 March 2010, under which Ministers undertake not to agree to any EU proposal in the Council of Ministers while that proposal is subject to scrutiny by the European Union Committee. A similar resolution, albeit yet to be updated

35 See European Parliament resolution of 8 July 2015 containing the European Parliament’s recommendations to the European Commission on the negotiations for the Transatlantic Trade and Investment Partnership (TTIP) (2014/2228(INI))

36 [Q 5](#)

37 [Q 8](#)

38 European Union Committee, *Scrutinising Brexit: the role of Parliament* (1st Report of Session 2016–17, HL Paper 33)

in light of the Lisbon Treaty, applies in the House of Commons. Although both resolutions allow Ministers discretion to over-ride the scrutiny reserve in important or urgent cases, they give scrutiny committees a clear right to be consulted and informed before decisions are taken.

56. As to whether an explicit scrutiny reserve was needed to cover the Brexit negotiations, Ms Barrett saw a clear need for “the terms of reference or the scrutiny reserve resolution to be more explicit about what this Committee requires from the Government”.³⁹ Professor Wyatt, notwithstanding his analysis of the European Parliament’s detailed scrutiny, was cautious, noting that parliamentary scrutiny of negotiations would be a “new departure”, and that a formal code of practice would be “probably premature”. He continued:

“A code of practice is something that is more likely profitably to evolve from the practice than to be dreamed up now, with the practice evolving from it. A few key principles might be recorded—principles that acknowledge the balance between scrutiny and the Executive’s needs.”⁴⁰

Professor Wyatt also observed that, even though the Commission would formally lead negotiations under Article 50 from the EU side, “government to government talks are likely to continue, even if not officially part of the negotiations”.⁴¹ It would be difficult to draft a scrutiny reserve in terms broad enough to capture such a wide-ranging negotiation.

57. The Secretary of State was not persuaded that a scrutiny reserve would be “applicable in this circumstance”. His primary concern was that a formal reserve would fail to reflect the dynamic and fast-moving character of the negotiations: “the simple truth is that we will have to be nimble, fast and responsive. I worry about anything that ties our shoelaces together in those terms”. At the same time, it appeared that his thinking was still developing, and he undertook to consider the issue further: “If the Committee writes to us, we will have a look at it, but my instinct at the moment is that it is not really appropriate.”⁴²

Conclusions

58. **The current level of scrutiny of trade and other international negotiations by the European Parliament, as set out in the 2010 Framework Agreement between the European Parliament and the European Commission, provides a baseline against which any arrangements agreed in the United Kingdom Parliament must be measured: it would be unacceptable for the European Parliament to have greater rights of scrutiny over the negotiations on Brexit than Westminster. We are therefore grateful for the Secretary of State’s assurance that the level of scrutiny in Westminster will at least match that in Brussels.**
59. **The key principles underpinning European Parliament scrutiny of trade and other international negotiations are that:**
- **The European Parliament, through a designated Committee, has access to all relevant documents, including draft negotiating**

39 [Q 11](#)

40 [Q 11](#)

41 Written evidence from Professor Derrick Wyatt ([UME0001](#))

42 [Q 16](#)

directives, draft amendments to those directives, draft negotiating texts, agreed articles, and draft agreements;

- **Those documents are supplied to the Parliament in sufficient time for it to be able to express its view, and if necessary to publish formal recommendations, and for the Commission (which conducts the negotiation) to be able to take these views and recommendations into account;**
- **The Commission is under a duty to respond to such recommendations, and in particular, if recommendations are rejected, to explain why;**
- **Both the Commission and the Parliament are under a duty to adopt procedures to safeguard confidential information.**

60. **The same general principles should be applied to scrutiny by the Westminster Parliament of the forthcoming negotiations on Brexit. Too much is at stake for scrutiny to be limited to establishing accountability after the event. While it is not for Parliament to manage the negotiations themselves, Parliament must be able to monitor them actively, and to make its views known in timely fashion, potentially against the backdrop of fast-moving negotiations, so that the Government can consider these views and decide whether not to act on them.**
61. **We have considered whether these principles should be embodied in a formal scrutiny reserve resolution. On balance, however, we are persuaded that a formal and prescriptive scrutiny reserve could restrict the Government's room for manoeuvre, thereby acting against the national interest. We are also conscious that scrutiny of treaty negotiations will be a new departure for the UK Parliament: it will take time for mutual trust to develop and for optimum working practices to be identified. We therefore do not recommend the adoption of a formal scrutiny reserve at this stage.**
62. **Instead, we invite the Government to undertake that the principles outlined in paragraph 59 should be applied to its relations with Parliament during the forthcoming negotiations. It is essential that the Government should work with the two Houses to give effect to these principles, if there is to be parity between the Parliaments in Westminster and Brussels in scrutinising Brexit.**

CHAPTER 6: PHASE 3—RATIFICATION

Parliamentary approval for treaty ratification

63. Whatever agreements emerge from the withdrawal negotiations will take the form of treaties, requiring ratification by all parties.⁴³ Treaties are ratified on behalf of the UK by the Government, acting under the Royal Prerogative. Under an undertaking originally given in 1924, and known as the Ponsonby Rule, successive governments allowed an opportunity for parliamentary scrutiny prior to ratification. This parliamentary scrutiny was ultimately codified in statutory form by Part 2 of the Constitutional Reform and Governance (CRAG) Act 2010, the key provisions of which are described in Box 2.

Box 2: Constitutional Reform and Governance Act 2010: provisions on scrutiny of treaties

- Ministers must lay a treaty subject to the Act before both Houses of Parliament for 21 sitting days prior to ratification.
- During this period, both Houses have the opportunity to pass a resolution that the treaty should not be ratified. If neither does so, the government can go ahead and ratify the treaty.
- If either the Commons or the Lords votes against ratification, the government cannot immediately ratify the treaty, but must instead lay a statement giving the reasons why it wants to proceed with ratification.
- If the Commons has voted against ratification, laying this statement triggers a further 21 sitting day period before ratification, during which time the Commons may again vote against ratification—potentially blocking a treaty indefinitely.
- If the House of Lords votes against ratification, but the House of Commons does not, then a ministerial statement must be laid before Parliament explaining why the treaty should nevertheless be ratified, but the additional 21 sitting day period is not triggered. The House of Lords does not have the power to block ratification.

Sources: *Constitutional Reform and Governance Act 2010, Part 2*; House of Commons Library, *Parliament's new statutory role in ratifying treaties*, Standard Note, [SN/IA/5855](#), February 2011

64. Thus there is a statutory requirement that any treaties emerging from the negotiations should be laid before both Houses. It is of course impossible to forecast at this stage how parliamentarians, or the general public, will view the agreement, but given its importance, the Government will no doubt publish detailed explanatory material, to help inform the debates in both Houses (and beyond) that will certainly follow. Given that there may well be amendments to any motions to approve ratification, leading potentially to votes in one or both Houses, there would also be a strong case, should time allow, for giving Select Committees scrutinising Brexit in both Houses an opportunity to set out their views before any debates take place.

43 If the treaties engage only areas currently subject to exclusive EU competence, the parties will be the UK and the EU. Ratification by the EU will require a simple majority in the European Parliament, and agreement by Qualified Majority Vote in the Council. If the treaties engage both EU and Member State competence, they will be 'mixed agreements', requiring consensus in the Council, and ratification by all 27 remaining Member States, in accordance with their domestic arrangements.

Withdrawal without an agreement

65. Although, as we noted in paragraph 38 above, there is no inherent reason why agreement on a withdrawal treaty should not be reached within the initial two years allowed under Article 50 TEU, the possibility that no agreement is reached within this time cannot be ruled out. In such a case, Article 50(3) states that “The Treaties shall cease to apply to the [withdrawing] State ... unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period”⁴⁴.
66. Lord Kerr told us that the underlying purpose of this provision was to provide “reassurance to sceptics that you were not tied to your oar for ever. If you want to get out with no agreement with the EU, if you want just to abrogate the treaty and repeal the Act, you can.”⁴⁵ At the same time, he was clear that “nobody in their senses is arguing that that is what we should do”. We agree: a disorderly withdrawal from the EU, without any opportunity to plan the necessary legislative or treaty changes, or to make arrangements to ensure continuity in areas of vital mutual interest, such as security cooperation, would damage the UK and the EU in almost equal measure.

Conclusions

67. **Any treaties arising out of the Brexit negotiations will engage the provisions of Part 2 of the Constitutional Reform and Governance Act 2010. Thus the two Houses will have an opportunity to pass resolutions that the treaties should not be ratified.**
68. **We would expect the Government, as well as laying the treaties before Parliament, to publish comprehensive explanatory material to inform public and parliamentary debate. It would be in the Government’s interest, should time allow, to give Select Committees scrutinising Brexit in both Houses an opportunity to set out their views before any debates and votes take place.**
69. **If, after two years of formal negotiations under Article 50 TEU, no agreement is reached either on the arrangements for withdrawal or on extending the deadline for negotiations, the UK will simply cease to be a member of the EU. Such an outcome cannot be ruled out, but would be highly damaging both to the UK and the EU.**

44 Article 50 (3), [Treaty on European Union](#)

45 **Q.1.** Lord Kerr’s views are reinforced by the explanatory notes on this article in the Treaty Establishing a Constitution for Europe: “The Praesidium considers that, since many hold that the right of withdrawal exists even in the absence of an explicit provision to that effect, withdrawal of a Member State from the Union cannot be made conditional upon the conclusion of a withdrawal agreement. Hence the provision that withdrawal will take effect in any event two years after notification. However, in order to encourage a withdrawal agreement between the Union and the State which is withdrawing, Article I-57 [now I-60] provides for the possibility of extending this period by common accord between the European Council and the Member State concerned.”

CHAPTER 7: PHASE 4—IMPLEMENTATION

Domestic legislation

70. Some domestic primary legislation will be required to give effect to the act of withdrawal, notably the repeal of the European Communities Act 1972. Directly consequential amendments to primary legislation, including to the Acts enshrining EU law within the devolved settlements, will also have to come into effect simultaneously.
71. Some light was cast upon the timing and scope of this legislation by the Prime Minister’s speech on 2 October 2016. She announced that the Government would include a ‘Great Repeal Bill’ in its 2017 Queen’s Speech. This Bill, once enacted, would “mean that the 1972 Act ... will no longer apply from the date upon which we formally leave the European Union”.⁴⁶
72. The Prime Minister also said that, at the same time as repealing the European Communities Act 1972, the Government would “convert the ‘acquis’—that is, the body of existing EU law—into British law”. This will be a major undertaking. As a first step, we assume that there will be a saving provision, to ensure that the many thousands of pieces of subordinate legislation made under the 1972 Act are retained, pending further review. Such an approach would, as the Prime Minister stated, “give businesses and workers maximum certainty as we leave the European Union”. At the same time, all this subordinate legislation may need to be updated, for instance to replace references to EU institutions with references to the appropriate domestic institutions.
73. The Prime Minister’s commitment to convert the *acquis* into domestic law will raise still more complex issues, when it comes to giving effect in domestic law both to obligations currently arising from directly applicable EU law, and to judgments of the Court of Justice of the European Union interpreting that law. The extent to which the Government will use primary legislation to deliver its commitments is still unclear, though the Secretary of State told us that the Government was “trying to avoid” a Bill with wide-ranging ‘Henry VIII clauses’—clauses that would enable primary legislation to be subsequently amended or repealed by means of subordinate legislation, thereby curtailing parliamentary scrutiny.⁴⁷
74. The domestic courts will also face the challenge of interpreting subordinate legislation that originally implemented EU directives, once those directives have ceased to apply in the UK. In the course of our consideration of the operation of Article 50 in March 2016, Sir David Edward KCMG, PC, FRSE, a former judge of the Court of Justice of the European Union, highlighted a few of the complexities that this would entail:

“You would need to enact in law everything that you wanted to keep in law, which is currently either the consequence of the direct effect of the treaties or, for example, the product of a directive. Under the current system of law, the courts are to interpret implementing legislation in light of the directive. If the directive no longer applies, you have to

46 Theresa May’s Conservative Party conference speech on Brexit (2 October 2016): <https://www.politicshome.com/news/uk/political-parties/conservative-party/news/79517/read-full-theresa-mays-conservative> [accessed 4 October 2016]

47 Q 24

consider, ‘Do I have enough in the existing legislation for the courts to proceed without looking at the directive, or am I to instruct the courts to construe it in the light of the directive as if the directive applied?’⁴⁸

75. Finally, the Prime Minister touched briefly in her speech on the review of the entire EU *acquis* that would follow withdrawal, confirming that “Any changes will have to be subject to full scrutiny and proper Parliamentary debate”. Although we did not explore this issue in the present inquiry, we are aware that many commentators have highlighted the complexity of the task of reviewing more than 40 years of EU law. The former Treasury Solicitor, Sir Paul Jenkins, described it on 24 June as the “largest legal, legislative and bureaucratic project in British history except for a world war”.⁴⁹ However the Government’s commitment to full parliamentary scrutiny is delivered—whether by using primary legislation, or by providing for enhanced parliamentary scrutiny of subordinate legislation—the impact upon the two Houses (including, in this House, the Secondary Legislation Scrutiny Committee and the Delegated Powers and Regulatory Reform Committee) will be profound.

Further treaty negotiations

76. Finally, we note that there is a strong likelihood that negotiations between the UK and the EU will continue beyond the point of withdrawal. Such negotiations will almost certainly be needed if the Government decides to seek a comprehensive trade agreement with the EU, and if there is no extension of the two-year deadline.
77. The Government will also, once withdrawal has been completed, seek to negotiate trade agreements with third countries—a process it cannot formally initiate for as long as the UK remains part of the EU, since external trade is subject to exclusive EU competence.
78. The same considerations that we have set out in earlier chapters of this report, with regard to parliamentary scrutiny of the withdrawal negotiations, will also apply to further negotiations on a trade agreement. As Professor Wyatt told us, “Trade agreements have moved on. They used to be mainly about tariffs, but now they are relatively little about tariffs. They are about non-tariff barriers and harmonisation of regulatory standards.”⁵⁰

Conclusions

79. **The ‘Great Repeal Bill’ announced by the Prime Minister on 2 October 2016 would formalise the UK’s withdrawal from the EU in domestic law, by repealing the European Communities Act 1972, with effect from whatever date is specified in the withdrawal agreement. We support the Government’s aim of maintaining the body of existing EU law in force, pending further review, but note that giving effect to this aim may be more complex than the Government has yet acknowledged.**
80. **The Government has yet to set out its strategy for conducting a full review of EU law post-withdrawal. While we welcome the Prime**

48 Oral evidence taken on 8 March 2016 (Session 2015–16), [Q 5](#) (Sir David Edward KCMG, QC, PC, FRSE)

49 Quoted in [Global Government Forum](#), 24 June 2016 [accessed 21 September 2016]

50 [Q 5](#)

Minister's commitment to full parliamentary scrutiny, we note that the legislation resulting from the review will have a profound impact upon Parliament, potentially dominating the domestic legislative agenda for an extended period. We therefore recommend that the Government publish an outline strategy for the post-withdrawal review of EU law as soon as possible, in order to inform consideration by the two Houses of how to deliver an appropriate and manageable level of parliamentary scrutiny.

81. **Negotiations on trade agreements, with the EU and with third countries, may continue for several years post-withdrawal. Like the negotiations on withdrawal, these will reach deeply into domestic policy-making, and the same considerations in relation to parliamentary scrutiny apply.**

CHAPTER 8: 'PARLIAMENTARY DIPLOMACY'

Interparliamentary cooperation

82. Throughout the negotiations, and beyond, Parliament will have an important diplomatic role. National parliaments play an active part in international relations, including through well-established multilateral bodies, such as the Parliamentary Assembly of the Council of Europe or the Commonwealth Parliamentary Association. Parliaments also support bilateral relations, such as those established following the 2010 Lancaster House Treaties between the UK and France, which are supported by a Parliamentary Working Group on Bilateral Defence Co-Operation between France and the UK.
83. There is already an active parliamentary dimension to the EU, with a well-established cycle of interparliamentary meetings, including the Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union (COSAC), which meets every six months in the country holding the rotating Presidency of the Council. The European Union Committee is appointed by the House each session to “To represent the House as appropriate in interparliamentary cooperation within the European Union”, and we send delegations to all the major conferences, as well as taking part actively in informal and bilateral meetings.
84. The forthcoming negotiations will of course test the UK’s relationship with the EU collectively, and with the 27 remaining Member States individually. Active diplomacy will be needed at all levels, particularly the parliamentary, to maintain good relations and support the UK’s long-term well-being. Professor Wyatt made this point forcefully:
- “During a period in which feelings about the UK on the EU side will be very mixed, and in which relations between HMG and EU Member States may deteriorate at certain stages in the negotiations, there will be a need for some official organ or agency of the UK to be, and to be seen to be, unequivocally committed to a warm as well as close relationship with the EU, and to positive outcomes at the end of the day. The [House of Lords] EU Committee appears to me to be potentially well suited to this role.”⁵¹
85. More specifically, there is a particular need for close dialogue between the Westminster Parliament and the European Parliament—the two parliamentary institutions that will, in due course, be called upon formally to approve whatever agreements emerge from the negotiations. It is also conceivable that the national parliaments of the other 27 Member States will have a role in ratification, for instance if the negotiations give rise to a ‘mixed agreement’.
86. Professor Wyatt noted that the European Parliament already had an external face, pointing out that “delegations from the EP and the US Congress meet twice a year, in Europe and the US”⁵². The two sides have used such meetings to discuss the progress of negotiations on the Transatlantic Trade and Investment Partnership (TTIP), and to identify shared priorities. The European Parliament also has an office in London, while the Westminster Parliament has a National Parliament Office based in the European

51 Written evidence from Professor Derrick Wyatt ([UME0001](#))

52 Written evidence from Professor Derrick Wyatt ([UME0001](#))

Parliament in Brussels, staffed by officials from the two Houses. Thus some of the structures for dialogue are already in place.

87. The European Union Committee has used these structures over many years to promote dialogue both with the European Parliament, and with other national parliaments across the EU. Since the referendum the level of interest from other national parliaments has, if anything, increased, and we have had informal meetings with colleagues from Germany, France and Ireland. We will also seek in coming weeks to begin a dialogue with the European Parliament, including with its recently appointed representative on Brexit matters, Guy Verhofstadt MEP, and with its Constitutional Affairs (AFCO) Committee. As part of this, we will discuss the options for formalising such dialogue for the duration of the negotiations.
88. In the longer term, Parliament will also wish to consider how best to maintain an interparliamentary dialogue post-withdrawal, given the continuing importance of UK-EU relations. It is possible that some new machinery will be required to support such dialogue, though it is too early to make firm recommendations.

Conclusions

89. **Parliament should play an active diplomatic role throughout the Brexit process, and beyond. Dialogue with the European Parliament, and with other national parliaments, will be important in maintaining cordial relations during what will be, at the intergovernmental level, difficult negotiations.**
90. **The European Union Committee is already tasked with representing the House in interparliamentary relations within the EU, and will accordingly seek in coming weeks to begin a dialogue with the European Parliament, and to agree arrangements for formalising such a dialogue for the duration of the negotiations.**

CHAPTER 9: INTERNAL ARRANGEMENTS

The role of committees

91. Our short inquiry has underlined both the scale of the challenges ahead, and the critical role that Parliament will play in overcoming them—by helping to build consensus, by bringing an appropriate level of transparency, and by ensuring the accountability of decision-making. It is not surprising, therefore, that extensive parliamentary scrutiny of Brexit should have already begun. There have been debates, ministerial statements and questions in both Houses; committees have held hearings, undertaken inquiries, and published reports.
92. While such intense activity is welcome, it carries the risk that ministers and officials, particularly those in the nascent Department for Exiting the European Union, will be diverted from their core work of concluding a successful negotiation by the task of supporting parliamentary scrutiny. The Secretary of State was reflecting on this task, as well as on the negotiations themselves, when he commented that “One of the outcomes of the sheer complexity of this is that it will be quite onerous”.⁵³
93. We have sought, in our analysis of the process leading up to withdrawal, to identify the different types of parliamentary scrutiny that will be appropriate at each stage. For example, at certain key points Parliament will be invited to take formal decisions, including approving the ratification of any treaty, and implementing that treaty by means of domestic legislation. The procedures for such formal stages of the process are already in place, and we have simply drawn attention to them, in some cases highlighting their resource implications.
94. At the heart of Brexit, however, will be negotiations on withdrawal, probably lasting two years, and further negotiations on future relations, potentially lasting much longer. As we stated in Chapter 2, we believe, as a point of principle, that Parliament has a duty actively to scrutinise both the process and the substance of these negotiations. No procedures currently exist in Parliament for such scrutiny, but in Chapter 5 we described the baseline level of scrutiny currently exercised by the European Parliament, and welcomed the Secretary of State’s undertaking that this level of scrutiny would at least be matched in Westminster.
95. Select Committees have, particularly since the 1970s, played a vital role in focusing parliamentary scrutiny of complex areas of policy, allowing Members of both Houses to build up expertise, relationships and lines of communication with Government. They also perform a ‘triage’ function, dealing with matters of detailed policy implementation and process themselves, while identifying the major issues that merit plenary debate. They have skilled and expert staff, established procedures for handling large amounts of information, and experience of dealing with confidential documents, such as draft reports. All these attributes will be needed if Parliament is to scrutinise the negotiations efficiently and effectively.

Conclusions

96. **Parliamentary scrutiny of Brexit should, we believe, continue to be inclusive and broadly defined. Debates, statements, and questions will all play an important part, and committees will continue to look at issues affecting their particular remits.**
97. **At the same time, we are conscious of the risk that uncoordinated scrutiny across both Houses could place an excessive burden upon the Department for Exiting the European Union. We therefore consider that, if Government is to be scrutinised effectively and efficiently, both Houses should confer explicit responsibility for such scrutiny upon a designated Select Committee.**
98. **We understand that the House of Commons is to appoint a dedicated Select Committee to scrutinise the new Department. While close liaison between the two Houses will be vital in scrutinising the negotiations, we reiterate the recommendation in our July 2016 report, that the House of Lords can best contribute to effective parliamentary oversight of the negotiations by also charging a specific Select Committee with explicit responsibility for scrutinising the negotiations, and for publishing reports so as to inform debate in the wider House.**

The European Union Committee

99. In our report in July 2016 we recommended that the European Union Committee should be tasked by the House to take the lead in scrutinising the negotiations on Brexit. We remain of this view, for four main reasons:
- It is already impossible to separate scrutiny of proposed EU legislation (any of which could potentially affect the UK's future relationship with the EU) from consideration of the terms of withdrawal. This has been implicitly acknowledged in the recent restructuring within Whitehall, during which responsibility for coordinating scrutiny of proposed EU legislation was moved from the Foreign and Commonwealth Office to DExEU, where it will sit alongside responsibility for coordinating the negotiations on withdrawal. While scrutiny of EU proposals will remain necessary for as long as the UK remains part of the EU, it makes no sense to separate this function from scrutiny of the withdrawal negotiations.
 - The negotiations will, as the Secretary of State told us, “be as broad as the entire governmental front”.⁵⁴ More specifically, they will range across the entire spectrum of EU competence, and will be conducted in detail by officials based across Whitehall. Any committee scrutinising the negotiations will need to provide an equal breadth of engagement, and the European Union Committee possesses six sub-committees, whose remits have been devised with a view to covering the entire extent of EU competence.
 - The European Union Committee, thanks to its unique structure, already reflects, in its 73 active members and its much larger number of former members, a wide spectrum of views across the House. Further thought would have to be given to membership—including to the

representation on the Committee of smaller parties and of the Lords Spiritual. Consideration might also be given to waiving the rule that prevents Members from sitting on more than one sessional investigative Select Committee, in order to facilitate the involvement of Members of other Committees. With these provisos, the broad-based membership of the EU Committee will be an invaluable asset.

- Finally, the Committee and its 25 staff possess considerable policy and legal expertise, along with a well-established range of contacts domestically and across the EU. It will be vital for the House to make the best possible use of these skills in scrutinising Brexit.

100. Any Committee charged with scrutinising the Brexit negotiations will need appropriate terms of reference—if the European Union Committee were to be so charged, its current terms of reference would have to be substantially updated. Professor Wyatt suggested the following terms of reference: “To consider the negotiation and conclusion of agreements between the UK and the EU consequential upon the result of the referendum of 23rd June 2016, and other matters relating thereto”. He also suggested that a reference to “third countries” could be added if the House wished to empower the Committee to scrutinise any trade negotiations conducted post-withdrawal.
101. In developing Professor Wyatt’s helpful suggestions, we have sought to combine them with the European Union Committee’s existing terms of reference, while also giving expression to what will become an increasingly important diplomatic role. The resulting terms of reference are given in Box 3. We have not incorporated a reference to third countries, since such negotiations will not arise until after withdrawal has been completed, at which point a more far-reaching review of the terms of reference will in any case be required.

Box 3: Proposed terms of reference

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| <p>(1) To consider the negotiation and conclusion of any agreements between the United Kingdom and the European Union relating to the United Kingdom’s withdrawal from, and establishment of a new relationship with, the European Union;</p> <p>(2) To represent the House as appropriate in interparliamentary cooperation and dialogue within the European Union, and in particular to develop on behalf of the House an active interparliamentary dialogue relating to the United Kingdom’s withdrawal from and establishment of a new relationship with the European Union;</p> <p>(3) To consider, for as long as the United Kingdom remains part of the European Union, any European Union documents deposited in the House by a Minister, and other matters relating to the European Union;</p> <p>The expression ‘European Union document’ includes in particular:</p> <p>(a) a document submitted by an institution of the European Union to another institution and put by either into the public domain;</p> <p>(b) a draft legislative act or a proposal for amendment of such an act;
and</p> |
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- (c) a draft decision relating to the Common Foreign and Security Policy of the European Union under Title V of the Treaty on European Union;

The Committee may waive the requirement to deposit a document, or class of documents, by agreement with the European Scrutiny Committee of the House of Commons;

- (4) To assist the House, for as long as the United Kingdom remains part of the European Union, in relation to the procedure for the submission of Reasoned Opinions under Article 5 of the Treaty on European Union and the Protocol on the application of the principles of subsidiarity and proportionality.

102. These terms of reference, supported by the Government undertakings recommended in Chapter 5 of this report, would go a long way to ensuring effective and constructive scrutiny of the Brexit process. They would not, of course, be sufficient in and of themselves, and the new Committee, in partnership with DExEU, would need to develop more detailed terms of engagement, including robust arrangements for the handling of confidential information.

103. In effect, what we have proposed, though it incorporates the European Union Committee's current terms of reference, would be a new Select Committee. The House might therefore wish to consider giving it a new name, such as the 'European Union and EU Withdrawal Committee'. At the same time, we believe, for the reasons given in paragraph 99, that the existing sub-committee structure would serve the House well in scrutinising the negotiations, and should be retained, pending further consideration by the new Committee itself.

Conclusions

104. **We recommend that the new Committee appointed to scrutinise Brexit should incorporate the existing scrutiny functions of the European Union Committee.**

105. **We propose the following terms of reference for the new Committee, for consideration by domestic committees of the House:**

“(1) To consider the negotiation and conclusion of any agreements between the United Kingdom and the European Union relating to the United Kingdom's withdrawal from, and establishment of a new relationship with, the European Union;

(2) To represent the House as appropriate in interparliamentary cooperation within the European Union, and in particular to develop on behalf of the House an active interparliamentary dialogue relating to the United Kingdom's withdrawal from and establishment of a new relationship with the European Union;

(3) To consider, for as long as the United Kingdom remains part of the European Union, any European Union documents deposited in the House by a Minister, and other matters relating to the European Union;

The expression ‘European Union document’ includes in particular:

- (a) a document submitted by an institution of the European Union to another institution and put by either into the public domain;**
- (b) a draft legislative act or a proposal for amendment of such an act; and**
- (c) a draft decision relating to the Common Foreign and Security Policy of the European Union under Title V of the Treaty on European Union;**

The Committee may waive the requirement to deposit a document, or class of documents, by agreement with the European Scrutiny Committee of the House of Commons;

(4) To assist the House, for as long as the United Kingdom remains part of the European Union, in relation to the procedure for the submission of Reasoned Opinions under Article 5 of the Treaty on European Union and the Protocol on the application of the principles of subsidiarity and proportionality.”

- 106. We further recommend that the new Committee should retain the existing sub-committee structure of the European Union Committee, pending further consideration by the new Committee itself.**

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

Why is parliamentary scrutiny necessary?

1. The forthcoming negotiations on Brexit will be unprecedented in their complexity and their impact upon domestic policy. The direction of many key areas of policy, affecting core national interests, will be heavily influenced, if not determined, by the outcome of the negotiations. While the Government has an obligation, following the referendum, to deliver Brexit, it seems to us inconceivable that it should take the many far-reaching policy decisions that will arise in the course of Brexit without active parliamentary scrutiny. (Paragraph 16)
2. We agree with the Government, and all our witnesses, that Parliament should not seek to micromanage the negotiations. The Government will conduct the negotiations on behalf of the United Kingdom, and, like any negotiator, it will need room to manoeuvre if it is to secure a good outcome. (Paragraph 17)
3. At the same time, we do not regard the principle of accountability after the fact, however important in itself, as a sufficient basis for parliamentary scrutiny of the Brexit negotiations. Instead, we call on the Government to recognise a middle ground between the extremes of micromanagement and mere accountability after the fact. (Paragraph 18)
4. Within this middle ground, Parliament, while respecting the Government's need to retain room for manoeuvre, should be able both to monitor the Government's conduct of the negotiations, and to comment on the substance of the Government's negotiating objectives as they develop. Only if these principles are accepted will Parliament be able to play a constructive part in helping the Government to secure the best outcome for the United Kingdom. Such scrutiny will also contribute to a greater sense of parliamentary ownership of the process, strengthening the Government's negotiating position and increasing the likelihood that the final agreement will enjoy parliamentary and public support. (Paragraph 19)

Phase 1—preparation

5. Across Whitehall, the Government is engaging with stakeholders, and analysing their views, with a view to drawing up guidelines for the forthcoming negotiations. We understand that during this period of intense activity the flow of information from Government to Parliament will be limited. (Paragraph 33)
6. Parliament can, nevertheless, make a significant contribution to the development of the Government's thinking, using conventional means such as debates and Select Committee inquiries. We are ourselves seeking to contribute to the process by undertaking a coordinated series of inquiries addressing many of the key issues that will arise in the course of Brexit. (Paragraph 34)
7. The Government has not yet indicated how it will publish its negotiating guidelines, whether they will be debated in Parliament, or whether they will be subject to formal approval by one or both Houses. Given the requirement that Parliament should approve and ultimately implement any agreement that emerges from the negotiations, we believe it would be in the Government's

and the nation's interest for both Houses to be given an opportunity to debate and approve the negotiating guidelines, at least in outline. (Paragraph 35)

8. We note the recent report of the Constitution Committee on the role of Parliament in issuing a notification under Article 50 TEU, and await the decision of the courts on the application brought by Gina Miller and Dier Tozetti Dos Santos. (Paragraph 36)

Phase 2—formal negotiations

9. The current level of scrutiny of trade and other international negotiations by the European Parliament, as set out in the 2010 Framework Agreement between the European Parliament and the European Commission, provides a baseline against which any arrangements agreed in the United Kingdom Parliament must be measured: it would be unacceptable for the European Parliament to have greater rights of scrutiny over the negotiations on Brexit than Westminster. We are therefore grateful for the Secretary of State's assurance that the level of scrutiny in Westminster will at least match that in Brussels. (Paragraph 58)
10. The key principles underpinning European Parliament scrutiny of trade and other international negotiations are that:
 - The European Parliament, through a designated Committee, has access to all relevant documents, including draft negotiating directives, draft amendments to those directives, draft negotiating texts, agreed articles, and draft agreements;
 - Those documents are supplied to the Parliament in sufficient time for it to be able to express its view, and if necessary to publish formal recommendations, and for the Commission (which conducts the negotiation) to be able to take these views and recommendations into account;
 - The Commission is under a duty to respond to such recommendations, and in particular, if recommendations are rejected, to explain why;
 - Both the Commission and the Parliament are under a duty to adopt procedures to safeguard confidential information. (Paragraph 59)
11. The same general principles should be applied to scrutiny by the Westminster Parliament of the forthcoming negotiations on Brexit. Too much is at stake for scrutiny to be limited to establishing accountability after the event. While it is not for Parliament to manage the negotiations themselves, Parliament must be able to monitor them actively, and to make its views known in timely fashion, potentially against the backdrop of fast-moving negotiations, so that the Government can consider these views and decide whether not to act on them. (Paragraph 60)
12. We have considered whether these principles should be embodied in a formal scrutiny reserve resolution. On balance, however, we are persuaded that a formal and prescriptive scrutiny reserve could restrict the Government's room for manoeuvre, thereby acting against the national interest. We are also conscious that scrutiny of treaty negotiations will be a new departure for the UK Parliament: it will take time for mutual trust to develop and for optimum working practices to be identified. We therefore do not recommend the adoption of a formal scrutiny reserve at this stage. (Paragraph 61)

13. Instead, we invite the Government to undertake that the principles outlined in paragraph 59, should be applied to in its relations with Parliament during the forthcoming negotiations. It is essential that the Government should work with the two Houses to give effect to these principles, if there is to be parity between the Parliaments in Westminster and Brussels in scrutinising Brexit. (Paragraph 62)

Phase 3—ratification

14. Any treaties arising out of the Brexit negotiations will engage the provisions of Part 2 of the Constitutional Reform and Governance Act 2010. Thus the two Houses will have an opportunity to pass resolutions that the treaties should not be ratified. (Paragraph 67)
15. We would expect the Government, as well as laying the treaties before Parliament, to publish comprehensive explanatory material to inform public and parliamentary debate. It would be in the Government's interest, should time allow, to give Select Committees scrutinising Brexit in both Houses an opportunity to set out their views before any debates and votes take place. (Paragraph 68)
16. If, after two years of formal negotiations under Article 50 TEU, no agreement is reached either on the arrangements for withdrawal or on extending the deadline for negotiations, the UK will simply cease to be a member of the EU. Such an outcome cannot be ruled out, but would be highly damaging both to the UK and the EU. (Paragraph 69)

Phase 4—implementation

17. The 'Great Repeal Bill' announced by the Prime Minister on 2 October 2016 would formalise the UK's withdrawal from the EU in domestic law, by repealing the European Communities Act 1972, with effect from whatever date is specified in the withdrawal agreement. We support the Government's aim of maintaining the body of existing EU law in force, pending further review, but note that giving effect to this aim may be more complex than the Government has yet acknowledged. (Paragraph 79)
18. The Government has yet to set out its strategy for conducting a full review of EU law post-withdrawal. While we welcome the Prime Minister's commitment to full parliamentary scrutiny, we note that the legislation resulting from the review will have a profound impact upon Parliament, potentially dominating the domestic legislative agenda for an extended period. We therefore recommend that the Government publish an outline strategy for the post-withdrawal review of EU law as soon as possible, in order to inform consideration by the two Houses of how to deliver an appropriate and manageable level of parliamentary scrutiny. (Paragraph 80)
19. Negotiations on trade agreements, with the EU and with third countries, may continue for several years post-withdrawal. Like the negotiations on withdrawal, these will reach deeply into domestic policy-making, and the same considerations in relation to parliamentary scrutiny apply. (Paragraph 81)

'Parliamentary diplomacy'

20. Parliament should play an active diplomatic role throughout the Brexit process, and beyond. Dialogue with the European Parliament, and with other national parliaments, will be important in maintaining cordial relations

during what will be, at the intergovernmental level, difficult negotiations. (Paragraph 89)

21. The European Union Committee is already tasked with representing the House in interparliamentary relations within the EU, and will accordingly seek in coming weeks to begin a dialogue with the European Parliament, and to agree arrangements for formalising such a dialogue for the duration of the negotiations. (Paragraph 90)

Internal arrangements

22. Parliamentary scrutiny of Brexit should, we believe, continue to be inclusive and broadly defined. Debates, statements, and questions will all play an important part, and committees will continue to look at issues affecting their particular remits. (Paragraph 96)
23. At the same time, we are conscious of the risk that uncoordinated scrutiny across both Houses could place an excessive burden upon the Department for Exiting the European Union. We therefore consider that, if Government is to be scrutinised effectively and efficiently, both Houses should confer explicit responsibility for such scrutiny upon a designated Select Committee. (Paragraph 97)
24. We understand that the House of Commons is to appoint a dedicated Select Committee to scrutinise the new Department. While close liaison between the two Houses will be vital in scrutinising the negotiations, we reiterate the recommendation in our July 2016 report, that the House of Lords can best contribute to effective parliamentary oversight of the negotiations by also charging a specific Select Committee with explicit responsibility for scrutinising the negotiations, and for publishing reports so as to inform debate in the wider House. (Paragraph 98)
25. We recommend that the new Committee appointed to scrutinise Brexit should incorporate the existing scrutiny functions of the European Union Committee. (Paragraph 104)
26. We propose the following terms of reference for the new Committee, for consideration by domestic committees of the House:
 - “(1) To consider the negotiation and conclusion of any agreements between the United Kingdom and the European Union relating to the United Kingdom’s withdrawal from, and establishment of a new relationship with, the European Union;
 - (2) To represent the House as appropriate in interparliamentary cooperation within the European Union, and in particular to develop on behalf of the House an active interparliamentary dialogue relating to the United Kingdom’s withdrawal from and establishment of a new relationship with the European Union;
 - (3) To consider, for as long as the United Kingdom remains part of the European Union, any European Union documents deposited in the House by a Minister, and other matters relating to the European Union;

The expression ‘European Union document’ includes in particular:

- (a) a document submitted by an institution of the European Union to another institution and put by either into the public domain;
- (b) a draft legislative act or a proposal for amendment of such an act; and
- (c) a draft decision relating to the Common Foreign and Security Policy of the European Union under Title V of the Treaty on European Union;

The Committee may waive the requirement to deposit a document, or class of documents, by agreement with the European Scrutiny Committee of the House of Commons;

(4) To assist the House, for as long as the United Kingdom remains part of the European Union, in relation to the procedure for the submission of Reasoned Opinions under Article 5 of the Treaty on European Union and the Protocol on the application of the principles of subsidiarity and proportionality.” (Paragraph 105)

27. We further recommend that the new Committee should retain the existing sub-committee structure of the European Union Committee, pending further consideration by the new Committee itself. (Paragraph 106)

APPENDIX 1: LIST OF MEMBERS AND DECLARATION OF INTERESTS

Members

Baroness Armstrong of Hill Top
 Lord Boswell of Aynho (Chairman)
 Baroness Brown of Cambridge
 Baroness Browning
 Baroness Falkner of Margravine
 Lord Green of Hurstpierpoint
 Lord Jay of Ewelme
 Baroness Kennedy of The Shaws
 The Earl of Kinnoull
 Lord Liddle
 Lord McFall of Alcluith (until 31 August 2016)
 Baroness Morris of Bolton (until 13 September 2016)
 Baroness Prashar
 Lord Selkirk of Douglas
 Baroness Suttie
 Lord Teverson
 Lord Trees
 Baroness Verma (from 13 September 2016)
 Lord Whitty
 Baroness Wilcox

Declarations of interest

Baroness Armstrong of Hill Top
Chair, Changing Lives (a charity based in Tyneside which may benefit from European Union funds)
Member, Advisory Board, GovNet Communications (publisher and event organiser)
Trustee, Africa Governing Initiative Trustee, Voluntary Service Overseas

Lord Boswell of Aynho (Chairman)
In receipt of salary as Principal Deputy Chairman of Committees, House of Lords
Shareholdings as set out in the Register of Lords' Interests
Income is received as a Partner (with wife) from land and family farming business trading as EN & TE Boswell at Lower Aynho Grounds, Banbury, with separate rentals from cottage and grazing
Land at Great Leighs, Essex (one-eighth holding, with balance held by family interests), from which rental income is received
House in Banbury owned jointly with wife, from which rental income is received
Lower Aynho Grounds Farm, Northants/Oxon; this property is owned personally by the Member and not the Partnership

Baroness Brown of Cambridge
Vice Chancellor of Aston University (to September 2016): significant research income, ERDF Funding from EU. Large number of EU (non-UK) staff and students. EIB Loan
Former Governing Board member of the European Institute for Innovation & Technology

Baroness Browning
Chair of the Advisory Committee on Business Appointments

Baroness Falkner of Margravine

Visiting Professor, King's College London

Member, Advisory Board, Cambridge YouGov Stone (market research and events agency)

Member, British Steering Committee: Koenigswinter, The British-German Conference

Vice President, Liberal International: The International Network of Liberal Parties

Member, Advisory Board, British Influence

Ownership of a house in Italy, jointly owned with member's husband

Member, House of Lords Foreign Policy Network

Lord Green of Hurstpierpoint

Shareholdings as set out in the Register of Lords' Interests

Chair, Advisory Council for the Centre for Anglo-German Cultural Relations, Queen Mary University, London

Member, Advisory Board of the Centre for Progressive Capitalism

Member, Steering Group, Sabanci University Centre for Excellence in Finance, Istanbul

Member, Akbank International Advisory Board, Istanbul (remunerated with an attendance fee which the Member donates to a registered charity)

Chair, Natural History Museum

Lord Jay of Ewelme

Trustee (Non-Executive Director) Thomson Reuters Founders Share Company Chairman, Positive Planet (UK)

Member, European Policy Forum Advisory Council

Member, Senior European Experts Group

Patron, Fair Trials International

Baroness Kennedy of The Shaws

Chair, Justice

Earl of Kinnoull

Executive Consultant, Hiscox Group (insurance)

Trustee, Blair Charitable Trust (running of Blair Castle and estate; a farm subsidy is received under the EU farm subsidy scheme)

Trustee, Red Squirrel Survival Trust and Director of associated private company (in receipt of EU funds)

Director, Horsecross Arts Limited (Perth) and trustee of related registered charity (in receipt of EU funds)

Member of Supervisory Board, Fine Art Fund Group funds

Farmland and associated cottages in Perthshire from which rental income is received and a farm subsidy is received under the EU farm subsidy scheme

Shareholdings in Hiscox Ltd and Schroders PLC (fund management)

Lord Liddle

Chair, Policy Network and Communications Ltd (think-tank)

Co-author of a report which the City of London Corporation commissioned Policy Network to write on developments in thinking on the regulation of financial services in the European Union

Personal assistant at Policy Network carries out secretarial work which includes work in relation to the member's parliamentary duties

Baroness Prashar

Deputy Chair, British Council

Lord Selkirk of Douglas

Director, Lennoxlove House Limited (remunerated as a Director)

Chairman of Directors, and Director, Douglas-Hamilton (D Share) Ltd (small family company: agriculture and property; the Member's financial interest derives from his directorship, which is now paid as an annual sum above the registration threshold)

President, Scottish Veterans' Garden City Association (national charity)

Chairman, Scottish Advisory Committee, Skill Force (national charity)

Baroness Suttie

Associate with Global Partners Governance Limited in respect of their Foreign and Commonwealth Office contract to provide mentoring and training for parliamentarians and their staff in Jordan

Trustee, Institute for Public Policy Research (IPPR)

Campaign Council Member, British Influence

Lord Teverson

In receipt of a pension from the European Parliament

Director, KCS Trade Print Ltd (card & label products)

Director, Wessex Investors Ltd

Director, Wessex Hotel Operators Limited (interest ceased 27 April 2016)

Director, KCS Holdings Ltd

Director, Anchorwood Developments Limited (property)

Board Member, Marine Management Organisation

Trustee, Regen SW (renewable energy agency for South West England)

Board Member, Policy Connect (think-tank)

Lord Trees

Chair, Moredum Research Institute, Edinburgh (independent animal health research institute) which applies for competitive research grants from the EU

Baroness Verma

No interests declared

Lord Whitty

President, Road Safety Foundation

Chair, Cheshire Lehmann Fund

President, Environmental Protection UK

Member, GMB

Vice President, Local Government Association

Vice President, Chartered Institute for Trading Standards

Baroness Wilcox

Shareholdings as set out in the Register of Lords' Interests

A full list of Members' interests can be found in the Register of Lords Interests: <http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests/>

APPENDIX 2: LIST OF WITNESSES

Evidence is published online at <http://www.parliament.uk/brexit-parliamentary-scrutiny/> and available for inspection at the Parliamentary Archives (020 7219 3074).

Oral evidence in chronological order

Ms Jill Barrett, Senior Research Fellow in Public International Law, British Institute of International and Comparative Law [QQ 1-11](#)

Lord Kerr of Kinlochard GCMG

Professor Derrick Wyatt QC, Emeritus Professor of Law, Oxford University, Brick Court Chambers

Rt Hon David Davis MP, Secretary of State for Exiting the EU [QQ 12-26](#)

Written evidence in alphabetical order

Alliance EPP: European People's Party UK [BRU0003](#)

Wilfred Aspinall, EU Strategy Adviser [BRU0004](#)

The Bingham Centre for the Rule of Law [BRU0002](#)

Professor Derrick Wyatt QC, Emeritus Professor of Law, Oxford University, Brick Court Chambers [BRU0001](#)