

## Home Affairs Committee

Oral evidence: [Post-Brexit migration policy](#), HC 857

Tuesday 27 February 2018

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Members present: Yvette Cooper (Chair); Christopher Chope; Stephen Doughty; Kirstene Hair; Tim Loughton; Stuart C. McDonald; Douglas Ross.

Questions 1-42

Witnesses

[I](#): Mats Persson, Head of International Trade, Ernst and Young; Zsolt Darvas, Senior Fellow, Breugel; and Catherine Barnard, Professor of European Union Law, University of Cambridge.



## Examination of witnesses

Witnesses: Mats Persson, Zsolt Darvas and Catherine Barnard.

**Q1 Chair:** We begin our hearing this afternoon. This is a Home Affairs Select Committee inquiry into post-Brexit migration policy options. I am going to ask each of you to introduce yourself in a second. What we want to look at this afternoon is what different options for immigration policy might be as part of the Brexit negotiations. Mats Persson, could you start by introducing yourself, please?

**Mats Persson:** Good afternoon, everyone. Mats Persson. I am currently the Head of International Trade at EY, formerly known as Ernst and Young. I have a background in government. Previously I was an adviser to No. 10 and also I used to run the think-tank Open Europe.

**Zsolt Darvas:** My name is Zsolt Darvas. I am a Senior Fellow at Bruegel, which is an independent, non-profit think-tank in Brussels. It is primarily supported by membership, which includes European Union Governments, including the United Kingdom, a number of global corporations and a number of institutions, including the Bank of England.

**Catherine Barnard:** Catherine Barnard, Professor of EU Law at the University of Cambridge. I am being supported by the ESRC UK in the Changing Europe programme, which is non-partisan, so it is not advocating one side or the other.

**Chair:** Thank you very much. We want to start by discussing different attitudes towards immigration in the UK and then across the EU.

**Q2 Stuart C. McDonald:** Could you say, first of all, how the UK experience of intra-EU migration over the last 20 years has differed from other EU member states and how do you think that has affected the approach of the different member states to free movement of people?

**Chair:** By the way, do just come in in response to the questions that you want to answer. Don't feel the need to answer every question.

**Mats Persson:** I am happy to go first as an EU migrant in the UK. I think the primary difference between the UK and the EU 27 is, perhaps with one or possibly two exceptions, that the UK has been a recipient to a large influx over a shorter period of time than any other member states. We can discuss the figures but the increase in numbers between 2004 and 2015 was quite significant and we have not really seen that elsewhere in the EU, with perhaps Germany being a slight exception. It is the pace of change, a large influx in a relatively short period of time, which means that the UK stands out. The second thing is that that is added on top of the already somewhat sceptical attitudes that existed in the UK with respect to the European Union and it has created a quite complicated mix. We don't see that elsewhere; we don't see it in Germany necessarily or in my native Sweden or in other European countries.



Q3 **Stuart C. McDonald:** How did the numbers compare to other EU countries prior to 2004?

**Mats Persson:** I would have to go back and look at that but I think it was comparative. I don't think the UK trend stood out. It was largely a post-2004 phenomenon, partly driven by the fact that the UK was one of the few countries that did not impose transitional countries from the 2004 big-bang enlargement.

Q4 **Stuart C. McDonald:** How does that impact on member states' attitudes to free movement and how resistant to change in free movement rules they might be?

**Mats Persson:** I can continue; please interrupt me. I can see where you are going with the line of questioning and I think you are making a good point in the sense that there is a difference and there is an absence of a meeting point between what the UK is concerned about with free movement and what others are concerned about with broader immigration. Elsewhere in Europe the primary pressures and debates on immigration are about non-EU migration rather than intra-EU migration. That absence of a meeting point between the UK immigration-related concerns and EU 27 immigration-related concerns is one of the big problems in trying to find a way through Brexit and looking backwards, before the referendum, was one of the big challenges we were up against when we tried to renegotiate the membership test.

**Catherine Barnard:** It is unusual because if you look at how the other member states have responded to migration, countries like Spain have very high levels of migration, not least from the UK but also from Romania and elsewhere, and you do not see the same trends that you find in the UK. There is no mainstream party that is advocating curtailment of migration, so the question is why it has such a hold in this country. The issue is that particularly areas that have not necessarily had a dramatic numerical increase in migration but where the percentage increase is high in a short space of time have really felt it. The area that I know best and where I have done the most work is in parts of East Anglia—Spalding, Boston—and it is only when you go there that you start to understand why the sentiments have changed. It is a town that is declining, where the shops in the centre are predominantly charity shops and Polish or Lithuanian shops, so they feel that there is a loss of identity. They go on to the streets and they do not hear English being spoken; you hear Polish being spoken. In the interviews we conducted there you could see that it was the identity issue of, "This town isn't what it used to be".

Q5 **Stuart C. McDonald:** Does that not exist in Spain?

**Catherine Barnard:** I have lived in Spain and I do not feel it as a migrant living in Spain. There are different attitudes to migrants but—

Q6 **Stuart C. McDonald:** How has Spain managed to avoid that? Is it because they imposed controls in 2004 when the UK did not or is it



because of—

**Catherine Barnard:** What Spain and a lot of the other member states do, which we have never done, is take advantage of the provision in the citizens' rights directive that allows for registration of all EU migrants. They have a much better sense of who is in their country, the age profile of the people in their country, therefore the public services needs of the people in their country. You have to register and if you are spending more than half a year in Spain, children have to be registered so they go to school. They have a much better sense of how many people are coming there.

Q7 **Stuart C. McDonald:** Did the eurozone crisis have any impact on how members of the eurozone viewed free movement of people?

**Zsolt Darvas:** Let me add a point on that, which is also specific to Spain regarding Romanian citizens. Romania joined the EU in 2007 and Spain abolished all controls in 2009 but in 2011, taking advantage of that during the seven-year transition period after Romania and Bulgaria joined the EU there was an option to reintroduce controls, Spain has reintroduced some controls on Romanian citizens, the new arrivals. The new regulation requires that they have to have a job before arriving in Spain.

Q8 **Stuart C. McDonald:** That is an interesting point. As a question of law, at the outset the UK chose not to implement controls but having chosen not to at the outset, could it still have implemented controls at any point over those seven years?

**Zsolt Darvas:** Yes. During the seven-year period there were different options. There was the option to reintroduce control even if it has been abolished completely or not introduced at all.

Coming back to your question on the eurozone crisis and sentiment within the eurozone, I do think that that had an impact. I speak to many stakeholders, parliamentarians in Europe, on various migration issues. I think the two factors of the eurozone crisis and the very large inflow of third-country nationals, mostly from Syria and other conflict zone countries, have somehow jointly influenced public opinion. Currently in Europe there is a very heavy debate and in fact legislation, as you probably know, on the so-called posted workers directive revision on the table, but no other policy measures on mobility or social security or any other measure is currently contemplated.

Q9 **Stuart C. McDonald:** There is a sense in which the United Kingdom has seen rapid levels, compared to some other countries, since 2004 of inward migration struggling with free movement, but what about the other side of the coin? Are you aware of discussions in countries where there has been significant net outward migration that that has an effect on their economies and public services and so on? Does that in any way influence their views and attitudes to the benefits of free movement?



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**Mats Persson:** I think it is important to point out that Spain is not even close in numbers to the influx that the UK had, so there is quite a big difference in sheer numbers between what Spain and the UK have received with respect to EU migration. What is interesting about your point on this argument is: is it really healthy for countries when almost an entire generation leaves? We have a large chunk of a demographic leaving for the UK to work, often taking jobs that in their home country would be something they would be over-qualified for. Is that healthy? Probably not, but equally we came up against this a bit when we did the renegotiation ahead of the referendum. We were trying to push the argument that of course free movement is good if it is circular, if it involves perhaps young people moving from pockets of unemployment for a period of time to places where there is work and then go back. That might be healthy but what we saw was more movement towards settlement, almost like a brain drain. The stats that we sometimes cited that one-third of all Portugal-educated nurses were working in the UK cannot possibly be healthy.

We were trying that argument a bit but, to be very honest, it had limited purchase because free movement was seen as something that was part of Europe whole and free, something that particularly for the post-communist countries was part of what they now were considering as the post-communist arrangement and sentiment in Europe. That was not something they were willing to compromise on, even with the potential brain drain or loss of talent. I don't know if that aligns with what you think.

**Catherine Barnard:** I agree with that. In Poland, because of the drain of Polish nationals to other EU states including the UK, Ukrainian workers have moved in. Some of the issues that we see here are being replicated in Poland. What has been interesting—and Mats can probably speak about this more fluently—is that one of the reasons why the negotiations in Brussels in February 2016 were so fraught was because for them they had bought into free movement of persons so much and they did not want to see their citizens being treated as second class citizens in the UK. If you remember, they were denied free movement of persons for most countries as part of the transition arrangements for the seven years after 2004 and there was a sense of injustice because Germans could sell their BMWs into eastern European countries but the workers from those countries who wanted to take advantage of the opportunities in Germany and Austria were denied that for the period of the transition. There was a sense of injustice and they saw the opportunities in the UK.

The UK, Ireland and Sweden did not impose transition arrangements and that had a funnel effect. The government figures, where they thought originally the numbers of migrants who would come would be small, actually mirrored what the experience was before 2004 because levels of migration in the EU were tiny. It was less than 1%. Compared with what goes on in the United States, levels of migration were tiny so government



figures based on the previous experience were borne out, but of course the reality turned out to be completely different.

**Zsolt Darvas:** Can I add two comments? One is that in central European countries the brain drain and labour shortages is a major problem. About 30% of companies report that lack of qualified labour is a factor that limits expansion of their production. It is still a major problem for hospitals; doctors and nurses are leaving. But despite that, the central European countries are still in 100% support of free movement and they do not want to see any restrictions on their nationals going to other European Union countries.

The second comment regarding the UK is that it is true there was a diversion after 2004. The UK, along with Sweden and the Republic of Ireland, did not impose restrictions but you know better than me that about half of immigration to the UK was from outside of the EU and the UK had full control over that. If immigration was clearly excessive from any political or other perspective I think the UK could have curbed immigration from outside the EU but certainly had limited impact on intra-EU mobility.

Q10 **Chair:** Just on the attitudes in other EU countries, Switzerland outside the EU had a referendum and voted against free movement. Is Switzerland different because it is outside the EU, different attitudes, or do you think that if you had a referendum on free movement in other European countries people would also vote for a restriction of free movement?

**Zsolt Darvas:** If you look at the population in Switzerland we see slightly more EU nationals than in the United Kingdom. As a share of population, more people arrived there. The Swiss are used to the direct democracy of referendum and they very frequently have regional and national referenda. It was a political movement to put it to the people.

Q11 **Chair:** What I am interested in is whether there is a gap between what governments are saying and what the public are saying in individual countries or whether Switzerland is just different?

**Zsolt Darvas:** Switzerland is probably different but also the vote was 50.2 or 50.3, so it was a very minor excess over a half.

**Catherine Barnard:** In the Eurobarometer surveys you see a slight increase in support for free movement, so it does look like we are something of an outlier. Even in Ireland, which has also received very large numbers, you do not see the same resistance to free movement.

**Mats Persson:** Immigration as an issue, whether that is free movement or non-EU migration, is clearly a big concern across the EU. You see that becoming a dominant feature in many different elections where previously that was not a big debate. Immigration pressures as a broad topic clearly is something that is very pressing across political debates in Europe. That is definitely the case. The issue is still that if you ask people



in countries like Germany or France or even Sweden if they support the right to go and live and work anywhere in Europe, they will immediately think about Erasmus, going for work in Paris or whatever, and they support it. If you frame it slightly different, you might have a slightly different response but the main concern and where you get the most opposition or most nervousness about immigration across the EU 27 is, and probably will remain for some time, non-EU migration.

**Q12 Stephen Doughty:** Apologies, I missed the start of this session. Given what you have just said, isn't the fundamental problem we have mixing up the three areas of immigration: asylum, European freedom of movement and extra-EU migration? Isn't that the fundamental problem of where we have got to in the UK?

**Catherine Barnard:** I agree, yes. The reality is that most people, for quite understandable reasons, don't understand the three different categories: under EU law the not quite unrestricted right of free movement, including economic free movement; non-EU migration, which might be for work purposes done under visa schemes or it might be family reunification; and then the asylum rules. The reality is that all of that was thrown into the pot and because we do not have clear language to distinguish between the three categories, it is all immigration or it is all migration. People, absolutely understandably, do not distinguish between those three groups.

**Zsolt Darvas:** Just one small comment on the Eurobarometer survey, if that is useful, is that according to Eurobarometer more than a half of UK people support both intra-EU but also extra-EU immigration but there is much larger support—65% or so of people who were asked by Eurobarometer—for intra-EU immigration and more than half support extra-EU. You have to ask how reliable these surveys are but they do show some support for intra-EU among UK citizens.

**Mats Persson:** There was a confusion of the different types of immigration leading up to the referendum. I think that is definitely clear. The backdrop was clear, the refugee crisis and then all of a sudden you threw potential Turkish EU membership into the mix because of the deal that had to be struck between the EU and Turkey on refugees, and it all became very muddled. Having said that, though, why would you expect a voter to say, "I view a Swedish immigrant completely differently to a Russian immigrant"? That is a somewhat arbitrary geographical distinction, so why would an EU migrant be fundamentally different or why should he or she be viewed as fundamentally different from a non-EU migrant? I don't quite get that.

**Q13 Stephen Doughty:** I can suggest a reason why certainly the opposing side in the Brexit referendum was making a particular thing about Turkey and Syria and Iraq and obviously religion is part of that as well. I had leaflets through my door and they did not have messages on them about Polish or Lithuanian workers. They had pictures of Turkey and a big map with Syria and Iraq next to it and all sorts of other not so subtle dog





whistles that made it very clear. Thinking particularly of your experience, Mats, why was that distinction not made clearer and what would you do differently going forward?

**Mats Persson:** Perhaps I walked into that one slightly. On the doorstep, as you will know better than us because we have never been elected—or at least I don't think you have—to explain the distinction is not that easy, so there is a quite natural cause for that. In retrospect there are things that potentially could have been done differently but it was just very unfortunate timing with the migration crisis as a backdrop. I come back to my previous point that fundamentally if you are voter, just because there is a distinction in law between one type of EU migrant and another type of EU migrant, in terms of influx, pressures and perception we should not expect people to make a distinction because it is the same type of pressure. If that is what your feeling is, it is the same type of pressure and same type of influx. Of course things could have been done differently, things could have been communicated differently, but fundamentally at the end of the day it is an arbitrary distinction between an EU citizen and a non-EU migrant.

Q14 **Stephen Doughty:** Going forward—and I have asked this question before—fundamentally EU residents who are here already are going to be able to stay in some form or another, register and whatever else. We are not going to start kicking lots of people out in the end. We are still going to have very preferential terms for EU citizens to come and work and live here. They will be in some higher tier of the system whatever it might be. Essentially, are we trading off a reduction in lower-skilled EU migration but a reduction of hundreds of thousands for potentially serious consequences on trade and the economy going forward? For removing 300,000 maybe low-skilled Poles from the mix, we are willing to pay the price economically. Is that what this all boils down to?

**Catherine Barnard:** That is part of the trade-off but I would have two caveats on what you have helpfully said. One is that there will be settled status for those who have arrived certainly by 29 March 2019 and probably by 31 December 2020. Settled status is fine for those who work in universities or the NHS where they have contracts and you can show that they have done five years, they have paid national insurance. It is much less clear for those who have very patchy work records, who have been seasonal workers. They have come here, worked in the fields for summer months, gone back, come backwards and forwards; what will their position be? There are women who have been here for a long time, might have married a British national, have not paid health insurance because they have used the NHS, like everybody else. The Government have given an undertaking that those people will not have to show that they have compulsory sickness insurance, CSI, but there is nothing absolutely guaranteed about that. There are issues about children, particularly children in care. There are a number of people who might have fallen through the net. In principle those who are on the radar will be fine but there is a number of people who are on the margins whose





position will be a lot less clear. It means it requires discretion on the part of the Home Office to take decisions about these individuals, over long periods of time and, as we know, the Home Office is suffering from resourcing issues. There is a real concern about that.

As far as this argument about low-skilled workers is concerned, it is a terminology that is rather sensitive. When you press people on what they mean by low-skilled workers, often they mean people who are working in agriculture in the fields, but in fact low-skilled for our purposes will also include a lot of people who work in universities but do not have PhDs, such as lab technicians, administrators, teachers in non-key subjects. When you start to explain that to people their views about low-skilled workers change.

**Q15 Chair:** Can I ask you about what the different options for reform might be? If you started from the framework around single markets, perhaps during the transition or maybe beyond the transition, if you were either staying within a single market or quite close to a single market what sort of reforms to free movement might be possible?

**Zsolt Darvas:** There is only one form currently for single market access and that is the European Economic Area agreement of which Norway, Lichtenstein and Iceland are part. That implies all four freedoms of the EU, including labour mobility. There is an escape clause saying that when there is a very serious local or social environmental problem in principle the EEA agreement allows for introducing temporary restrictions but in practice it has not been applied. Lichtenstein has a very different regime. It had some temporary restrictions and then at the end it was transformed into a more permanent system, but Lichtenstein is a very small principality so it is not comparable at all to Norway not to mention the United Kingdom. One clear case is the EEA but, as you also know as well as me, the EEA does not just involve the four freedom but it also involves the full transposition of all EU laws, regulations, product standards and everything without having a voice on how these are decided and implemented. It also involves the ultimate interpretation of the European Court of Justice. As an economist, I think an EEA arrangement would be good for the UK and good for the rest of the EU 27, but I understand that for political reasons this is not the option that the United Kingdom will likely choose.

If you move away from the EEA agreement, there is a lot of possible different regimes. Some could be just minor changes like, for example, if a job seeker goes to another EU country, including the UK, he or she would have six months to find a job. You may bargain with the EU 27 that the six months should be reduced to three months, which is the standard period for a tourist visa. There are also some other options, for example limiting certain benefits that people who move might receive and so on, but the more you deviate from the single market free movement principle the more difficult it will be to get access for goods and financial services.



**Catherine Barnard:** I broadly agree with that. You have article 112 of the EEA agreement, which is the closest to an emergency brake but remember it also goes hand in hand with article 113, so there is a process. It is not a unilateral decision by the state to invoke it and there is a process whereby there needs to be consultations with the EEA joint committee and others can object. It is not an absolutely straightforward process. On the subject of the EEA, we are told that all instruments must be complied with. In fact, there is a degree of discretion because there is a scrutiny committee that works out whether legislation from the EU is compliant and suitable to be applied to EEA states. It is not an automatic transposition but it is certainly true that the citizens' rights directive, directive 2004/38, which is the main piece of legislation, applies in the EEA states but without the citizenship framework that is superimposed on it through EU law because everyone who is a national of an EU state is a citizen of the Union and that comes with certain political baggage attached. That does not apply in the EEA states.

Cases that arise under the EEA agreement go to the EFTA Court not the Court of Justice. There is a duty of what is called homogeneity between the rulings of the EFTA Court and the Court of Justice but Carl Baudenbacher, who is the current president or the outgoing president of the EFTA Court, does insist quite vociferously now that there is increasing divergence between the EFTA Court and the ECJ because of the slightly different context in which both are operating. That is on the EEA.

As far as alternatives are concerned, the one area that might be interesting to explore a bit still is what was looked at and what was negotiated by David Cameron in Brussels in February 2016. Just to be clear, we know that that agreement in itself is dead because it was conditional on there being a vote to remain but nevertheless David Cameron did get some quite key concessions. The one that was most trumpeted was the emergency brake on benefits, albeit quite a complicated provision that made it harder to sell. But there is buried in the text some language, that is appealing to lawyers and rebarbative to anyone who has got a life, that you might be able to find some sort of not just emergency brake on benefits, which is very clear on the face of the text, but even an emergency brake on actual migration. There is language in the text that talks about where there is a need to reduce unemployment or protect vulnerable workers or avert the risk of seriously undermining the sustainability of social security systems, it might be possible to impose discriminatory restrictions. This is not fleshed out in a lot of detail but there is language there that does create a bit of wriggle room.

Q16 **Chair:** What kind of thing? If you were being imaginative, what kind of things are you talking about?

**Catherine Barnard:** If you were being imaginative and if you see what the EU has somewhat grumpily agreed with Switzerland, you could imagine not a national emergency brake on migration but a much more



regional base. Presumably we would operate on a whole area like East Anglia, although that probably is too big because the difference between Cambridge and Spalding, although they are only 43 miles apart, is vast. You might be looking at county level where it might be possible to have various indicators. You look at levels of unemployment, levels of immigration into the area, which would require data collection on who is coming, wait times for access to hospitals or to see a GP, pressure on housing. If you combine these various indicators with perhaps a trigger mechanism triggered by a county council or a unitary authority to say that they are experiencing pressure, what they are hearing on the doorsteps, what they are seeing with these quantitative factors is that there is real pressure, something needs to be done, whether it be a brake on further migration or further permits being offered to EU nationals working in that area, you can imagine that there could be some structure. Of course, it is administratively bureaucratic but that is inevitably the consequence of leaving the free movement rules.

**Q17 Chair:** Mr Darvas, Mr Persson, do you have any other thoughts about things that might be changed within this broad EEA framework, for example?

**Mats Persson:** I am just thankful to Catherine for giving a nod to the 2016 February agreement, which of course was an excellent agreement, so thank you. Catherine is right, there was a lot of stuff in that agreement that had the vote been different we would have been able to build upon and perhaps those kind of reforms that we all were working towards. We looked at some of these brakes and how to link them to a basket of regional criteria in the past. It is administratively cumbersome, of course, it is a challenging, but if you compare it to the administrative challenge involved in Brexit I think it is probably not in the same league. I guess it depends what you compare it to. I think there is a body of ideas there that is really interesting, that has been looked at in the past and would be worthy of serious consideration.

However, my question is: is the EU more willing now to negotiate some sort of emergency brake than it was a couple of years ago? Have the politics changed that this is something that they are willing to talk about? I think that is an open question because presumably the politics will have to have changed a bit since we were at it for this to be acceptable to the EU side. The question is: has that changed to a sufficient degree for it now to be a serious discussion? As an idea and as something that docks with the political pressure that we are facing, it is not the craziest thing I have heard.

**Zsolt Darvas:** I am bit more cautious on many innovative approaches and proposals for immigration. One reason for that is that I see the EU negotiating stance as a very rigid one based on the treaty. The treaty specifies that these are the four freedoms of the EU. If the UK is out then a completely new regime will start, but I also think that the EU has a kind of goal to demonstrate that the four freedoms are indeed indivisible,



partly to discourage other member states from following the UK. Certainly member states have different views on that but so far I do see such a strong stance.

**Mats Persson:** Do you think it has moved in the last three years or is it the same stance as it was three years ago? Is there anything that has happened on the continent that has moved the EU stance or is it just as rigid on the four freedoms as we have been taught to believe?

**Zsolt Darvas:** When you talk about the EU 27, I think it remains as rigid as it was. Another question is what would be the longer relationship between the UK and the EU 27 after the UK has left? There could be some room for manoeuvre but again I would think very limited room for manoeuvre. Some minor things and if disagreement is really minor, what actually is put in place and have to give under certain conditions preference to local workers and advertising in local job centres and so on is very limited. The UK is a much bigger country than the EU. There is also the joint interest of finding an agreement, but I would be very cautious on having big expectations that the big compromise on labour mobility could be achieved while at the same time the UK will have a broad-based single market access.

Q18 **Tim Loughton:** Can we come back to Professor Barnard in view of your nuggets that were hidden within the agreement? It is completely unworkable, isn't it? Describing having a scheme of work permits for Spalding or whatever, so all of a sudden the problem goes to Grantham or to Hull, for all practical purposes does not deal with the problem. Isn't it the case anyway that it was all subject to the adjudication of the European Court, which would overrule it on discrimination grounds pure and simple? It was never going to happen, so it was entirely tokenism and, therefore, not a serious prospect, despite how wonderful the negotiations of Mats and his friends were?

**Mats Persson:** Tim, are you talking about what was actually in the February agreement or the extension that Catherine was talking about, rolling this out to some sort of emergency brake on numbers?

**Tim Loughton:** On the emergency brake, as you termed it, the language of a possibility of an emergency brake but really what it amounted to was nothing in practice.

**Catherine Barnard:** Technically you are right at the moment because the Brussels agreement is dead in the water. Had we voted to remain, you are right there were always going to be questions about how the court would respond to what had been negotiated. You are also right to say that the orthodox position is that direct discrimination, which is essentially what an emergency brake would be, is normally only allowed in very narrow circumstances and this was a step forward or a departure from the court's orthodox case law. On the other hand, I would say that the court has showed a pragmatic turn when it came to the rather exceptional measures that were put in place to try to deal with the



eurozone crisis. When they were all challenged before the Court of Justice, it upheld them all.

You are right that there were elements of what was agreed in Brussels that could have been challenged by the court. Nobody knows which way it would have gone. It might have been pragmatic. But, given that we are leaving, the question is: is there a way of having some sort of quasi single market access, perhaps not called that but allowing some form of free movement to continue? As we know, there are certain sectors that are heavily reliant on EU migrant workers. Could it be combined with an element of showing to the British public that there is control retained? Where the UK did not take advantage of the rules that exist at the moment is, for example, we never used article 8 of the citizens' rights directive to register who was coming in, so therefore we did not have that granular understanding of who was living where and what the local pressures were. I should add also some of the issues that have come up, particularly in parts of East Anglia, about pressures on housing and some very poor housing practices by landlords where you have eight or 12 people living in one house and they are essentially rotating beds, could have been dealt with under local authority enforcement powers, those who are not getting employment rights could have been dealt with by national law. But the perception is that nothing has been done, so having some sort of emergency brake would show that the public were being listened to. I hear what you say, yes, of course it would be administratively burdensome but this is going to be—

**Tim Loughton:** Quite impossible, really.

**Catherine Barnard:** We have never tried it so we do not know. I do take your point, because it requires registration of who is coming and a work permits system and so forth, but at least it would be a way of local councils, county councils saying, "There is a real problem in our area and you, Westminster, or you elsewhere—" particularly Westminster, because Scotland has a different issue. Scotland wants the migrants because it has a declining population, but in England you say, "You, Westminster, have to help us out", whether it is through a regional fund or whatever.

Q19 **Tim Loughton:** Sure, but you know the fudge that they have had to do in Switzerland to a non-member country will have absolutely no effect. It is a face saver to stop the Swiss being fined considerable amounts but it will not affect anything, and that this did not amount to a row of beans either is the problem. The question I want to come back to—and Mats was there—is could David Cameron actually have got more practical, workable stuff than he did, not least by not saying it is over 21 months early?

**Mats Persson:** Obviously we will never know what the counterfactual is. I do think what we got on EU citizens' access to in-work benefits and the four-year restriction on that was a meaningful change and something that, as Catherine has sort of alluded to, in negotiation terms was not easy but was, I think, an achievement and I think it would have stood the



test of time, absolutely 100% would have stood the test of time. Could we have got to more? We just don't know. The big question is again the emergency brake, whether one should have asked for the emergency brake, and it comes back to the same question: is there a different perception now in the EU 27 on whether this is possible?

Q20 **Tim Loughton:** Did we seriously ask for an emergency brake?

**Mats Persson:** No, but we never—

**Tim Loughton:** Why not?

**Mats Persson:** You know the story, because it has been well-documented, that we went in on a four-year policy. The emergency brake was talked about, it was considered, it was floated. John Major gave that famous speech, or at least in my world it was a famous speech, in 2014 when he floated an emergency brake in Berlin and that went down like a lead balloon. Had we doubled down an emergency brake and played a long game, we will never know whether we could have achieved it.

Q21 **Tim Loughton:** But why didn't we?

**Mats Persson:** It is a negotiability issue and a range of different interests and concerns and the timing of the referendum played into it. There was a whole range of different considerations going into that.

Q22 **Tim Loughton:** But the timing of the referendum and the promise from the Government was that there would be a referendum by the end of 2017 and so in March 2016 the Prime Minister came back to say this is the deal we are now going to put. We all know the way the EU works is 11th hour deals and so the prospect of the Prime Minister walking away several times might have reinforced the point that, "Actually this is serious and there is a serious prospect that the UK will no longer be part of the EU unless you give us some serious meat", of which an emergency brake may have been that bit of serious meat that might have influenced people to vote to stay. He did not walk away once.

**Mats Persson:** Are you saying, Tim, that we should have voted to remain and given a bit more time?

**Tim Loughton:** No. I am saying that if the Prime Minister had negotiated longer and harder at that stage, and not just at the first serious negotiating phase said, "Okay, this is the deal", he would have been able to have come back later, in 2017 perhaps, and said, "I have gone to the wire. This is the best deal we are going to get", which might have been able to include an emergency brake on immigration. That would have been a significant factor, a workable one, not just we are going to have work permits for people in Spalding or whatever might be interpreted, and which had a serious implication for the adjudication powers of the European Court. If he had said, "We have negotiated long and hard, this is the deal we have and now I am going to put it to the vote", the result might have been different because certainly it would have appeared to





have done something about the immigration issue that was a big issue for many people who voted the way they did. He didn't. Why didn't he and could he have achieved more? Everything you are saying suggests there was more of a deal to be negotiated.

**Mats Persson:** SALT's argument will be that there was nothing. We were at the edge of what should have been agreed. That is what we were saying on free movement. The timing of the referendum is something that has been discussed a lot in retrospect and whether this was the right time to hold the referendum or whether we could have played a longer game. Obviously there are arguments on both sides about the timing of the referendum. Do you want to do it quickly after the election, avoiding the French and German elections in 2017—the arguments are quite well known—versus playing a slightly longer game where you try to give a bit more time to achieve reforms, perhaps giving yourself some leeway to walk about from the table? But I think the arguments at that point in time, with the information that we had, were quite equally yoked and we came down on the June 2016 referendum. Had we waited, had we asked for more and held a later referendum, would the outcome have been different? We just will never know.

I think what is interesting now in the Brexit discussions, circling back to have the politics changed, so that you can get something that will broadly say it would broadly grant the UK comprehensive access to the single market while signing up to some sort of version of free movement of people, even if it is free movement of people minus but with some additional controls, is the more relevant question than going back in time, don't you think? What is the right balance now between market access and immigration control? That seems to me the more appropriate topic for this discussion.

**Zsolt Darvas:** I agree, but let me give an answer to your question. Any concession that was given to the UK was not a specific UK concession but could have applied to the EU as a whole. If David Cameron had fought much harder and was somehow able to achieve a quantitative emergency brake, that would have had to apply to the European Union as a whole. This is currently not allowed under the EU treaty, so that would have required a change in the EU treaty. Nobody likes to change EU treaties because that is a nightmare process, long-lasting and so on, so I think what David Cameron achieved was probably very close to the limit of what was possible under the current EU treaty. I don't think he could have achieved much more.

Q23 **Tim Loughton:** But by failing to achieve anything of substance, there are two sides of this coin. Previously we have been discussing the impact on the home countries of migrants. We now have what I believe is a completely unsustainable situation of migration within Europe so that, to take the example of Poland—I think you mentioned that, Professor—you have over 15 million Poles who live outside of Poland. Poland has one of the best education systems within the EU. Those leaving Poland are





disproportionately better educated, so there is a brain drain from Poland that is making the economic growth prospects of Poland rather more challenging than they might be and now they are having to bring in people from Ukraine or whatever. The benefit to us and others in northern Europe, where we have highly over-qualified people doing less skilled jobs, has taken away from the prospects of Poland, and the same is true of Romania, Bulgaria and certain other countries. There is a mutual interest there that our gain is very much to the loss of Poland. Why would Poland and various other countries, as has been suggested in discussions that many of us have had, not like to see a restriction on free movement of people?

It is way beyond what was ever intended in the original Treaty of Rome. That was about making it easier for various skilled people to be able to move around with their profession within Europe. It was never about mass migration of people due to the arbitrage between economic circumstances.

**Catherine Barnard:** I would like to disagree with you on that point. I have been looking at all of the historic documents prior to the signing of the Treaty of Rome and what is very striking about them is that there is not a single view as to what free movement should be about. There are various strands in the debate. Some say free movement and some countries, particularly Italy, were very keen for absolutely unrestricted free movement. France, Belgium and Luxembourg were much more cautious about what free movement should be about. The language changed. Some countries, like Italy, pushed for unrestricted free movement. The French wanted only those who already had jobs. There was extensive discussion about whether it should be the right of everyone just to leave to look for work. There was discussion at the time about whether free movement was there as a sort of individual right or whether it was a safety valve dealing with high levels of unemployment. Then there was a question in the early documents about whether a pool of six states was big enough to deal with the safety valve dimension of free movement to overcome the fact that countries like Italy had high levels of unemployment so they needed to export their people to find work elsewhere.

In fact, as we know, what gets into the final version of the treaty is inevitably a compromise. There was much discussion in the early days about an emergency brake on migration or a gradual implementation of the rules on free movement, so the numbers who could move would go up 1% per year of the size of the local population. That had been mooted. It never got into the final version of the treaty.

Q24 **Tim Loughton:** Can I interrupt? It is a very interesting history lesson about that but, first, we then had the regional aid fund that was supposed to compensate for that and, secondly, the experience of how free movement has worked has shown that there is serious detriment to those countries that have been losing a lot of their skilled people. Going forward, there is a different dynamic now for why surely there would be



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real mutual interest in having some negotiation that restricts free movement of people, in making sure not too many people come to a particular country but perhaps even more so making sure that people who are needed in their home country are able to stay in that home country rather than going north.

**Catherine Barnard:** But there is quite of churn. We see a lot of the Italians and Spanish, who were the largest group in recent years to come, are going back because the economies of their own countries have improved. You could say that there has been a mutual benefit in having them here because from our point of view they have done jobs that were not being fulfilled locally and those individuals have improved their own skills, their language skills and other qualifications. There is a mutual benefit in having migration as well.

Q25 **Tim Loughton:** Yes, but in the case of Poland, most Poles leaving the UK are not going back to Poland. They are going to other EU countries because of currency and things like that. Anyway, it is an argument we can continue to have, but basically David Cameron could have done a bit better really, couldn't he?

**Zsolt Darvas:** I see no intention from Poland or the Czech Republic or any other central European countries to try to limit outflow of their citizens to other EU countries. I see no intention and no discussion at all. In principle you are right that these countries are losing by losing some of the brains and also low-skilled workers. The construction industry has major labour shortages. That is where most of the Ukrainians come in, by the way. But I do not see any intention from these countries to try to limit their nationals going to western Europe.

Q26 **Douglas Ross:** Mats, you said in response to earlier questions that the success of the negotiations with the EU and the deal that was reached would have been borne out with the test of time. Effectively that is what you were saying about the arrangements that were put in place. Why did that message not get across to the referendum? What was the failure to get that point across? If you believe they were successful, why weren't the majority of the public convinced of that?

**Mats Persson:** I think the deal that was negotiated was a good deal, as we have discussed. We asked for four broad areas of reform and we got four areas of reforms, which I think is more than most people get when they are negotiating.

Q27 **Douglas Ross:** If you got four out of four, why was that not conveyed back to the public here in the UK? If they agreed with you, they should not have voted for Brexit.

**Mats Persson:** The way I would describe it is it worked on substance, it did not work politically. The way to explain the four-year policy is an exercise that takes a little bit of effort. It is not something you necessarily do in two or three words. It is not as straightforward to explain as an emergency brake on numbers. That is something that I



think is well understood now in retrospect, but against that we also had a negotiability issue of whether we would have achieved an emergency brake. It is not as if it was a straightforward choice between the four-year policy and the emergency brake. There was a negotiability issue that had to be taken into account. But I think it was the explanation point and, as the old saying goes, if you have to explain you lose.

I personally would have preferred us to do a bit more to stand behind the deal that we negotiated in the campaign, because I thought that we did a good job. When I came into No. 10 I was told, for example, that we would never achieve anything that came even close to changes in secondary law that would differentiate between EU citizens and UK citizens for the purpose of accessing in-work benefits. People told me it was completely impossible, but we got that and the Commission, for example, showed a lot of flexibility and creativity in trying to achieve a political compromise. For me, the February agreement, whether or not we could have asked for more or whatever, was a good agreement. Personally I would have liked to have spent a bit more time in the campaign talking about that and standing behind it. That is just my personal view.

But that does not change fundamentally that against the backdrop of the refugee crisis, record levels of net immigration, all of a sudden Turkish EU membership—of course very far-fetched but as a campaigning trick it worked—our reforms, as well negotiated as I think they were, were not as easy to explain. We did not do a good enough job to explain them and perhaps we did not try hard enough to stand behind them for it to work through the referendum campaign.

**Q28 Douglas Ross:** But David Cameron was a highly skilled politician. He changed the fortunes of the Conservative Party and he had seen how referendums work. We had been through one in Scotland and he knew the way these political arguments are processed during a referendum campaign. Do you think he underestimated the reaction from the public or overestimated what he achieved?

**Mats Persson:** Neither, I think. The EU referendum in the UK on the UK's EU membership in my view—and again we are going over old ground rather than looking forward but I can understand why you are asking these questions—was a matter of when not if. I think so much democratic and political pressure had been built up over a number of years that at one point or another you would have to hold the EU referendum. David Cameron made a call on when to hold that and under what terms, but no matter when you held it it was always going to be very difficult. I don't think he underestimated the difficulties involved or the pressures involved or the opinions out in the country, nor do I think he overestimated what we achieved. He just made a call about the timing and the terms of the referendum. I have nothing else to say about that. I think that is just how politics work. You are right, he was a very skilled politician, a very strong negotiator, in my view, who could go to Europe



and convince EU leaders of things that, as I said earlier, they would initially say they would never do. I think he had a lot of very good things going for him.

**Q29 Douglas Ross:** Okay, stop looking backwards, looking forward: will the UK and EU agree new immigration arrangements in time for them to take effect by the end of the two-year implementation period?

**Catherine Barnard:** At the moment what I see is how little discussion there has been of immigration issues at all. It is the elephant in the room really. We have spent hours and hours discussing the finer points of a customs union and an indefinite article but the issue that probably was the biggest issue at the time of the referendum, which was immigration, has scarcely been discussed. There has been lots of talk about securing the rights of EU nationals who are here but we know almost nothing of what the future will look like. We know that there is the evidence gathering taking place at the moment but the immigration White Paper is not now due until the autumn. The very fact that there has been so little talk about what is the biggest issue facing what people are most interested in is really quite striking. That is why I am not at all convinced that we will have a deal on migration done by 31 December 2020, and not just that. There are a number of reasons why I suspect the transition period will have to go beyond the 20 months that the EU has talked about. These are big issues and they are difficult issues. We saw the difficulties in just negotiating the Brussels agreement. Now we are trying to work out what a future framework might look like.

If you look at the templates that exist, we have heard about the EEA. That would be the easiest one because it is the closest to what we have at the moment but of course for many people it is not acceptable. Then you look at the Ukraine Association Agreement, which is the other one that is often invoked, there are provisions on migration in that agreement but they are incredibly light-touch. Ukrainian workers who have been admitted under, say, French law should enjoy a certain number of rights. It is not the right of free movement as we understand it. CETA, the Canadian free trade agreement, has nothing on free movement of workers as we know it. There are some provisions on those providing services and intercorporate transfers but it is not at all what we are familiar with.

Then the question is: should we be looking at particular sectoral arrangements? Here I declare an interest. Universities have a very strong interest in maintaining relations more or less similar to what we have at the moment. Sectors that are highly dependent on EU labour—and it is not just universities; it is hospitality, catering, the transport and distribution sector, agriculture—all have claims to say we still need arrangements very similar to what we have at the moment. The EU has said, “We are not keen on having sectoral arrangements”. Then we need to work out where we stand on migration. Are we going to go for something rather similar to what we have at the moment or something



completely different? Off-the-peg models do not really help, apart from the EEA.

**Q30 Douglas Ross:** In your view, is the reluctance to discuss this elephant in the room, as you put it, from one side or both sides or just because it may be a priority for the public in their voting intentions but the Government and the EU have decided it is lower down the list of priorities for the negotiation?

**Catherine Barnard:** Possibly. We know that they did prioritise the rights of EU citizens already here but there has been no public discussion about the future relationship. It may be that it is in the box marked “too difficult” at the moment. It may be that if you can resolve some of the issues about trade perhaps some of the issues about migration fall into place. You should think, for example, that if we continue to co-operate in respect of some of the science programmes that also requires free movement to go with it. All of these issues are interconnected.

**Zsolt Darvas:** In my understanding, the major reason for the lack of discussion of immigration issues is that the UK itself has not yet decided what kind of immigration regime or broader new relationship it wishes to negotiate with the EU. Once the UK publish, “Look, we want to achieve this, we want EEA”, that would be simple. Probably you will not say that, you will say, “We do not want EEA but we want this and this and this”. After that point I think a very intense discussion will start, including on the immigration regime.

The UK can decide on any immigration regime it wants but the EU will view that in close association or close relationship with the other parts of the deal. In particular, access for the financial services of UK-based firms to the EU 27 will only be granted if the immigration regime of the UK is very liberal or very close to the current free movement. If the UK wants to have a more restricted immigration regime of whatever type, as a sovereign country it would be able to do that.

There is still the possibility of reaching a very comprehensive agreement on trade of goods, one as frictionless as possible. I have no doubt there is very strong interest on both sides. Nobody wants to restrict capital mobility. That has been fully free for four or five decades. Capital mobility is not an issue, but I think the price for more restricted labour mobility from the side of the UK will be more restrictions on financial services access. The UK can decide on any kind of immigration deal—if you want to do something it is your duty to decide—but certainly it will be a big, comprehensive deal and the consequences will be, in my view, more limited access to the financial markets of Europe.

**Q31 Douglas Ross:** You started off by saying that any delays or the pushing back of a White Paper in this country would be stopping any negotiations with the EU. Would you also agree, however, that this is a policy that we have to get right? It is the crucial issue that so many people voted on and therefore there is no point rushing in with something that is not going to



satisfy anyone. We are probably better served by taking a bit longer to ensure we have a policy that can work.

**Zsolt Darvas:** What we see at the moment is that there is the intention from both sides that at least until the end of the transition period, which is currently foreseen to be the end of 2020, practically everything will remain unchanged. I have seen a number of these agreements and in Michel Barnier's most recent public or press conference he also listed the main areas of disagreement about transition. But for the long run, everything is possible. Yes, I agree that you could have a very carefully thought-through proposal from the side of the UK, what you really want to negotiate and achieve. Ultimately it is your job to decide what you want to achieve and based on that the 27 will draft negotiating guidelines to be given to the Commission and the Commission will basically follow those guidelines from the EU 27. First, the UK has to move and has to say what it wants to achieve.

Q32 **Chair:** Mr Darvas, is what you were describing similar to the continental partnership proposal set out in one of the Bruegel papers, in that you would keep the close economic relationship but not have free movement and commitment to political union for not just the UK but potentially another, wider ring of European countries?

**Zsolt Darvas:** First, let me clarify that the continental partnership proposal had five authors. I was not among the authors. It is a proposal to consider. It proposes that within a monetary union you cannot separate the four freedoms in economic terms but if a country is outside the monetary union, in economic terms you may justify that free movement of people might not be involved. The other three, capital, goods and services, must be involved.

That proposal tried to somehow offer a prospect for both sides, both the UK and the EU, for a partnership that imposes limitations on immigration but at the same time involves a very large degree of regulatory harmonisation. It basically says that ultimately the EU will decide but the UK might have, through various committees, at least an informal possible influence. It also envisages that the UK will contribute financially relatively substantially to the European Union budget. If it will benefit from certain parts of the EU 27 market in a relatively free way, the EU will likely demand compensation for that in financial contributions.

Q33 **Chair:** If the UK were prepared to sign up to that kind of model, do you think the EU would be?

**Zsolt Darvas:** It is difficult to say what EU leaders might be ready to consider but I think there would be a willingness to consider it, again including all aspects, which would involve financial contribution and a very large degree of regulatory harmonisation.

**Mats Persson:** You made a good point—I do not know if it was a question or a point but in either case it was well made—about not necessarily rushing what is a very fundamental decision for this country,





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which is, “What kind of immigration policy does this country want to have over the next two or three decades, potentially?” Of course you need to dock with the negotiation timings and process but probably fundamentally you will want to get this right.

The way I always look at this in the context of Brexit—and this is slightly simplified but I think it probably works—is that any post-Brexit immigration policy must try to balance three different considerations. One is that it has to work politically. It has to work for society. There has to be an element there that links back to what happened on 23 June around people’s anxieties and concerns about the free movement of people. We discussed that. That does not necessarily mean that you have to radically reduce numbers. There is some interesting research and polling about having to choose between control and reducing numbers, and control is what matters more than reducing numbers. You can keep the numbers rising indefinitely. What 23 June really boils down to is control. That is what the vote leave slogan was, “Take back control”. In terms of how it needs to work politically and how it works for society, it probably manifests primarily through that control argument.

Secondly, it needs to work for the economy and for business. I work with businesses across the country in trying to assess what the impact of Brexit might be. Probably the number one concern I hear, up there together with the reintroduction of a customs union, is a sudden and dramatic reduction in the available labour supply and what that does to some businesses, particularly the manufacturers in the Midlands and the north, for example, that have a disproportionate reliance on EU citizens.

Any post-Brexit immigration policy also has to work for business and that is where I want to echo what Catherine said early on—I think this is the point you made, or at least where you were pointing—that any artificial distinction between low and high-skilled migration is problematic because it will leave a big group in between. I do not like “low-skilled” as an expression anyway but in any scenario that will leave a big group in between what we consider low-skilled and high-skilled and what I consider very valuable skills for the country that probably would qualify as low-skilled but that businesses really need. I have loads of examples like that. For example, EDF has been on record talking about this so I can mention it. To build Hinkley Point C, EDF needs something like 1,400 or 1,500 steel fixers over a number of years. The problem is that there are only 2,700 steel fixers in the entire country that will simultaneously compete for other big infrastructure projects. That is probably something that is going to be low-skilled but I would consider them very valuable skills for a strategic project for this country. It is that artificial distinction between low-skilled and high-skilled that we have to avoid if we want an immigration policy that works for the economy and business.

Thirdly, it needs to work in some way with respect to negotiation dynamics and that trade-off between market access and a restrictive immigration policy. I think that would only come third, to be honest. That





would come once we have settled the issues about how this works for society, how we make it politically sustainable in the UK and how it works for business and the economy as a whole, keeping in mind that we are a country that is quite reliant on EU citizens. Then we think through how we can position this with the immigration policy that we have in place, particularly if we can grant preferential licence for EU citizens. How can we take these negotiations to Europe to maximise market access?

**Q34 Douglas Ross:** You were mentioning numbers there and I wrote down what Professor Barnard said earlier on. You said Scotland has a different issue with migrant workers, and I accept that, but do you also accept, however, that the public perception of migrant workers and immigration in general is very similar north of the border to how it is in the rest of the UK? That is what research and opinion polling continues to show. While there is a greater need in Scotland, the public in general associate themselves in Scotland with the views of the rest of the UK on that matter.

**Catherine Barnard:** Being English, I would not dream of offering my views on what Scottish voters think.

**Douglas Ross:** You did earlier.

**Catherine Barnard:** I said there is an objective need because it is an ageing population. It is a point that has been made by a number of key politicians north of the border. I am not in a position to comment on whether that is what Scottish voters think.

**Q35 Douglas Ross:** That is what they are saying in opinion surveys and studies. We have referenced it in our own reports. I just wonder what your thoughts are on that. If we accept what you are saying and there is such a difference in needs, why is there a very similar view on immigration north of the border and in the rest of the UK?

**Catherine Barnard:** Of course it is also needed south of the border as well but the ageing population is starker in Scotland. Some of the work we have been doing on this is interesting. For example the Citizens' Assembly, which was run by the Constitution Unit in UCL, got together a perfectly balanced group of voters over two weekends. They were presented with issues on key aspects of the referendum, including immigration. When we sat down and talked to them about some of these nuances of immigration—the three different groups of migrants who are coming here, the different legal rules that apply, the fact that “low-skilled” does not actually mean what it says on the tin and it is more complicated than that—what we saw was that when people had these things explained to them they adopted a much more nuanced view about migration. It is not that they want to stop migration; they want some element of control.

However, the fourth point I would add to the three that Mats has given is that they talk about control but the perception by the public is control at borders. What they do not really appreciate is that not very much control



is done at the border. Most of the immigration control is currently done by employers and landlords. It is essentially a privatisation of the control. The reality is that if we go for very strong controls and a very bureaucratic system, employers, local abattoirs and small businesses who have never employed non-EU staff before, will have to set up a whole complex system in their own businesses to manage the applications for visas. I do some of this work in my own college and so I have a taste of just how complicated it is. We have a whole team of people at the university to support us in applying for these visas. At the moment that applies to only non-EEA nationals but if it is extended to all EEA nationals as well, there will be a significant administrative load.

Q36 **Douglas Ross:** The first two, in answer to my last question, mentioned trade policy. How much do you think, in the final deal, our trade policy and our migration policy will be linked together? Should they be? Will they be?

**Zsolt Darvas:** I think they will be linked exactly because of the indivisibility of the four freedoms. That is what has been very firmly and clearly said many times by many EU leaders. If you want to deviate from that then it would also mean deviation from the other elements of the four freedoms, including trade.

**Mats Persson:** It is a bit of an unknown, this, though, because I hear different things in the EU capitals about this as well. What is clearly the case and what we have had repeated throughout, what you always hear, is this point about the four freedoms being indivisible. Given that the current UK Government have ruled out staying in the single market, that becomes a moot point because they have already said that we are not going to apply the four freedoms. We accept that.

Then the question is: are we looking at the sliding scale that you suggest, Zsolt, where basically the more liberal the immigration policy with respect to EU citizens the more market access and vice versa, or is it going to be more nuanced than that? It probably might be more nuanced than that. Immigration policy will certainly be up there as an issue but I do not think it is necessarily going to rank higher than, for example, financial contributions, how much the UK is willing to pay on an ongoing basis, or perhaps even more fundamentally the level of supranational jurisdiction that the UK is willing to accept. That would facilitate, for example, the mutual recognition considerations much more, arguably, than the immigration policy that the UK opts for. I think it is going to be one consideration but it is not going to be as clearly co-dependent, in my view—this is, of course, speculation—as in the Swiss agreement. We are in slightly different territory.

**Zsolt Darvas:** Let me be clear, finally, that I think everything will be agreed in one go. We will not have a separate immigration deal and then two years later a separate trade deal and three years later a separate deal for security or whatever. All the nitty-gritty details will require a lot of technical work but I think at least the key principles for everything,



including financial contributions or possible financial contributions to the EU budget, will all be agreed in one go. Therefore, there is a trade-off between each of the elements including immigration and trade.

**Q37 Kirstene Hair:** Do you think that there will be a desire for serious wider EU reform, as in change of treaties, across the European Union over the next, say, five to 10 years, for example?

**Zsolt Darvas:** I personally see a very limited ambition for that. Even when Emmanuel Macron set his very ambitious European Union agenda, everything is either under the EU law or it could be done by intergovernmental treaties at the eurozone level. I do not see any big drive for EU treaty renegotiation. That is so complicated and so cumbersome a procedure, both for the preparation of the agreement and then ratification, that politicians do not want to risk entering that.

**Q38 Kirstene Hair:** Even if there was pressure from member states, you think because it would be so incredibly difficult—

**Zsolt Darvas:** Member states see it the same way. They know that it is very difficult. It is opening Pandora's box. If someone wants to renegotiate one element, someone else will say, "Okay but only if you renegotiate the other element". Then a third country will say, "Okay but only if you renegotiate a third element". We have a kind of equilibrium. You see minor treaty changes. When a new member state joins the EU that is very simple, a quick ratification process, but more substantial treaty changes are extremely complicated politically, technically and from all aspects.

**Q39 Kirstene Hair:** Of course a number of member states need to have a referendum and the referendum does not necessarily go the way that the government wants. In one sense it is not a surprise that there was a vote to leave in the United Kingdom. The previous French referendum on the constitutional treaty in 2005 voted against. The Danes have voted against. The Irish have voted against a number of times. Their governments do not want that if they are pro-European governments, so therefore they are stuck.

**Mats Persson:** I broadly agree with all of that but you should never say never about these things. If you think about what has happened in the EU since 2010, there have been a huge number of developments. Zsolt made a key point on the issue of treaty change in that the EU, post-2011, found this intergovernmental route to get stuff done. It is a way to circumvent the normal treaty procedures. That set the precedents that the eurozone has used repeatedly since, more or less, and that has changed the dynamic somewhat. Then again, things happen. I refuse to believe that the Lisbon Treaty will be the last substantial treaty change. It will happen sooner or later but I broadly agree with what has been said, that at the moment there is very limited appetite in member states for it. Another type of crisis could well change that quickly. If they genuinely need a treaty change to get stuff done, that might happen.



Q40 **Chair:** Just a final thought from you. In terms of where the negotiations seem to be heading at the moment, on your best guess would you expect immigration provisions to end up in a future partnership agreement or not? Would you expect the future partnership agreement just to be on trade?

**Catherine Barnard:** I think there will have to be something on immigration if there is agreement on other areas that abut migration issues, perhaps education and research or Erasmus, which I think even the Prime Minister has said she would like us to continue. We have already heard about financial services too. It is quite hard to avoid having something about immigration. Therefore, it is surprising that there has not been more ventilated on it yet. It may be that once the parties have taken a view on the customs union or not, attention will turn to immigration.

**Zsolt Darvas:** I very much agree with that. I think there is a very large probability that the transition period will be agreed. I share your view that the 20 months might not be sufficient. The current European position seems to be very strong that it cannot be extended but if the two parties are negotiating with goodwill and in partnership I could well imagine that it could be extended by one year. There will be one treaty closing the UK's membership in the EU and another broad deal that will set the new relationship for the future. I very much expect that immigration will be part of that deal along with all the other things we discussed, what kind of trade agreement, what kind of budget contribution and so on.

**Mats Persson:** I agree. It is very difficult to have a final agreement without, I would say, a substantial chapter on migration, partly because of the interlinkages. In my sector, thinking about services provisions, that involves people working in another EU country for several months every year. It has to be addressed somehow. Accessing services and the mobility questions are interlinked. You cannot avoid answering that question in some way. You have provisions in other FTAs so it is not completely unheard of, obviously. Fundamentally, even though it is one of many features and factors, of course if the UK can achieve some sort of preferential immigration regime for EU migrants that is something that would play into the whole market access debate. There is no doubt about that. That would translate into some sort of agreement.

Q41 **Chair:** I am not sure whether it is possible to answer this briefly but if it was possible to give us a brief, instinctive reaction, what is your best guess about where all of this ends up? If you are assuming that it is possible for it to reach a conclusion as opposed to all falling apart along the way, what is your best guess as to what that conclusion is likely to come to on immigration, bearing in mind where the UK is coming from, the issues that were raised in the referendum and also where the EU is coming from and the relationship between immigration and trade? What would your best guess be about where it will end up?



**Zsolt Darvas:** My best guess is that there will be some controls, at least the possibility of controls. Catherine explained that it should not be on the skill level and I 100% agree. It should be on the sectoral level or regional level. If there is a disturbance in one sector the UK, in my view, would be able to exercise certain controls, but the price of that would be not complete access to the EU single market. That will have to be broad based because it is again a joint interest.

On customs, there are very innovative ways to reduce the burden, at least at the border, but still the burden will be there because if the UK is not going to be a member of the customs union then somewhere all those papers will have to be checked, even if electronically. The northern Irish border issue I think can be solved. That is my best guess.

Q42 **Chair:** I am not going to ask you for a solution to the Irish border at this point, just final thoughts on the immigration side of things. What is your best guess?

**Mats Persson:** On the UK side, there will be a very live discussion in this place. I imagine there will be various votes on that. In the short term, not now talking about the transition period but about short-term post-Brexit immigration arrangements, because of the difficulty involved in suddenly restricting that labour supply that I have talked about earlier, it seems to me that the central scenario is you end up with a more demand-led immigration system. What I mean by that is that if there is a job, if there is a demand for you to come, you can come. That would be controlled in different ways. I do not think we are heading towards the UK sitting and picking winners of sectors that need specific support. I think it is going to be slightly more demand-led.

That in turn, to be slightly optimistic, can facilitate a reasonably comprehensive agreement on market access. If it is largely demand-driven, of course, it is not free movement of people. It is well short of that but it is pretty liberal. It is not hugely different to what we used to have, in some ways, within the European Union, when if you had a job you could come. That would be my best guess, a largely demand-driven system in the UK that in the medium term would help facilitate what I would think would be a reasonably comprehensive market access agreement between the UK and the EU.

**Catherine Barnard:** I would say it much depends on how many migrants leave in the next period. We already see the trajectories downwards. If there is a sense that there is a real skills shortage and employers start making noises more vociferously than they are at the moment, it may be that eventually we have some sort of more managed system whereby it is not so very different to what it is at the moment but there is a very long transitional period toward some new, more restrictive system. It is a slow departure from free movement of persons at the moment. That presupposes that there is a political will to push that rather than a quick win to say, "We are going to stop all EU migration". When



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you talk to people, their views become more nuanced when they start to understand the complexity of the situation.

**Chair:** Thank you very much for your time. We really appreciate your time and your evidence this afternoon.