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Preparing for the withdrawal negotiations

UK in a Changing Europe (UKICE): Did you pay much attention to the Brexit referendum? In so far as you did, were you surprised by the outcome?

Stefaan De Rynck (SDR): I wasn't working on Brexit at the time, so I paid attention like any foreign political observer, or EU civil servant. I was not entirely surprised. I remember I had a conversation with one of Jonathan Hill's advisers in January and we had a New Year's party for the department I was working in, DG FISMA (Financial Stability, Financial Services and Capital Markets). He was extremely confident about winning that referendum. The idea was that as soon as David Cameron got involved, he told me, this would all fall into place. I remember I reacted very sceptically to that. So, I wasn't surprised, no.

UKICE: But you watched as an interested observer.

SDR: I wasn't involved in the Cameron renegotiations, the settlement. I only got involved with Brexit in September, October 2016, after the referendum.

UKICE: Was your view widely shared in the Commission? When you came into work on the 24 June, was there widespread shock or surprise?

SDR: I think people were a bit daunted by what would happen next. People were not surprised by the fact that a referendum like this could go either way, and the polls had been very tight. I don't think people were surprised, but more daunted by the task that faced us.

I, at the time, was in the financial services department, in what is called FISMA in our jargon, so people looked at this from the financial services angle to say, 'Well, we need to get this right'. But people at civil servant level, where I was, thought 'Wow. I'm not sure how this is going to work'. At the top level, of course, everything had been meticulously prepared in terms of the reaction to the referendum by Juncker and Tusk and other people.

UKICE: Was there contingency planning for a Leave vote in the Commission?

SDR: Yes, though I can only talk for the financial service dimension at the time. We had a contingency plan for the financial services, obviously, for a possible Leave vote in terms of financial stability, and the repercussions that could happen from that. That was talked through with the ECB and other institutions as well.

UKICE: Working at the financial services DG, were you surprised that Jonathan Hill decided that he would step down so quickly?

SDR: No. I thought it was the right thing to do when he did. I wasn't totally surprised. I had worked with him for two years, and I had come to know him quite well as a responsible, no-nonsense politician.

UKICE: Was there any debate in the EU about whether the Council should have played a more central role? You ended up with a Commission driven institutional structure for Brexit. Was that a foregone conclusion, or were there any conversations about it?

SDR: It was not a foregone conclusion at all, I would say. It was only confirmed in December 2016, when the European Council had these interesting conclusions where they said that the European Commission would be the chief negotiator and also welcomed that the Commission had appointed Michel Barnier, though I'm not sure of the exact wording of the conclusions.

The Council decided that the Commission would lead and that Michel Barnier would somehow integrate the Council presidency lead within the Commission. President Juncker when appointing Michel Barnier in July had anticipated that he needed to do something out of the usual to put the Commission in the game.

But between that appointment in July and December, it was not a foregone conclusion. What Michel Barnier did first was a tour of all the capitals. He went to Berlin before he took office on 1 October, he went to the Netherlands, Romania, Ireland, all in his first week or 10 days in office. I believe he did the majority of the 27 capitals before the December European Council.

In parallel, together with the Council team where Didier Seeuws had been appointed as chair of the Council working party, we had what we called back then 'confessionals'. These were a kind of joint Council-Commission talks with member states, to draw up a list of what was on member states' minds and how to handle this.

In parallel to that, the Commission had Task Force 50, which started on the 1 October, where we had meetings with large delegations of member states. When I say 'large', I mean 10 to 15 people from different sectorial ministries, mostly chaired by the prime minister's Sherpa, or someone close to the prime minister, or the permanent representative in Brussels. This was designed to talk both sides, both the member state and the Commission's team, through the issues that we were facing.

Of course, there were talks going on in parallel about the approach as well, and how we would do this in terms of what would come first in the negotiations, what would come next, and attempting to create a joint understanding, of what was ahead.

We also had seminars, very early on, on the financial settlement, on citizens' rights, and on a number of issues related to Article 50, where the Council's legal service and the Commission's legal service worked hand in hand to present to the 27 member states, and to the Parliament at the time, how we saw this process going, and what Article 50 meant and implied.

UKICE: There was an insistence that there would be no bilateral talks with the

UK, even where there were shared interests, and no negotiations before the UK moved formally to Article 50. What was the thinking behind that? Was that a hard discipline to impose on member states, or were they just relieved that somebody was taking responsibility?

SDR: The mantra of ‘no negotiation without notification’ was in place very early on, from the very start. Part of it is just a legal point, because Article 50 speaks about the proper constitutional requirements of the member state when it notifies the EU of its intention to leave. As we’ve seen with all the court cases in the UK, those constitutional requirements were up for debate as well in the UK, between Parliament and the Government, and there were different views on that.

So I think from the legal angle, it was right that the EU said, ‘We’ll wait until we get the letter’. Also, Article 50 is triggered by the letter, and so as long as there is no such letter, there is no withdrawal process. Obviously, people also analyse this from the perspective of the famously ticking clock, where you know that once the process starts, it’s a two-year process, unless there’s unanimity to extend it.

When we started, nobody thought about all these numerous extensions you would get at the end. Everybody thought, ‘29 March is the day that the UK will be leaving’. So, as soon as that clock was ticking, that created certain dynamics in the negotiations whereby it was obvious for most people on the Brussels side that the UK would want to leave with a deal. It was in the UK’s national interest to have an orderly withdrawal. So, there were also dynamics of power at play in terms of the new negotiations, in terms of the no negotiation without notification.

On the bilateral side, it was not particularly hard to police. There were some worries in the very beginning, some rumours going around. I think what is probably underestimated is the high sense of responsibility of EU leaders, and how they felt at that particular moment, given that the European construct was, in my view, in a fragile state, after multiple crises. Leaders wanted unity, and no sectorial ministers would break that unity by talking bilaterally to the UK.

National leaders were also facing elections and populist forces. The French elections were still a few months away, but people looked at (Marine) Le Pen in

the opinion polls and (Jean-Luc) Mélenchon was also doing very well. There was also (Geert) Wilders in the Netherlands, and the position of (Matteo) Renzi in Italy at that time. There were various issues that played into why EU leaders took that decision very early on to stay united and not be divided by such an existential threat to the EU project, in my view.

UKICE: At this point, did you have any thoughts that UK actually might not move to trigger Article 50, and that it might either try and go outside that process, or indeed, that Brexit might not be as inevitable as it looked after the referendum?

SDR: On the first point, yes. We drew up all kinds of scenarios. I don't think we ever seriously considered the idea that the UK would not notify and would not follow the Article 50 process. But, given that we were at the early stages of a process and nobody knew how it would unfold, it was the responsible thing to look at different scenarios than the UK leaving via the Article 50 process.

We didn't plan for that, but we brainstormed, and we put things on paper in terms of 'What would happen if the UK would stop applying EU law?' But nobody ever took that hypothesis seriously, I think. But to think it through and to reflect on it was still the responsible thing to do.

UKICE: What did your role consist of? Did you have any qualms or doubts about taking it?

SDR: I had worked with Michel Barnier in the past, and so when he was appointed by Jean-Claude Juncker, I approached him to see if I could get involved in this, because I wanted to. It was obviously a project that many EU civil servants wanted to get involved in, or Commission civil servants, because of its historic nature, and because of the importance of it.

In the beginning we were a very small taskforce, and the roles were not entirely clear. We referred to ourselves as a start-up, like 10 or 15 people trying to find a computer and an office, and trying to install security doors so that we would have a secure space where we could work. I remember in my first weeks, I made short briefing notes. I did one on Gibraltar, I did one on Cyprus, I believe, on various different issues. Basically, we were learning about different issues.

It was clear that I was hired as a future head of unit for issues raised in public debate and communication, which was also part of my role, but also to head a small team with (Michel) Barnier's speechwriter, and to work on the transparency policy. My team designed that transparency policy early on in the process, which was unprecedented. Then, as I had worked with Michel Barnier in the past, my role was to give him strategic advice.

So, before every European Council, or at every important political moment, we would have iterative discussions on what he would say. I was always part of those key strategic moments. I was never involved in direct negotiations with the UK. I've been in some of these negotiations, but I was never hands-on, writing text for the agreements, for instance, except for the very beginning where we all had multiple roles.

I remember the speechwriter came in May 2017, which was eight or nine months after we started. So, I wrote most of Barnier's earlier speeches, for instance, in this process.

UKICE: At what point did you stop being concerned about some kind of Brexit domino effect, if at all?

SDR: It's hard to say. The Brexit domino effect was in the minds of a number of EU leaders, obviously. It wasn't a general domino effect that was feared, but there were a number of issues that were on people's minds. The British referendum was also one year after the Greek referendum on the euro.

I can only speak for myself, but I never believed in the domino effect. That doesn't mean it couldn't have happened. That's just my personal belief.

I think that once we got into the negotiations, and once people got a grip on how we would handle this issue, it not only gave a bit of reassurance to all of us in the team, but also to member states. By the time we had the April guidelines in place, which was a month after the notification by Theresa May, I think we all knew, more or less, what was to be done. The sequencing, the withdrawal and trying to reach that first, then the future relationship. I think people felt more reassured by the EU having a firm grip on the how the process would be organised.

National elections probably played a role in this. I remember Wilders didn't do very well in the Dutch elections. Renzi disappeared in December, I believe because of a referendum, but political stability in Italy then returned rather quickly contrary to what many had feared initially. So, political events at member state level also helped to calm down domino fears. The convincing election of (Emmanuel) Macron in May 2017 no doubt contributed to that as well, I believe. All of these political events at national level played also an important role in that.

UKICE: When Theresa May, someone who had some experience negotiating with the EU, but not a huge amount, became Prime Minister, she had a running commentary of 'Brexit means Brexit' for a bit. Then, you started seeing the UK's lines coming out at her party conference in October, just after the taskforce had been set up.

Then came Lancaster House; you also saw the turbulence of UK representation with the resignation of Ivan Rogers, who presumably was relatively well known in Brussels, as well as the UK fighting a Supreme Court case.

Were you surprised by the line that the UK Government seemed to be taking about the nature of its future relationship with the EU? Or did you just look internally and think 'We know what the EU needs out of this'?

SDR: A bit of both, I would say. There was a workstream going on, on our side – irrespective of what the UK was doing in terms of preparing the future relationship. This stream was screening the whole EU acquis, all of the policies, all of the possible implications. So that workstream was going on, but that doesn't exclude the other issue in terms of your question.

We were, of course, paying enormous attention to what was happening in the UK's public debates. We collectively analysed that, with the 27 capitals. Also, what Theresa May said in Birmingham at the Tory Party Conference, the Lancaster House speech and the white paper that came out very quickly after that, all gave some early indications of some offensive UK interests, in terms of specific sectors. The speeches were not well received in national capitals on the security side, because there was a perception that there were some threats to withhold security cooperation. That went down rather badly, I would say.

The UK had an important diplomatic effort to counter that, and to clarify that that wasn't what had been meant. Most importantly, the October Tory Party Conference speech was quite firm, and people were surprised by the firmness of the choices that had already been made in terms of leaving the Single Market and leaving the customs union. Those are some of the first questions Barnier asked David Davis when they started negotiating, nine months or so later: 'Is it really the case that you want to leave the Single Market and the customs union?' That was then confirmed early on in negotiations.

That had already been announced publicly in October and that certainly impressed a lot of us in the team and in the national capitals. It created clarity. That clarity disappeared somewhat later, when people in the UK then understood the economic implications of that decision, and when some in the British Government then decided this was not what they wanted after all. If you compare the Mansion House speech, which came much later, to the Lancaster House speech, it's a totally different approach. But, yes, there is no doubt that these speeches played a very important role in the beginning.

UKICE: Were you surprised by what she said at the Conservative Party Conference and Lancaster House, and by the line that the British Government took?

SDR: I personally was not surprised, because I always thought Brexit was an ideological project. But many people were surprised by the announcement she made there and the grave economic implications it would have. In that sense, it set the tone for 2020, in terms of the UK's ideological approach to sovereignty and autonomy and the UK breaking free versus, 'We want a very close trading relationship with the EU', which was added later to the wish list, and which was not compatible with the other. I was not surprised, but some people on our side were and wanted to keep the door open for the UK to evolve to a closer relationship. You can see that in many European Council conclusions.

In the October to April before we started negotiating, I think there was also a worry on the EU side, which partly explains the fallout of this famous Downing Street dinner in April. There was a worry on the EU side that the UK was putting itself on a track which would increase the chances of no deal, and that the EU had to help the UK to face the trade-off that this Brexit project would inevitably lead to.

UKICE: At Lancaster House, one of the things that the Prime Minister said was that the UK wanted a bespoke, special relationship. One of the big themes afterwards was that there would be ‘no cherry-picking’. Was there ever any real thought in the EU of saying, ‘Does it make sense to just look at precedent, whether it’s Canada, or Norway?’

After all, to have a very large, very geographically interlinked former member state leaving is a completely unprecedented situation. Did the EU think at this stage to say, ‘We need to be thinking about a very different sort of relationship and look at seeing if we can co-create that with the UK’?

SDR: The Barnier staircase only came out only in December 2017, just to refresh our memory here. Merkel had already said when she met Theresa May for the first time, or around that time, in the summer of 2016, that the four freedoms were indivisible for freedom of movement, of goods, services, people and capital. It was clear then, and she confirmed that free movement of people would stop.

I think, in all of this, people underestimate the fallout of the Cameron settlement, and why the four freedoms were kept indivisible. There was a bit of a hangover in certain EU circles about the compromise that was made with David Cameron, which is sometimes trivialised by Brexit advocates on the UK side, but which was seen by many on the EU side as a very big deal, in terms of the potential threat to free movement of people that would come from that.

So, the indivisibility of the four freedoms was set very early. The Court of Justice was put on the table by Theresa May in Birmingham in October. The ‘no financial contribution’ was also clearly a red line for the UK very early on, ‘Take back control of money and laws and borders’. So, the staircase came months later as an attempt to visualise what EU leaders, before Barnier took office, had already decided. That’s my reading, at least, of the situation.

There were moments when some member states showed a little bit more sympathy, but it was very, very slight. Nobody ever contested that this was the choice that the UK had to make, and there were then mechanical consequences resulting from that. In that sense there was, indeed, no search for a bespoke model, or a generous model, at least not in terms of FTA, the single market, or a Ukrainian style of relationship.

What played into that was also potential precedent with third countries. We have a number of non-EU members who are members of Schengen. We have Turkey which is in a customs union, so there are certain rights and obligations there, even though that customs union is up for reform. We had the Swiss relationship which was certainly not the model which Juncker and the Commission was trying to renegotiate, to bring in an institutional framework agreement.

I'm sure people like Ivan Rogers and others would then say this is short sighted, or that this was strategic myopia, or short-sightedness on the EU's side. I disagree with that, because given where the EU was in 2016, 2017 and 2018, I think that this was the choice that had to be offered to a member state which was leaving.

And preserving the integrity of the Single Market, the integrity of the Union's legal order and the autonomy of the decision making structure of the EU, and resisting equivalence, the mutual recognition scheme, the three baskets, managed divergence and all the concepts that popped up around that time which were expressions of that bespoke model, was a strategically important choice to make on the EU side. I don't think the EU was also strong enough to make other choices.

The first stage of the withdrawal negotiations

UK in a Changing Europe (UKICE): Did the outcome of the 2017 election shift your expectations about what was going to happen?

Stefaan De Rynck (SDR): I remember before the election, our line was basically 'We're looking forward to strong and stable government'. They didn't say that, but people were expecting that in April and May, given what the polls were saying in the UK about Theresa May winning a bigger majority, that we would therefore have a more comfortable position. It would certainly have changed the whole dynamic of Brexit. So, the June 2017 elections were absolutely crucial in terms of how these negotiations would then evolve.

Did it change our perceptions? No. On the EU side, we had made up our mind that we needed the sequencing, we needed to put money and the citizens first. Ireland cropped up, with increasing importance as the weeks went by, as part

of the three issues that needed to be settled before we would go to the future.

The April guidelines of 2017 preceded the elections, and they remained the reference document for Michel Barnier and the whole team in EU to work with. They said it all, basically, in terms of the principles that the EU would apply, and they would never deviate from it until the very end.

UKICE: The UK thought that the sequencing of the negotiations made it very difficult to solve Ireland, because you could only have a solution once you saw the full future relationship. At various points during that summer, people in the UK said that they thought the Commission had made a mistake by putting Ireland into the first phase, because you could only really solve Ireland long-term. Not having that solved was one of the things that ultimately made it impossible for Theresa May to pass the Withdrawal Agreement.

How did you think about what to secure for Ireland in the Withdrawal Agreement, and how that then related to the future relationship?

SDR: One doesn't exclude the other. The backstop from December 2017, the famous 49(c) option, was not incompatible with designing a future relationship which would have made GB-NI trade more frictionless, in comparison to the current trading relationship. If you look now, in early 2021, at the type of relationship that the Johnson Government has chosen, it underscores how important it was to have an insurance policy to avoid a hard border between Northern Ireland and Ireland.

In a way, the proof of the pudding is in the eating. There are certain problems today. But if you come back to the first phase of negotiations, as we started mapping north/south co-operation with the UK, I think both the UK delegation and the EU went on a steep learning curve about the magnitude of this challenge to avoid a hard border.

To the credit of both parties, nobody ever contested that avoiding a hard border was important, and it was absolutely the most important priority, though when Johnson came in in Autumn 2019, there were some threats to put customs controls all over the island, basically. But during phase one, we were very strongly convinced that the UK was trying to use Northern Ireland as a bargaining chip for the future relationship, and we wanted to avoid that at all

costs.

So, independently of all the substantive goals we had to achieve in terms of protecting the Good Friday Agreement and avoiding the hard border, we also thought that the UK was holding back, and was using Northern Ireland later on for issues such as mutual recognition or equivalence, that would then threaten the integrity of the Single Market.

UKICE: The row of the summer was meant to be over sequencing. Yet, there wasn't a row. Can you talk us through what happened?

SDR: We agreed that those would be the three priority issues. We never agreed to sequencing in a physical document. We just said, 'Let's focus on those issues first'. That's basically how we started. It was never a row.

In July and August 2017, the first eight weeks of negotiations, we worked a lot on citizens' rights and on the financial settlement, and also on the north/south mapping, and the Northern Irish/Irish border. Nobody contested that the summer would be filled with work on those issues, and those issues only.

There were some general discussions between Barnier and David Davis on the future relationship, in particular on leaving the Single Market and leaving the customs union, that was made clear by David Davis. But there were no negotiations or no more formal talks on the shape of the future relationship.

Clearly what happened then, in terms of the firmness of that sequencing, was that the member states were incredibly firm in their belief that the Barnier team should not deviate from the sequencing, and should achieve sufficient progress without mixing in non-withdrawal issues, so to speak.

UKICE: Did you get any sense of tension on the UK side between Olly Robbins as chief official negotiator and David Davis as Brexit Secretary? Did you get a sense of mixed messaging from the UK side, or were they pretty obviously unified?

SDR: I don't think that affected the negotiations in any sense, or the effectiveness of the UK's delegation. It was obvious that there were some issues there. Olly Robbins was moved to the Cabinet Office around the time of

the Florence speech, I believe. But I don't think this in any sense affected the UK's negotiating tactics, position or substance, and I would say that David Davis always struck me as someone who was very loyal to Theresa May and to what she was trying to achieve.

He had, of course, his own ideas, and he was a more convinced Brexit advocate than she was during the referendum campaign, but I think he always tried to be helpful to her, up until the point of Chequers, of course. And you could feel him fading away after the March European Council, I would say, as Chequers was being prepared, while he stayed on the max fac solution for Ireland and Northern Ireland.

UKICE: Were you surprised that it seemed relatively easy to get an agreement on the financial settlement? Because the UK side, I think, expected that to be the difficult thing to settle.

SDR: Yes, and we thought so too. That's part of why the sequencing happened. Because the EU side and the EU leaders also wanted to avoid a situation where, in the last weeks of negotiations on the future relationship, the financial issue was not settled and would then become a bargaining chip.

The UK was quite blunt about it, or at least some leaders on the UK side, including David Davis, who I believe thought that this could only be settled in the context of the future relationship. It's not the only issue where the UK showed remarkable flexibility in terms of the negotiations, to sign up to the financial settlement rather early in the process.

I think having the transition in that mix was probably a very important element, because at some point then, with the Florence speech, we came to this implementation period, and so to the end of the budget period. That was very important.

In the very beginning, we had an analysis that determined that one of the situations we had to avoid was the financial settlement being the last issue standing, in terms of how these negotiations were unfolding. You're right that they unfolded in ways which one could not have predicted after the first weeks of negotiations, where the UK said, 'We owe you zero as of 1 April 2019'. We then came to a situation where, basically, the UK subscribed to the position

paper we had published in May 2017 with just one exception, which was the relocation costs of the two agencies. I can understand why the UK didn't want to become responsible for that.

UKICE: David Davis always gave the sense that he thought that, by March 2019, you would have the Withdrawal Agreement done, but you would also pretty much have a fully negotiated future relationship, that could then just be signed a minute afterwards and be good to go. That would make sense of the Theresa May implementation period, which would have given businesses until the end of December 2020 to make one set of necessary adjustments. Did the EU ever think that was at all a realistic possibility?

SDR: No, not at all. No one ever took that seriously. You may go back to public statements as well, where it was clear that the future relationship could only be put in place once the UK had become a third country. We always said we can only start these negotiations when the UK is a third country. Then we can have a mandate from the Council to, as a Commission, negotiate what we did in 2020.

It was also a total misunderstanding of how the EU operates, in terms of the Commission having 27 principals overseeing these negotiations and basically being the ultimate bosses of how these negotiations are conducted. It would have been totally impossible to do that. In the nanosecond after withdrawal was then the second-best option, from what I recall from one of David Davis' public statements in the House of Commons.

UKICE: When you heard Theresa May's speech in Florence, did you think that she was providing the basis for a Withdrawal Agreement?

SDR: Yes. Partly at least. On citizens' rights we were well advanced by that point, because the UK had dropped its idea that this would be based on UK migration law. In April and May, that was still the firm UK's position. By early July, we were discussing citizens' rights based on EU law.

On the financial settlement, Florence put us halfway to a solution. No member states will have to pay more, or receive less, from this MFF she had said, something to that effect. Which still left quite a bit of important liabilities beyond 2020.

On Ireland, I'm not entirely sure now what the Florence speech brought, but by and large, we saw Florence as a very positive speech for trying to wrap up the withdrawal negotiations, to the point that we thought it was feasible to reach sufficient progress by the maybe the October European Council. But we failed to reach that.

UKICE: We had that false start in December, with the language around the Joint Report and Theresa May's problems with the Democratic Unionist Party. The language seemed very fudged in that Joint Report. Were you worried that was storing up problems for the future, or did you think that was quite a good result to enable a sufficient progress verdict to be given at the December European Council?

SDR: I would say it's both, in a way. It was a good result in terms of the negotiation dynamics, to bring the two parties to an understanding that if all fails, there is the backstop. Even though the text may be read as a fudge, I think in the discussions around that text, it was very clear what the EU understood, and what paragraph 49 meant. In that sense, it was a good result, because we could build on that later.

Then in terms of the other side of your question, even though we had had good results on the idea of 49(b), the specific solution, what then became alternative arrangements, or what different types of solutions could work, we had said to the UK, 'You need to give us your ideas.'

They never came forward in January or February, which then led us to publish a Withdrawal Agreement with the text of the protocol as we saw it, in terms of what article 49(c) of the Joint Report meant.

That was not an easy decision, but it was the right decision, because we had to confront the UK with the internal contradictions, in terms of the negotiation dynamics. I believe that we had to put a text out, and we discussed this also on the EU side, to make sure that people would see in black and white what 49(c) meant, and to speed finding a solution together with the UK for the Northern Irish/Irish border.

Chequers and Salzburg

UK in a Changing Europe (UKICE): You published your interpretation of the Joint Report in February and, as I recall, on the morning of Prime Minister's Questions. By lunchtime, Theresa May had to dismiss it as something no UK prime minister would ever sign up to. She had Jeremy Corbyn backing her in this. Do you think, in retrospect, you did enough to roll the pitch, or were you surprised by her dismissive reaction?

Stefaan De Rynck (SDR): On the EU side, our patience was wearing somewhat thin with the failure of the UK to come up with proposals, in spite of us having understood that that was what would happen in January or February. So, we were confronted with that. A second very important element in this whole discussion was the immediate backsliding after the Joint Report had been published and endorsed, notably by David Davis on *The Andrew Marr Show*, and by others. That then led to the European Council in December taking a much stronger and tougher line on the UK than had initially been envisaged. It also led to us then saying, 'We need to pin down the UK on what we have agreed, and therefore, we are going to publish a full text of the Withdrawal Agreement'.

It was not a clear-cut decision on our side that the protocol would be in, from the start. Our wanting to publish a Withdrawal Agreement was part of an anti-backsliding move on the EU side, with the view of having a fruitful March European Council with a transition period agreed, and most of the Withdrawal Agreement text agreed. We then threw in the Northern Irish protocol because we thought it was time to un-fudge the fudge, if I come back to what you said earlier.

I've always claimed that the Joint Report was not a fudge, and I still believe it wasn't, because I think we had a clear understanding with the UK on what it meant. But I can see that people who were not at the negotiation table, and so not at every conversation, would look at us and say, 'Wow. There are three options, and what's it going to be? It is a bit of a fudge'. We had to clarify that. I still think today that we were right in doing so.

Whether it was right to do so two hours before Prime Minister's Question Time, I will skip that part. I'll just make a general comment that we could not be hostage to the timing of the UK political process. Of course, we could be intelligent, but we had to move forward on our side.

The UK prime minister, and certainly Theresa May, was known to put unionism at the heart of also how she wanted to deal with these Brexit negotiations. But there were different ways of reacting to this backstop protocol, I would say, compared to what was said.

UKICE: When you first started to hear about the Theresa May Chequers proposals on a facilitated customs partnership and so on, what was your immediate reaction?

SDR: We said, basically, 'Don't do this. Don't go to a position where we will end up with a confrontation. Because, if you're going to ignore the principles of the European Council, there's no other way. We will get into a paralysis and a stalemate'. Chequers was tricky in the sense that, if you look at what Barnier said, he was always as positive as he could be on Chequers in his public statements. He always stressed how tremendous the progress was in terms of internal security and the Convention on Human Rights. He said basically that some of the economic ideas were not workable, but we could work with them, to benchmark them against our positions, and that we had to find a way forward on that as well.

We tried to be as positive as possible on Chequers, while not betraying any of our principles, of course. What Chequers tried to do was shift the EU away from its core principles, and that was never going to work, and that was also made clear to some in the UK delegation. I'm not sure if that was made clear to Theresa May. I'm not privy to those conversations.

UKICE: What Chequers did seem to do was offer the EU the prospect of a Brexit that meant that the UK wouldn't become a regulatory competitor, by accepting a common rulebook and negotiating access to critical EU agencies.

When you looked at the detail of Chequers and the white paper that came out, did you ever think, 'These would be quite interesting things to discuss with the UK in a future trade agreement that could facilitate trade in goods, where after all, the EU has a significant surplus, with the UK still excluding itself from the single market for services'?

SDR: Certainly, Chequers was interesting on the services side, because it focused on goods more than on services. But that's part of my reading of

Theresa May's choice to concentrate on GB to NI and trade in goods, to make that as easy as possible, and square that with Brexit.

But on the common rulebook, mutual recognition and equivalence, Chequers stressed parliamentary sovereignty to deviate from the common rulebook and a common rulebook outside of the Court of Justice, which on our side plays a fundamental role in safeguarding the integrity of that common rulebook. That was always seen as a threat to the Single Market and how it works. It was not something we could work with. The glue and trust between EU member states depends on common institutions. The UK wanted a common rulebook but no common institutions.

UKICE: Was that the view across all member states? Was there at any point any pressure from member states who thought that this might not work? Throughout this, was there any point at which EU unity was more fragile than it appeared?

SDR: Chequers is part of the Salzburg story too, right? That's where the whole story ended on Chequers, I would say. Even though on the UK side the May government kept insisting. If you look at the political declaration, there's still a lot of Chequers language in there, but formulated as UK aspirations to which the EU will react with full regulatory autonomy. But clearly, I think how leaders reacted to May at Salzburg is part of the answer to your question.

UKICE: Did the UK, either before Chequers, or in the period between Chequers and Salzburg, do any sort of diplomatic pitch rolling to try and persuade the EU of the merits of any of its proposals? Because the UK side seems to have been very taken aback by the very negative reaction in Salzburg.

SDR: Yes, which is just remarkable, because there was quite a bit of intense bilateral diplomacy on the UK side to try to convince capitals as well, before Salzburg. Cabinet ministers were travelling to try and convince capitals that they had to put pressure on Barnier to become a bit more 'reasonable'. That's the kind of language the UK used that it was in our 'mutual interest' and therefore in the interest of the EU to compromise here, that kind of language. This never led to real pressure on Michel Barnier or the team, as the economic part of Chequers was not a workable plan due to the issues we

referred to earlier. So, I'm not sure why the UK would have received the impression that Chequers could be workable in the run-up to Salzburg.

UKICE: You've talked about how Michel Barnier tried to be positive about Chequers. Do you regret the way that Mrs May was treated at Salzburg? Do you think that might have been counterproductive in the end because it further undercut the support for her at home, and left her even weaker than she was before?

SDR: What are we talking about? The Tusk picture, or something?

UKICE: The Tusk picture, but also, just the tone of some of the comments coming out of that were certainly interpreted here as being incredibly hostile.

SDR: This came 24 hours after a rather hostile op-ed by May in the German newspaper that she had published before Salzburg, saying it was now time for the EU to move and to compromise on its principles, basically. She didn't put it like that, obviously, but that was the message she was trying to pass to 27 EU leaders. I think that was always going to fail. That was inevitable, I think.

UKICE: I'm quite interested on your reflections throughout this period on the UK's diplomatic efforts. You've already mentioned that some of the things said at home for domestic audiences, David Davis' Marr interview, for example, had gone down badly. What did you put it down to? Was it a misreading of EU sentiment? Why was this going so wrong diplomatically for the UK?

SDR: Fundamentally, I think my personal view would be that the UK underestimated what Brexit means, in terms of influence over the other EU countries. Sometimes you got the impression that the UK thought it was still part of the EU's game against the Commission, which is sometimes what members of the Council do in the classic EU decision-making process. The Commission proposes something, and members of the Council get together to shift it, to change it, to kill part of it, or to add stuff. The UK was trying to build some kind of alliance to sway that EU machine in its favour, which was a total underestimation of the serious implications of Brexit, in terms of putting yourself outside of EU power and EU influence.

I think that this is best illustrated by the Irish issue, where some in the UK Government said to some of the bigger countries in the EU, 'We are the bigger powers here', whereas the EU side was saying, 'Ireland is one of ours. Ireland is part of our club, so of course we're going to defend Ireland. It's not a big European power game we're playing here. It's the EU confronted with a country that is leaving, and putting itself outside of that'.

UKICE: Did you get the sense that the UK always had a feeling that member state governments would be more pragmatic about economic interests, against the purist interpretation from the Commission?

SDR: No. Of course, there have been discussions between the Commission president and EU leaders, and between Michel Barnier and member states, on specific issues where people raised concerns, which is a normal part of the process in economic sectors. But there was never a moment of tension between the member states and the Commission, or between a number of member states and the Commission's negotiating team.

So there was never any question on our side of whether we should drop principles, or change the approach. That never happened. Even though people keep asking me, 'When is the unity going to break down? After sufficient progress? After the March European Council? Now we're going to the future. Now is the moment. Or when the negotiations started with the Johnson Government'. But it never happened. That comes back to the earlier logic. Once the UK is a third country, it's a totally different situation.

On your point of tension between member states and Barnier's team, and pragmatism of member states versus the Commission, I would refer to the episode of when we had to explain and defend the backstop we agreed with May to the Council. I would not call it 'tension' but the Barnier team had to do some heavy lifting. Some member states were worried about fishery. Some were worried about giving the UK zero tariff access.

The tunnel, the deal and Brexit stalemate

UK in a Changing Europe (UKICE): After Salzburg, were you surprised that the decision was made to go into the tunnel? What did that mean during the final straight towards finalising the Withdrawal Agreement? Were you surprised

that Theresa May lost another Brexit Secretary, and saw some more Cabinet resignations?

SDR: The tunnel, for us, was a sign of great trust from the member states in the EU negotiating team.

UKICE: What was the process between Salzburg and getting into the tunnel? What went on there, and why did you think it was worthwhile?

SDR: That was a process of a couple of weeks. I'm not sure now when exactly the tunnel started. I remember it was a Sunday when Dominic Raab came, when we were still stuck on a commitment to negotiate a UK wide customs regime. That was the Sunday before the European Council of October, which turned out to be not decisive at all on Brexit. The decision to convene a special November summit was taken later.

First, we had thought that we would work on a system whereby we would commit to having the backstop, and we would basically commit to negotiating a level playing field and a customs union with the UK, in order to mitigate the effect of the Northern Irish specific treatment, in terms of the backstop as we had published it in February 2018.

When that failed, Barnier reported to Coreper. After the European Council we went into a tunnel where we basically wrote that customs union with the level playing field conditions proposal in a very short time, thanks to some British educated lawyers on our side, EU nationals, who were very quick to put all this on paper, which is quite remarkable.

And that was not easy for us, because then member states were worried about losing leverage on fish, or were asking, 'Is there enough of a level playing field?'. We were giving zero quota, zero tariff access to the UK, as part of a temporary customs union 'unless and until' there would be an alternative system to put in place. It was not easy for us with the member states. We were quite nervous as a negotiating team on how member states would react to that when we came out of the tunnel.

UKICE: What did you make of the dynamic in the UK negotiating side, at the moment we lost successive Brexit secretaries? There was a sense from some

in the Conservative Party that Olly Robbins was too willing to compromise with the EU.

SDR: I think Theresa May made her choices. She wanted a system which, in terms of goods moving from GB to NI, would be different from what we have today. Johnson took a different choice. How you then assess that in terms of whether there was tough negotiating or not, I think it's just a different choice that was made in terms of what the priority was. Johnson chose an autonomous GB trade policy, with special status for NI on trade as part of that, subject to the application of the protocol, no longer the backstop.

I know that some people say that in 2020, the UK delegation was tougher in terms of negotiations. Let's say that they were clearer, because we didn't have the Chequers thing anymore, and we had a clear choice of a free trade model, which was no longer contested also on the UK side. Whereas Theresa May had to work in very difficult conditions, and chose a model which the EU had told her it would never accept. She manoeuvred herself into a very difficult position in that sense. But of course, she was asking for something which was economically more advantageous for the UK, compared to Johnson.

Just to be clear on tough negotiating, I don't think one could say that the Johnson team was a tougher negotiating team. It had more clarity in terms of principles. But if you look at where we ended up in terms of fisheries, in terms of level playing field, in terms of issues that the UK dropped along the way in terms of its demands, I don't think you can make that comparison as easily as some people do.

UKICE: It's possible to present the all-UK backstop as a big negotiating triumph. But ultimately, it was one of the things that torpedoed Theresa May's Withdrawal Agreement. Were you surprised that she faced so many difficulties in getting this through when she took it to her first vote in December, and had to pull it? Presumably, the UK side had given you some assurances that if you negotiate this, we can get this through domestically.

SDR: To your first point, I think the counterfactual is quite interesting. Imagine we had had a transition period, and at the end of that transition period you had zero tariffs, zero quota, and a regime with level playing field conditions already as part of a backstop 'unless and until'. It would have been a totally different

dynamic in terms of negotiations.

UKICE: So, a position in which the UK would have negotiated an economically more advantageous future relationship, do you think?

SDR: We would both have had an insurance policy in our back pocket, which would have been a more comfortable situation, in terms of not having a future relationship in place at the end of transition. You can make your own calculations in terms of how that affects the leverage, or the influence that has on negotiating dynamics.

Theresa May had reassured leaders that the language that she would be using was that this was the best and only deal possible, and that she would fight to get it through. If you look at what she said around that time of the deal, you can see that she knew she had an uphill struggle. This wasn't a moment of great triumph, to take your words. Her public statements were such that she knew she had an uphill struggle, her pulling of the meaningful vote negatively impressed other EU leaders.

AM: Even prior to that, were you surprised by the reception of the deal when she brought it home, and the rather paltry efforts of the Government to sell it? How did you react as this all unfolded?

SDR: We had our ratification, with Council and European Parliament, which was our responsibility, and the other was the UK responsibility. We tried to be helpful with (Geoffrey) Cox and Steve Barclay. You may recall that in February or early March, we negotiated extra reassurances with them, because the fear from the UK at that point was that the EU would not play fair, and would not negotiate a future relationship. I always thought that was ludicrous, but that was a real fear amongst some Conservative MPs at the time, that this was a ruse or a trap. The EU was uncomfortable with having had to go for a UK wide customs regime as part of the backstop.

So we tried to reassure them, and I think we did. We gave them substantive reassurances in March. But then, Geoffrey Cox basically said that legally, this didn't change the dial. You can argue about that. I think it did change the dial. Of course, legally, we were still in the position where the 'unless and until' could last for a long time. But in my view, we had offered as much as we could.

From then on, we had nothing else to offer. It was up to the UK.

People then accused the EU of not having analysed the UK political situation in a sophisticated enough manner. We had met quite a few people over the years and always saw that, if you put the soft Brexiteer side in one camp, there were so many divisions between them. There were the people who wanted to prioritise a second referendum, people who prioritised a soft Brexit. It was a recipe for a disaster from the start, in terms of how the soft Brexiteer side was organising itself.

UKICE: There were all sorts of rumours in the British press of some sort of a collaboration between the EU negotiators and the second referendum proponents in the UK. There were rumours that they used to come over and talk to you and plan strategy together with you. Were you aware of these stories?

SDR: Yes. I think we had Nick Clegg, Ken Clarke, (Andrew) Adonis and many others. Of course, we were aware of the story, because in the British press it immediately became, 'They're working with Barnier on sabotaging Brexit'. Barnier met Farage quite quickly after that. I think all these Remain people who came to visit us came away disappointed from their visits, because they didn't get a receptive ear.

They saw a team who said, 'Yes, nice to listen to you. We would like to understand how you see British politics'. Being a politician, Barnier was always interested in the chances of British politics changing direction. But it was not up to him to engineer any of that, or even to support any of that. He never did, of course. He always said, 'I'm negotiating with the UK Government'. We met these people, and then the next day, he would negotiate with David Davis on withdrawal, which is what our task was.

People underestimated that the EU commission was subject to the obligation of following the Treaty on the EU, within which Article 50 was activated. It was our task to deliver, do nobody ever tried to sabotage that on our side. I think many Remainers, again, came back disappointed from their meetings with us.

UKICE: Was there ever any doubt that the UK would ask for an extension, and that an extension would be agreed? Did you ever think, during the period

coming up to March 2019, that you were facing the prospect of a disorderly withdrawal?

SDR: Yes. We prepared a lot of contingency plans in January and February 2019. The extensions were out of our hands. That was basically (Donald) Tusk and the EU leaders, managing that process with Jean-Claude Juncker. They obviously asked Barnier for his advice, and he spoke to the Sherpas and Coreper about how he saw the situation, because he had first-hand knowledge of the UK. But the extensions were not really something we controlled within the team.

UKICE: When the UK did get the second extension, was there any thought as to whether it was absolutely obligatory for the UK to go ahead with the European Parliament elections? I think that the two major parties in the UK were very much hoping that there might be a way of avoiding that.

SDR: I think the extension tried to avoid that, right? Because we had a two-pronged extension from the 24 May to the end of June, and then to the end of October. So there was an opportunity for the UK to avoid them, but the UK didn't take it. Once you get to a situation where the UK doesn't take that May opportunity, and there's a June election, there's no way around it. You're still a member state. You have treaty obligations. The EU was already quite cross with the fact that the Johnson Government didn't appoint a Commissioner. You may remember that episode as well, with an infringement procedure.

UKICE: In this period, Theresa May has failed three times to get her Withdrawal Agreement through, got an extension, has said she'd stand down as Conservative leader, and has opened up talks with the Opposition. Presumably, throughout most of this period, the action is all in London, not on your side. But we had the Conservative leadership coming and Boris Johnson emerging, post-European elections, as the most likely candidate to replace her.

What were you doing in the taskforce while the UK was internally focussed on working out how to break the domestic stalemate?

SDR: We went back to the mode in which we had started, brainstorming different scenarios, putting things on paper for different scenarios, both on the future, and on what would happen in a no deal situation. We put things on

paper, to sharpen our own approach on the different possibilities that were ahead, so that we could confront those.

Johnson's revised Withdrawal Agreement

UK in a Changing Europe (UKICE): Were you surprised when you got that first letter from the Johnson Government to President Juncker and President Tusk essentially saying, 'Chequers is dead. The UK wants something very different on regulatory autonomy'? Or had you completely anticipated that?

Stefaan De Rynck (SDR): I think that letter was more about the idea that this 'anti-democratic' backstop had to go. We were not surprised, because we had heard that from David Frost earlier. We had very cordial, professional first contacts with Frost, which were very clear in saying 'No, the backstop has to go. That's the clear position of the government that I work for'. So, we weren't surprised.

I think I was a bit surprised by the timing of the letter. The substance was not a surprise, but it was shortly before the first G7 that Johnson attended Biarritz.

Then, of course, we starting thinking, 'What does it mean to scrap the 'anti-democratic' backstop? Does it mean we could have a 'democratic' backstop, perhaps?'

UKICE: Was it clear to you that the UK Government was prepared to resurrect the Northern Ireland only backstop, which had originally been the Commission's proposal back in February 2018?

SDR: No, because of the letter in August from Johnson to Donald Tusk. The position before that letter was, 'We really don't want the backstop in the Withdrawal Agreement'. We said, 'That's not possible'. Then we made an opening on our side. I forget the exact wording, but we said something like, 'If it's not exactly this backstop, it needs to be compatible with the aims and what we had achieved with what we originally had'. Their first papers were dispersed custom checks on the island of Ireland.

It started changing gradually bit by bit. There was the Johnson speech at Conservative party conference, which took a few people by surprise because

he expanded the scope of regulatory alignment. It was bit by bit, and the last thing standing was customs. With customs, the idea was that goods would be checked when they left warehouses, and when they arrive in warehouses, companies or in factories. So there would be checks all over the place, and then we pointed out that in the context of the island of Ireland this was perhaps not the smartest way forward, in terms of security.

UKICE: What did you make of the parallel shenanigans in British politics, with the passing of the Benn Act which meant that the Government had to go back to Parliament for it to leave with no deal, and the prorogation and the Supreme Court case? Did that make you think that the UK was desperate to do a deal?

SDR: No. For me this was in the background. For us, and I think also for Michel Barnier, though we looked at all of that and we analysed it, and we asked our London colleagues to analyse it, our assessment from early on was that it was in the interest of the Prime Minister to strike a deal, Benn Act or no Benn Act. If he had gone for elections, it would have been better to have a deal in place and have Brexit delivered. There was a lot of speculation in the media, saying, 'This weakens the hand of the Johnson Government', but we did not see it that way.

UKICE: How closely were you working with the Irish Government? There was that substantive summit in the Wirral between Boris Johnson and (Leo) Varadkar, soon after the Conservative Party Conference in early October, which seemed to open the way to a deal.

SDR: Yes, it did. We worked very closely with them. I remember Simon Coveney came to visit Barnier the day before that summit. There was very close co-operation.

The renegotiation of the backstop is not unique to Johnson. Theresa May had, of course, met Varadkar in a summit in Sweden, during the sufficient progress of the Joint Report of December 2017. In Salzburg, she had famously sat down with Varadkar on the morning of the Salzburg meeting.

So these bilateral contacts were not unusual. This one was special in the sense that it gave 'a pathway to a deal'. That was the expression that Leo Varadkar used, and it was a pathway to a deal. It was a real leadership

moment, I would say.

UKICE: Were you aware of bilateral contacts between London and Dublin in preparation of that meeting, or did you think this was very much just going through Brussels?

SDR: I wasn't privy to the inner talks on this between our team and Dublin, but we had always worked very closely with the Sherpa of the Taoiseach, with Declan (Kelleher), the ambassador in Brussels, with members of their team. I wouldn't have expected that to be different in those days.

Simon Coveney, I believe it was the night before, he came to talk with Michel Barnier. Then, on the Friday after the Liverpool meeting, Steve Barclay came with David Frost and David Frost's deputy, Beatrice (Kilroy-Nolan). Between the Taoiseach and the Prime Minister, we were very, very well-briefed about what had been said, in order to then take it forward and wrap up the deal.

I remember that was five or six days before we then wrapped up the deal with Steve Barclay, and then with Johnson and Juncker's telephone conversations.

UKICE: One of the big differences with that deal, compared to the backstop as proposed in February 2018, was the addition of the consent mechanism in Stormont. Were there any reservations about that, as that seemed to remove the idea that this was a permanent guarantee of the relationship?

Theresa May had originally been asking for some sort of parliamentary lock or democratic consent around her backstop, and the EU had never been prepared to concede that.

SDR: Yes, but I think we need to distinguish a bit. We had no qualms or reservations around the principle of consent. For someone like Barnier, it was quite normal to think that if ever the Northern Irish Assembly would vote against it, then it was no longer something which was implementable or operational. What we had reservations with was the first proposals on consent which came to us, which I believe were put forward in August or September, where there was consent before the Withdrawal Agreement entered into force.

So the Parliament would ratify, and then before the backstop or the solution for

Northern Ireland would start on January 21, some kind of consent would again be needed, which was defeating the whole purpose of the ratification for us.

There were various forms of consent that we could not accept, but the one that Varadkar and the Prime Minister discussed, rightly so as co-granters of the Good Friday Agreement, was one that was desirable even in terms of its permanent nature.

I think people underestimate the big change we had from the logic of a backstop to a permanent solution. We were no longer following the logic of 'unless or until we find alternative arrangements'. I think the advocates of alternative arrangements in London were somewhat surprised perhaps by that, and by the fact that that all fell by the wayside suddenly, because this was the solution, full stop. And if it was the solution, it needed democratic support in Northern Ireland by the different parties.

UKICE: Did anyone express reservations about the fact that bringing this up before the assembly every four years, and having this as permanent running issue between the communities there, could potentially destabilise Northern Ireland?

SDR: The issue of four years was discussed. I'm not entirely sure now exactly what timeframe it had. I think this was one of the last issues that was settled, with this compromise that it could be eight years if the vote is a kind of super majority, and not four.

The implementation problems today are worrying from that perspective, obviously, because you want to give stability to Northern Ireland. But that's jumping the gun to today. Back then, yes, we had discussions, but I forgot exactly how the compromise came about regarding the four and the eight-year periods.

UKICE: When you concluded that deal, did the Prime Minister assure you that Parliament would then vote for it and the UK would actually pass this Withdrawal Agreement and this would solve his parliamentary problems?

SDR: I always had the impression that, at the very end, the idea was that this would go very quickly through Parliament. This was Johnson's idea. So, that

failed.

Of course he wanted to get it through Parliament. That was clear. I think it was Oliver Letwin and some other people who took initiatives then that thwarted that.

UKICE: Did you ever think that Johnson might leave the EU with no deal?

SDR: It could have happened. It wasn't a very credible proposition to us, and it wasn't a very rational proposition in our view, in case elections would follow.

Remember we are talking about pre-Covid. So, having everybody talking about no deal, or the Brexit impact being visible, is politically not a very astute strategy, because you will have all the disruption and the friction and people being unhappy with all the short-term adjustments that they need to do.

For me, they are structural adjustments, but they could have been presented as short-term adjustments to the Brexit voters. We didn't think that was a very credible political path.

I think member states were willing to go for no deal in the case that the Irish solution was not satisfactory. So, I don't think there was ever any pressure on the unity of the 27 following from the 'tough strategy' in London. That has never impressed the EU.

UKICE: Alongside the Withdrawal Agreement, Johnson published a political declaration that was pretty much the same as the Theresa May political declaration, would you say?

SDR: Well, in the foreign and security policy section it included a bit of wording around sovereignty and stressing the sovereignty of the UK. I guess that announced that they had decided internally that they wouldn't want to discuss this once negotiations started.

On the economic side, it changed. Ollie Robbins and Theresa May had pushed the idea that the UK would consider aligning. The UK would take measures in order to reach a spectrum of outcomes in terms of border checks, hoping that those measures would reduce the risks on the EU side and, therefore, lead to

less friction. So the legacy of frictionless trade, the objective of Theresa May, was still in the political declaration. One of the things David Frost did was take that out.

The other issue which we dealt with satisfactorily was the level playing field, because, of course, once the Theresa May backstop had gone, the level playing field conditions of the backstop had gone too. The fact that the backstop was a bridge to the future was no longer something that we had to deal with, in terms of the logic of what we were creating. So, we needed new language on the level playing field.

That went relatively smoothly, with very ambitious language, that we were very happy with. It wasn't followed through once the negotiations started, between March and September, before we came back to this more seriously in the endgame, but at least when we had the political declaration, we were very pleased with the language on the level playing field, which was commensurate with market access but also to avoid a distortion of trade or investment. Competitive advantage and gaining competitive advantage was something that the joint agreement would prohibit or prevent in the future.

The toughest one was on taxation, in terms of language, because the UK was resisting the language we wanted, so we watered it down a bit on our side.

UKICE: But you thought that the political declaration as agreed gave you a pretty good starting point for the future relationship negotiation?

SDR: Yes, because it made a clearer choice for the free trade agreement. That made it easier to negotiate, except of course for the level playing field and the fisheries and the overarching governance. The architecture of that free trade agreement was much broader than any other we negotiated.

The Trade and Co-operation Agreement

UKICE: So if we move on, the UK ratifies the deal, and on the 31 of January the UK is out. In early February, there were two speeches, one by the Prime Minister, one by David Frost, about their approach to the EU. Did either of those ring any alarm bells with you about where the negotiations might go, or were they basically what you expected to hear from a Government that was

prioritising sovereignty?

SDR: There was no surprise in terms of what we had heard privately, or in terms of what we had felt during the negotiations of the political declaration. The Frost speech was quite strong on sovereignty and I would say on the near impossibility for the UK to undertake any international obligation, let alone with us, who are not exactly the preferred entity of some of the people on the Brexit side.

These speeches were, of course, not something which affected our work. We took note of them and said, 'Oh, there will be tough negotiations to come, no doubt'. That's what we all felt, especially the Frost speech, but also the Johnson speech. But our work was focused on preparing our mandate and the negotiating directives, based on the political declaration. Our job was to defend EU interests, not adjust positions because of UK speeches.

UKICE: Were there any problems with the unity of the EU27, which had held incredibly well during the first phase?

SDR: There were no problems with unity, but there were of course requests by member states on aviation, on mobility, on social security coordination, and on some issues on services that needed to be discussed and clarified. These were not serious difficulties, but there were differences of opinion which needed to be ironed out.

UKICE: How tough was it when you started opening up the negotiations? Very quickly they had to turn virtual, and both David Frost and Michel Barnier were ill and had to cancel negotiating rounds.

Did you think at that stage that the UK was absolutely bound to ask for an extension, that this was a ludicrous project to conclude with in the year, or was it absolutely clear from the start that the UK had no intention of doing that?

SDR: I think both can be true. It was a ludicrous proposition not to ask for an extension, but also it's true that we never believed they would ask for an extension.

The negotiations started in a very speech-like manner, I would say, in March,

before Covid-19. We had the first round face-to-face. The UK had tried this exercise in Whitehall, whereby David Frost tried to trim what the UK would ask from the EU. It was speech-like in the sovereign equal kind of way, and he was saying things like, 'We are sovereign equals'.

Barnier always said, 'Yes, nobody contests that, the question is what will you commit to?'. It was coming back to Frost's speech – 'It's fine that you're sovereign, but tell us what you are willing to do in terms of obligations in this agreement'. It took quite a long time for us to have a discussion on the obligations that the UK was willing to undertake. The funny thing was that the UK was not asking for a lot during all that time, in my view, on services, for instance, or on the FTA for goods.

UKICE: When did the negotiations get really serious? In June, we had the virtual summit between President von der Leyen and Michel and Boris Johnson, where he said, 'There's no reason this deal can't be done by the end of July', 'Tiger in the Tank', and David Frost's new post was announced from September.

Did you actually at any point notice a change in the detail, beyond the speech-making?

SDR: We were going into technical detail in all the workstreams, but the UK often didn't have a political brief or mandate to go forward. Particularly on the level playing field that kept going back and forth, so to say, or in circles rather, where we kept going back to square one. I am mixing metaphors here.

It was the same on fisheries, where we talked past each other for a long time as the UK said, 'An independent coastal state, annual renegotiations on access to waters', and so all of that only changed in September.

The June-July period was one where the UK put that deadline down, but it didn't impress the EU, because there was a discrepancy between saying, 'There's a deadline now of July or August, we need to have the tiger in the tank and wrap this up', and then not coming forward with concrete proposals on what the UK was willing to accept. So naturally, there was not much progress.

UKICE: Did you actually get any sort of insight as to why there was that lack of progress? Was it just lack of bandwidth at the political level in the UK, or do you think it was a tactic, in that the EU would only ever come round right against a deadline?

SDR: I never got the impression that the Government was divided over the Brexit negotiations, like we experienced with Theresa May. I would be surprised if there was no bandwidth. The Prime Minister had a large majority, but I do not know what the discussions were in Whitehall or Westminster.

On the tactics, clearly, fish was the last issue standing and the UK had taken the deliberate decision to do that, because there was no reason to leave it so late. We had made compromise proposals quite early on.

On various issues, even before the June meeting, Barnier had opened the door for saying, 'We could reconsider how the role of the Court of Justice would be in a dispute settlement'. Various issues on our side had been put on the table as hints of landing zones if the UK would pick them up, and they didn't for three or four months. They didn't pick them up.

Why? It's hard for me to reconstruct what happened inside Downing Street.. Clearly they held out on the level playing field and fish longer than on governance and security cooperation and fundamental rights, as the U-turns on those two last issues happened over the summer, in terms of accepting an overarching agreement on the ECHR, and domestic enforcement in the UK as pre-conditions for the broader partnership on security cooperation.

On level playing field, I guess they were trying to hold out with fish, in order to mix the two and have kind of bargain, whereby the UK would have bargaining chips to lower the level playing field commitments that we were asking from them. That didn't work out well, I would think, in terms of the negotiation tactics, because on the one hand we managed to have a joint system of a level playing field, with commonly agreed rules, and on the other we had to reinforce the capacity of each party to react unilaterally with so-called punitive measures.

There was an outcry at some point in the UK media on, 'The EU wants to punish us if we do our own thing'. Well, that's more or less the system that we

have now, and hopefully we won't have to use it.

So, I can only observe that the level playing field and fisheries were the two last issues standing. And there were some market access requests at the very end, on certain goods and services, which didn't come to fruition except for the rules of origin on electric vehicles, where we had a mutual interest to have more generous rules of origin in terms of battery development in the EU and the UK.

UKICE: It looked at various points as though Michel Barnier was finding it quite hard to get scope for movement from some of the EU's fisheries ministers. Was that true?

SDR: I wouldn't call it opposition, but on fisheries it is certainly true that in his meetings, the ministers kept a very firm line. Barnier went to them and said, 'This is the lay of the land, and this is how I could see a solution, and of course we want to see your interest preserved and we don't want to see a negative impact on your fishing industry, so we'll try to avoid that as much as we can'. So that was a way of making sure we stayed united. It wasn't a challenge to the unity but it had to be worked on. I don't think there was anything else.

There was a specific request from member states that they kept coming back to, mobility for instance, where we kept telling them, 'A mobility arrangement is very hard because the UK Government is not interested'. Hence the negative impact on the musicians in the UK, but the Government also said, 'We don't want mobility', whereas a number of our member states were saying, 'We would really like to have more generous mobility arrangements for students or for specific categories', or, 'We would like a non-discrimination clause for longer-term visas'. We didn't manage to obtain that, but member states were asking us to try. So, there were a couple of issues that member states were vigilant on.

These included road transport and market access rights, in terms of the consequences for road haulage industries in some of our member states. Aviation was also certainly a issue for us, in terms of traffic rights and fifth freedom for cargo, where the compromise was that member states can top it up with the UK, if they want to do that.

So there were a couple of those issues. There wasn't pressure on unity, but we were mindful as negotiators that we had to deliver on all those issues to keep member states satisfied. That was very clear. On fisheries, it wasn't until the very end of the negotiations where that could have gone wrong if we didn't obtain what we needed for the fishing countries.

UKICE: UK ministers said that they did put forward a proposition that would have dealt with the performing artists and musicians, issue, and it was the EU that said no, which is why there's no real agreement there.

SDR: No. The UK put forward its standard treatment of 30 days for EU musicians coming to the UK. So, since that is in any case something all third-country nationals have, and there was no mobility chapter, there was no need for us to offer a more generous treatment of UK musicians coming into the EU, since the UK Government resisted all of that.

UKICE: Was it easier to deal with Lord Frost than it had been to deal with Olly Robbins and Theresa May's negotiation? I think you said earlier that there was a degree of clarity. Was that as true of this phase of the negotiation as the earlier one?

SDR: The easier thing was not so much the people, but the fact that, on the one hand, Theresa May's Government was hindered by its awful internal divisions, and on the other it was asking the impossible from us, in terms of a bespoke model in between the FTA and the single market. So, that was the difficulty with Theresa May's Government.

The difficulty with the Johnson Government was more its ideology on sovereignty, which led to a very painful process to convince the UK that any international agreement implies international obligations, including with the EU.

UKICE: You've said that you were surprised by the lack of ambition from the UK side, particularly on services, but in the political declaration, financial services had been kicked into the autonomous process of equivalence. The UK may have wanted mobility because of its promises on freedom of movement and control of borders.

What had you been expecting that the UK might ask? Did you think that they

might tie an equivalence decision say to fishing which Leo Varadkar had suggested earlier?

SDR: No, we would never have made those links. That was one of the keys for us in the negotiation approach more generally. We never accepted making the links between all these subjects. We wanted these subjects to be negotiated on their own merits.

So we didn't want to link fishing with governance or level playing field or other issues. On linking financial services and fisheries, I don't think that was ever an idea on our side.

Leo Varadkar made that statement once, but I don't think he repeated it, and it was never something that we considered. I had expected the UK to be a bit more ambitious on services, as we have just discussed with musicians, but it doesn't affect only musicians, it affects service providers across the board from the UK, and it's an important part of the UK's economy beyond financial services.

We basically came to an understanding that the UK was not very interested in mobility arrangements, and that had an impact on Mode 4. So, we couldn't give everything the UK asked us in Mode 4 because we were blocked on the mobility side, and so there was no incentive for us to give more to the UK.

UKICE: Did you think, given the timings, that the UK would ask for some sort of phasing in of the controls on the EU side that were agreed in November?

SDR: No. We were never going to give that, and the UK, to my knowledge, never asked for it. UK business did, of course, but no.

UKICE: Did you ever think they'd go for no deal, or that you wouldn't get this deal through?

SDR: I don't think it was ever rational to go for no deal. That doesn't mean that the Government would not have done it.

UKICE: Do you have any general reflections on the whole process? Has it left UK/EU relations in a good place to build upon?

SDR: It has certainly solidified the views of the EU27 on the UK. So, that is a positive thing on our side, in a way, and it builds a strong unity between member states.

For me, the most worrying two issues are first the compliance of the UK with international obligations. This is a big deal post-Brexit. This is the first big international agreement undertaken by the UK post-Brexit. So, one would think it has an incentive to uphold all the commitments in there. It's not just the EU that's watching, it's other parts of the world. So, that is surprising to me.

Then, and this is the kind of thing we felt in the negotiations as well, the discrepancy between saying, 'We are sovereign equals, but then we're not going to recognise your ambassador here'. It doesn't hold up. The UK needs to calm down in the way it interacts with the EU because, obviously, we have a huge incentive to cooperate positively.

UKICE: The UK thinks that playing hard ball over, say, the Internal Market Bill and threatening to disapply bits of the protocol are successful negotiating tactics.

SDR: The UK Internal Market Bill was a disastrous negotiating tactic by the UK. It solidified the unity of the 27, at the crucial moment when we were going into the end game of the negotiations on the future. Nobody understood what the UK would gain from doing that, on the EU side. So we immediately said, 'Well, since we are not interested in no deal, we will separate these two tracks, and that will put us in the infringement track on the Withdrawal Agreement and we keep negotiating on the future'.

But we never said, 'In the future, oh my goodness, we are so scared of what the UK will do'. In terms of what, exactly, would we be scared? It's mind-boggling, that kind of behaviour. It's part of a disruptive form of politics which I hope we can all put behind us.