




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 1 72 108.1,521600938 0 Td intod (af7yTd (Select)Tj A)T.0.833007



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

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 large



because of—


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?

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



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



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

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?


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?

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

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.

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?

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.

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.

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?

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 beens007




position will be a lot less clear. It means it requires discretion




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 only through EU law because every one who is a national of an EU state is a citizen of the Union and

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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



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.

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?

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?

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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



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?

No, but we never—


Tim Loughton: Why not?

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?

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



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.

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.

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




disproportionately better educated, so there is a brain drain from Poland that is making the economic growth



real mutual interest in having some negotiation that restricts free movement of people, in making




think is well understood now in retrospect, but against that we also had a negotiability



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?



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?

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



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

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.




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



is done at the border. Most of the immigration control is currently done



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




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?

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-



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.