



HOUSE OF LORDS

Select Committee on the European Union

EU Financial Affairs Sub-Committee

Oral evidence: Financial Regulation and Supervision following Brexit

Wednesday 20 December 2017

11.05 am

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Members present: Baroness Falkner of Margravine (The Chairman); Lord Bruce of Bennachie; Lord Butler of Brockwell; Baroness Liddell of Coatdyke; The Earl of Lindsay; Baroness Neville-Rolfe; Lord Skidelsky; Lord Woolmer of Leeds.

Evidence Session No. 10

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Questions 135 - 147

Witness

[I](#): Dr Kay Swinburne MEP.

Examination of witness

Dr Kay Swinburne MEP.

Q135 **The Chairman:** Good morning, Dr Kay Swinburne. Welcome to our evidence-taking session on financial regulation and supervision following Brexit. The Committee has taken evidence from you before, and we are very grateful to you for coming today. Thank you very much.

I need to go through some administrative matters. You have a list of interests that have been declared by Committee members. This is a formal evidence-taking session of the Committee, and a full transcript will be taken. It will be put on the public record in printed form and will be available on the parliamentary website. You will be sent a copy of the transcript, and you will be able to revise any minor errors. The session is on the record. It is being webcast live and will be subsequently accessible via the parliamentary website.

Would you like to make any opening remarks, or shall we go straight into questions?

Dr Kay Swinburne: Given that we are in a very fluid situation right now, questions are probably the better option.

Q136 **The Chairman:** Yes, we were commenting on quite how fluid it is every morning, with a new iteration of where we are. In light of that, perhaps I could ask you about the UK's vision of financial services. What does it want for them? As an opener, in your opinion, what is the perception of that in Brussels, given the conflicting things that we are hearing?

Dr Kay Swinburne: That is difficult to answer very simply, because the Government's position is not clear on what they are asking for when it comes to financial services. Indeed, I would hazard to say that it is not clear what they are asking for right now as the overall mandate, on the basis that my colleagues in Brussels have not had a clear statement about what we are looking to transition to at the end of the negotiations.

On financial services, however, so much work has been done by external bodies, in particular by some of the City representative bodies, that there is an awful lot out there that has given people an indication of where some of the options may lie. Therefore, a commentary is developing in Brussels right now regarding the body of work that is publicly available.

It is not necessarily the Government's position; it is that of the City itself. Financial services associations are making very clear what the options could be, and they are discussing those. The perception is that there is no government position at this point in time.

The Chairman: Can I press you a bit further on that? I assume that you are talking about the IRSG, UK Finance, TheCityUK and all those bodies, along with Hogan Lovells, Shearman & Sterling and the plethora of reports that have been produced. Is there a perception in Brussels that those proposals offer a way to deal with financial services falling conventionally outside the WTO? Is there a perception in Brussels that

they are solutions? If any come to mind, would you be able to share them with us?

Dr Kay Swinburne: The Economic and Monetary Affairs Committee is doing a large amount of work of its own, and is having external entities do some work for it, on what future options might look like and on what changes may need to be made to European financial services legislation, in order to accommodate the largest financial centre in Europe moving outside the EU institutions and outside their direct control. There is a feeling that there is work going on internal to the EU.

They all read the work that is produced by all the different bodies here, and many of the esteemed associations you mentioned have pieces of work that everyone is familiar with. They also read our daily newspapers. They very probably read more of our press than many of our own members do. They are very much aware of all the different options.

What people are unclear about at this point is where the future may be for close co-operation and how much of a rule-taker versus a rule-maker we will want to be on financial services. Everybody on the ECON Committee appreciates how much the UK has shaped the rules for financial services, particularly those post 2009, when the new Commission and the new co-legislators, post the Lisbon treaty, took financial services reform very seriously after the crash of 2007 and 2008. The mandate of 2009 to 2014, overseen by the Commissioner for Financial Services at the time, who was Commissioner Barnier, was very active, and they believe that many of the things that the UK shaped may need to be revisited now in the absence of the UK.

The EU 27 are focusing much more on what they need to do to make their rules fit for purpose and on what changes they need to make to their legislation in order to accommodate us leaving. They will have to recalibrate a large number of their pieces of legislation and their rules, and they will even have to adjust their rules completely in some ways. Certain institutions, such as Lloyd's of London, are actually named in the treaties, so they will have to make changes themselves to certain wording because we are moving outside. They are doing that work right now.

The Chairman: Given the ECON Committee's heft in the European Parliament's final recommendations, it is likely to have a significant voice in the Parliament, is it not?

Dr Kay Swinburne: It is. The current chair of the Committee is Roberto Gualtieri, who is also one of the sherpas on the Brexit negotiating team for the Parliament. We have a significant voice in Mr Gualtieri, who is taking a very active role. However, Mr Gualtieri is very much aware of the global component of financial services and will make sure that the voice is heard so that there is no trapping of capital unnecessarily, and that we try to find as amenable a solution as possible for both sides. It is a great plus for the UK to have someone with his ability to see the importance of global financial services, and the role London plays, trying to make sure

that the EU incorporates as much as possible of the UK skill set, rather than trying to block it out.

The Chairman: Are the EU 27 well-disposed to an agreement that goes beyond equivalence, particularly given what we have heard about conflicting signals today? What is the mood music in Brussels for equivalence plus?

Dr Kay Swinburne: Equivalence is strange terminology. It is a unique Brussels word regarding a political decision taken by the Commission on whether it deems a third country equivalent in outcomes. We have seen over the last few years, particularly regarding the equivalence decisions taken on countries operating with CCPs—central clearers—that those decisions are highly politicised, so the decision taken for the Swiss CCPs' equivalence was delayed by multiple numbers of months, based on the fact that the Swiss referendum had upset the Commission by trying to limit the freedom of movement of people from the EU into Switzerland. It delayed the decision on equivalence on a political ground.

We know that the way in which equivalence is structured is flawed. There was recognition several years ago, pre Brexit, that it needed to be looked at very carefully. Indeed, the equivalence regimes—the third-country regimes in every piece of legislation in financial services—are different. There is no consistency between them; they are all very different.

To rely upon a political mechanism with a 30-day withdrawal notice period is, for me, unacceptable for a large global financial centre. We would need to find an alternative to it anyway. If we are looking at a future free trade deal of some description, a very high-level, mutual recognition of highly regulated sectors, of which financial services would be one, is a method by which I can see it working.

Lord Butler of Brockwell: Do you think that is practicable to achieve, either by next autumn or during what is known over here as the implementation period? What do you think the timescale is for reaching the sort of arrangement you are thinking of?

Dr Kay Swinburne: The way Brussels typically works is that people need to come to a political agreement on where they are trying to get to and what they will allow. Once they have made that political decision, they allow the Commission and all the civil servants and technical individuals to go to work to try to deliver what they asked for.

I believe there is a possibility of a political decision being taken by the EU 27 Council of Ministers to get to that point before we get to March 2019. However, we will not have a very far-reaching, or in fact any, free trade deal signed and ready to go on the day of exit. I do not believe that we will be able to do that even within the two years of a transition period post March 2019.

I have been involved in discussions in the Parliament over the Canadian free trade deal. We have taken seven years, and it is still not fully

implemented. Seven years of negotiation before the Parliament signs off on it is a long period. The Canadian deal is the most far-reaching we have done, but it is not as far-reaching as we would like the UK transaction to be.

When we looked at where the TTIP discussions were going with the US early on, it was fairly obvious to us that Michel Barnier, when he was Commissioner for Internal Market and Services from 2009 to 2014, drafted a chapter specifically on financial services to be included in TTIP. Indeed, it was the US that said that it did not want to include financial services in that trade and investment partnership. We already have what I would consider a template, written by former Commissioner Barnier himself, when he was in that role, for including financial services in a much broader partnership with the UK. I would suggest that, rather than his words of last week, when he said that it was not going to be possible and that nobody had ever contemplated it, his own chapter on financial services for TTIP might be where we want to look when we start negotiating on financial services in a free trade deal.

Lord Butler of Brockwell: But you are talking as if there is a single, monolithic free trade agreement. Do you see any possibility that there could be a separate, bespoke agreement on financial services, which might have a different timetable?

Dr Kay Swinburne: When the US refused, under the TTIP negotiations, to include the financial services chapter as a chapter in the main agreement, it was never taken off the table; it was described by Michel Barnier as something that would be used as a stand-alone bolt-on to TTIP. It was never taken off, and it was considered to be something that could be taken as an annexe to the main agreement of TTIP.

I would go back to some of the minutes of the Commission's negotiations when it was trying to negotiate with the US, because I believe that it has already had that authorisation. Certainly, as Commissioner, he was authorised by member states to take those negotiations in that direction. Therefore, if the Commission has done it once for the US, I see no reason why, given how close we are, in that our rules will be identical on day one, it would not consider that as an option for us. I firmly believe it is an option and one that we can pursue in a positive light.

Q137 **Lord Butler of Brockwell:** As you originally said, there is a lot of contact with the financial services trade associations, bodies and think tanks, but it is not so clear what the British Government's eventual aim is. Do you have any reason to think that the British Government's position might be different from that of the financial services sector?

Dr Kay Swinburne: I obviously cannot speak for the Government, but, from the meetings I have had with the UK regulators and with the Treasury, I am convinced that the same conclusions are being drawn within the official bodies as are being drawn by those in the industry themselves. To be fair, I genuinely think that the ambition will be there from our Government to secure a financial services chapter within a free

trade deal. That ambition will be supported, in the main—not necessarily universally—in the early discussions with Brussels.

The problem has been the sequencing, where there has been an insistence that only the exit deal, and the three issues under Article 50, have been allowed to be discussed publicly to date. Once we have got over that hurdle and can start to talk about the future, I hope that will happen very quickly. I understand there will be some announcements later today that will start to demonstrate some good will in financial services towards the EU 27. That will be critical to build confidence and to build trust back into that relationship, so that there is an intent to make financial services work, whether it is within the EU 27 or in the UK, to allow capital to continue to flow, and to recognise that the two entities—the UK and the EU 27—have worked so co-operatively and closely over decades that to do anything that might damage that would be not necessary.

Lord Butler of Brockwell: Am I therefore right in interpreting your view as quite optimistic, and that there is, below the surface, quite a developed structure of mutual understanding?

Dr Kay Swinburne: There definitely is among the politicians. My concern is that the Commission itself is undertaking a number of draft legislative proposals that almost pre-empt the larger, bigger-picture strategic discussions that I expect the leaders of the EU 27 to have over the next few months. I am sure that we will go into the detail of some of those legislative proposals, but many of them are in the guise of the EMIR review and the location policy that has emerged on CCPs. You are seeing them under the ESA review. I understand that you are seeing them today on a draft piece that is coming out later this morning on investment firms, and the way the Commission would like cross-border investment firms to be supervised by a central EU entity, rather than by national competent authorities.

All of that is starting to put in place legislation that will inevitably colour the discussions. There is a real danger that the Commission is jumping the gun on much of this, and I urge caution. It is not for the Commission to make these political decisions; it is for the member states themselves to define the mandate for the Commission in the discussions.

The Chairman: You mentioned the Canada deal and the separate template that Michel Barnier, as Commissioner, came up with at the time. Would you be able to provide us with any further information on that in written evidence?

Dr Kay Swinburne: That was with regard to TTIP, as opposed to CETA.

The Chairman: Forgive me, of course it was TTIP.

Dr Kay Swinburne: TTIP has now been parked by the US, since we have a new President in the US. The documents are available to me in a private reading room and I cannot release them to you. However, I

understand that the documentation was much more widely available when it was first released, and my suspicion is that many member states may have it, so I suspect that the UK Government will have a copy of it somewhere in their filing system.

The Chairman: Yes. That will be a bit of a challenge.

Q138 **Lord Skidelsky:** What ought to be the EU 27's key priorities for regulation over the coming years? As you mentioned in your ISDA speech in September, 70 new pieces of legislation have come out since the crisis, with the aim of making the financial sector safer. Much of that is work in progress. New proposals seem to come up pretty regularly to mitigate the defects of a previous proposal. How much remains to be done? What, in your view, would be the priorities in regulation?

Dr Kay Swinburne: There are two things taking place at the moment. One is that the EU 27 are trying to establish for themselves their priorities once we leave, so that they can have their political priorities lined up. Their political priorities are very much along the lines of the EMU being not just deepened but expanded.

There was a public statement in the State of the Union address in September by President Juncker, that the intent will be, by whatever means necessary, to persuade the non-Eurozone countries to become Eurozone members. That very large initiative is taking place. Completing the single currency project and getting as many of the remaining non-Eurozone members to become members is one of their leading priorities going forward.

That butts up against the review periods that are built into the legislation on financial services. When financial services legislation was done post crisis, a decision was taken, and I think it was the right decision, that every piece of legislation should have a review period built into it. At the end of a three-year period after implementation, you would assess the impact of that legislation. You would look for where things had not worked as well as you would have liked them to work, and then offer the solutions and fixes required within that legislation.

Unfortunately for the UK, much of that is happening now. It is happening in the period when we also have the Brexit discussions. Something that should have been routine, such as the European market infrastructure regulation, EMIR, on central clearing and the role of the clearing houses, is now highly politicised, rather than being the technical document that it should have been, which would have been a quick review with some quick fixes of things that were not working well.

Unfortunately, the timing of the review periods is now making it a much more political journey to get those reviews done, but they will continue to be done. We continue to work on those committees. I will certainly be shadowing all those reports through their journey in the review period, having done the original legislation, too. The UK's influence is still very much there. Even within the European Supervisory Authorities, the skills,

knowledge and evidence that UK regulators bring to the table are still very much appreciated and very much used within the reviews.

Lord Skidelsky: I wonder whether you can really separate the technical from the political in the way you just suggested. It seems to me that many of these issues are highly political. For example, the project of increasing integration—creating an integrated market in financial services—throws up regulatory problems, because it increases the interconnectedness of all those trades.

You have been involved in CCP regulation. Just looking at it, it seems that the increasing concentration of derivative trading in the CCPs also requires superior capacity to judge risks. One is building one risk on top of the other as a way of mitigating risk. Does that seem to be getting rather top heavy? In other words, are CCPs now more resilient to shocks than they were before the crisis?

Dr Kay Swinburne: Yes. During the crisis, the G20, in Pittsburgh in 2009, used central clearing as something that they wanted to promote, because the CCPs had worked well during the crisis. During the Lehman shock, they absorbed a huge amount of the damage that could have been done within the system. The central clearing mechanism absorbed the shocks as it was designed to do. The G20 mandate to put more trading of derivatives through central clearing was because the risk management systems were deemed to have been successful.

Now, we have put more instruments through them, so we have extended the role of the clearing houses and put potentially more risky instruments through them, which means that we have had to strengthen the risk management systems much more than if we had just kept to the original basic products. That does happen, and has happened.

Under EMIR, rules were put in for a very extensive default waterfall, where everyone knew up front what they were committing themselves to in risk management, what tools were allowed to be used by the CCP on their behalf and how the risk would be mutualised through the system, depending on what had happened. The EMIR legislation has become the gold standard throughout the rest of the world. It has certainly been emulated across Asia.

We have got to the stage where co-operation between regulators for CCPs is extensive and frequent. It now happens not just regularly but daily; the exchange of information is very frequent. It is also very detailed, in a way that never happened before, so I am convinced that the risk management procedures within the globally systemic CCPs, of which there are very few, are much stronger than they ever were. There is much more oversight by other jurisdictions around the world of the activities of their players—their clearing members—in the systemically important CCPs.

The final piece of that jigsaw is recovery and resolution, which is what happens when you get to the end of the default waterfall and you need to

find additional tools either to resolve or to continue the business, if it is a critical function, for market stability. We are doing that piece of work right now, and I am the rapporteur on behalf of the Parliament, as a co-rapporteur post Brexit, to take that piece of legislation through the co-legislative process. We will, I hope, get it through the committee structure by the end of January. Despite the highly politicised environment we are working in for central clearing right now, my colleagues have trusted me to continue as a lead negotiator on that file as a British member. Indeed, they are allowing me to continue to take the file forward separately from the more politicised work that is going on with regard to location policy and the entire ESA review. They are allowing us to move at a much faster timetable and are allowing us to do it much more discreetly than you might otherwise anticipate, given the highly political nature of things at the moment.

Baroness Neville-Rolfe: Dr Swinburne, the work that you are doing there sounds very important. You have brought out the focus on the EU moving to the single currency, and on risk and oversight. Where do innovation and competitiveness get a look-in, either in the thinking of the EU or indeed in the thinking of the European Parliament? Europe has been very innovative in this incredibly important area of financial services, which is the lifeblood of business and economies.

Dr Kay Swinburne: My concern is that much of the innovation has come from the UK and has been led by our financial services sector here. Indeed, the hub that we have had, because of the synergies with the financial services players who are here—the global players—has been a point where the synergy is such that we have attracted a large number of the innovative new financial services companies to the FinTech space here.

Yes, there is activity going on in Amsterdam, in Frankfurt and in Paris, but London is the driving force for this innovation. We have to make sure that we stay open for business. As the UK, with this large global centre, we have attracted many other businesses with EU member state founders from the EU 27 that have decided to operate from the UK rather than in their home member state. With us moving outside the single market, it may not be such a natural transition for them if they do not have freedom of movement, freedom to bring in employees as they require, and freedom to move their profits and sales around as they see fit throughout the Union. We have to be careful that we are open for business.

Competitiveness in the EU legislative programme is rarely discussed. It is almost always about a regulatory framework and how we regulate, supervise and control risk, rather than how we promote innovation. I would dearly love to have conversations in those legislative dialogues about competition, innovation and how we promote and facilitate them. Unfortunately, given the way the system is set up, that is a very rare discussion. It is more likely to happen in the margins of the Parliament, where we have hearings and workshops organised by individual

members, and we discuss the type of facilitating roles that we might play. Sadly, I am not sure it is in the DNA of the way that the institutions are set up to talk about those things.

Baroness Neville-Rolfe: Are any member states or groups of MEPs particularly helpful in this respect? You mentioned some. Holland is an obvious candidate. Luxembourg has a big financial sector. There is Ireland and Milan. Is there any way that these things can come through? I am looking forward two, three or four years to the future of Europe and us hopefully having a close and effective relationship. How do you make sure that some of this innovation and competitiveness continues to be part of people's thinking? It is as important as risk management.

Dr Kay Swinburne: The Scandinavian countries are probably our biggest allies in this. They have historically been highly innovative, and they are very much aware of the financial services sector and the way capital markets operate. They have a highly educated public, who are typically investors, rather than just savers. That is not true across the EU 28. They are fairly far ahead of some of their neighbours in investment mentality and capital market structures. Much of what has come out of Scandinavia by way of payment systems has been very innovative. If you tried to use cash to buy anything in many airports throughout Scandinavia, you would not be able to do so. You have to use your card or your telephone to transact. They are very much leaders in this innovation, and they see the opportunities.

The Netherlands and its Government are investing heavily. Cora van Nieuwenhuizen, who was one of our ECON members until very recently, has just gone back into the Netherlands Government as a Minister. I am sure she will drive innovation from within government now, rather than from within the European Parliament. We have some strong friends and allies throughout many of the member states.

My only concern is this. The UK has historically looked after smaller member states. We have been a strong voice and advocate for smaller member states. My concern is about who will do that when we leave. Smaller member states typically do not have the same power in discussion. They do not have the same behind-the-scenes discussions before major meetings. If they do not have access to that decision-making in the corridors before large meetings, will they have the same ability to influence as they currently do using UK channels? It is a big concern of mine, as a pro-European, that the future of the EU 27 needs to be 27, not led by two or three large member states. It will be important to get that balance right for the future of the EU and its competitiveness.

Q139 The Earl of Lindsay: You have made a number of references to CCPs. I was hoping that you might expand your views on what the impact will be in respect of the Commission's proposals for CCPs, especially regarding CCP location policy proposals. What would the effects be for UK and EU counterparties? Is there an upside for supervision or greater financial stability?

Dr Kay Swinburne: I apologise if I have talked about clearing houses far too much. I have spent nearly seven years working on clearing and on the legislation surrounding it. On location policy, I get reprimanded in Brussels for using the terminology, because it does not appear in the legislation as a title. It is a twofold piece of legislation; there are two separate parts. One part is about the future of EU supervision, and the other part is about whether we need a special regime for third-country CCPs. They are graded 1, 2 and 3, and you go up in terms of the oversight required. Location policy, which is the third-country part of it, is a highly politicised component.

We should not underestimate the impact of the other part of that piece of legislation, which is the future way in which the EU 27 will operate; in fact, it is designed for the EU 28 because we are still members. That piece of legislation is about the future of how supervision will happen, and it will put far more power into the hands of the European Supervisory Authorities. It already scopes out that ESMA will have a new role with regard to CCPs, which will change through the legislative process. What comes out in draft form and what ends up in the final text is significantly changed, because it is not always drafted as well as it might be.

There are some issues with it. In particular, I have a problem with the way in which ESMA is given a much bigger role, but so is the European Central Bank. There is very little dialogue between those two entities on a daily basis. One has a prudential mandate and the other has a supervision mandate for market oversight, and for the two, effectively, to have parity in decision-making is not acceptable for a CCP. You need clear decision-making for those entities. They are risk managers—they mutualise risk—and they need a clear, up-front set of rules to work to, with no interference, once they have been agreed. To have two competing entities is a strange way to set up this piece of draft legislation.

A major problem is that it gives primacy to a central bank of issue over risk mitigation techniques being used by a CCP. It does not mention the ECB by name because it cannot do so; it has to refer to “a central bank of issue” because there is more than one central bank of issue in the EU 28. It talks about them having primacy over risk management decisions. It would have primacy, for example, if you wanted a haircut—collateral held by a CCP during times of stress. An example might be that, during a time of stress, the London clearing house may be forced—vetoed, effectively—not to haircut, say, Hungarian government debt that it holds as collateral, because the Hungarian central bank of issue has said that it disapproves of it, and it would create market stability issues for Hungary.

The draft legislation is flawed, and I think it will be amended. The primacy issue is a major one that has not been thought through correctly. If they have a role, that role needs to be *ex ante*, as opposed to *ex post*. During moments of crisis you cannot have unexpected interference from unexpected sources. All that will be ironed out in the proposals. I will do my best as a shadow on these files to make sure that all these things are

fully taken into account. Some significant changes will be necessary. As proposed, I do not think it is workable.

The Earl of Lindsay: Are you cautiously optimistic that, as it goes through further iterations and the European parliamentary process, some of the weaknesses or flaws will be addressed, and it will be a better proposal when it finally comes to ratification?

Dr Kay Swinburne: I would suggest that. I have worked on a very large number of pieces of financial services legislation over the last eight and a half years, and very few of them look similar to how they were originally drafted. The vast majority change significantly, and for the better. I am optimistic that we will end up with a better version on the statute book.

The Earl of Lindsay: The impact on London-based CCPs will be what, do you think?

Dr Kay Swinburne: There is the extreme scenario, where the EU deems that a CCP that is systemically important to the EU is not giving it significant comfort that it has the right tools, with the right mitigative action being implemented when it is required. If the rulebook is not being fully implemented, if it is not giving sufficient oversight, if it fails to give the level of comfort that EU supervisors require in order to ascertain that no shocks are being transmitted, or are likely to be transmitted, to their system, and if all of that means that they have no certainty about the way operations are happening, they can require that the CCP relocates—locates, in fact—within the Eurozone and has direct supervision.

Even now, that is drafted as a very last resort. It is not drafted as something that supervisors would require a systemically important CCP to do today. If they had drafted it in that way, two very large US CCPs would have to relocate some of their business, and that is not going to happen. There is very much an awareness that it is a tool of last resort, and it would only happen if the supervisory dialogue had broken down from the normal state of affairs. That, in my opinion, is highly unlikely, given the fact that we have daily interaction, and the interaction between the Bank of England, the PRA and the FCA and its European counterparts is very strong.

The EMIR legislation put in place detailed college activity and a supervisory board, and all those work very well. Therefore, it is unlikely that we will end up in that situation. My belief is that they will not withdraw it. They will leave it on the table as the ultimate stick if the UK's negotiations for Brexit fail to materialise in a positive way. Unfortunately, given the timing, it will remain. It is a question of whether or not we can make sure that it really is the ultimate tool, rather than one used much earlier on and more for their convenience than for genuine market stability reasons.

Q140 **The Earl of Lindsay:** You have already mentioned the review of ESAs. That, too, is driving a more centralised approach to supervision and regulation. Do you see benefits flowing from the ESA review and the

proposed greater concentration of powers being given to European regulatory bodies at the expense of national competent authorities? Is that a good thing, and is it a trend that you think will go on in the future, after the current review?

Dr Kay Swinburne: We have to put this back into historical context. When the European Supervisory Authorities were designed, the UK was very much at the table, and the UK shaped much of what the European Supervisory Authorities were not allowed to do. Huge restrictions were put on the direct supervision of firms, for example. The UK would allow and support only the direct supervision of trade repositories, which were new entities being devised post crisis, and the credit rating agencies, which were believed to have held a central role during the crisis times, particularly the Eurozone crisis. They played a central role, but they were effectively unregulated entities. Direct supervision was restricted to those two categories and did not extend beyond, into firms. That was at the request of the UK, predominantly. The way the ESAs were structured was very much a UK-led initiative, rather than one from the remaining 27.

We should bear in mind that there is a big difference in the way capital markets function across the EU 28. The UK would be in the lead with its advanced capital markets, with the French and German capital markets, the Scandinavian capital markets and the Dutch capital markets coming strongly behind. A large number of member states have few participants, or little participation, in capital markets. They have few alternatives to bank lending in their member state structure. Do we really require them to have national competent authorities for the supervision of securities and markets?

That is where the dilemma is and where the debate is happening. In many instances, it suggests that a more centralised European Supervisory Authority for capital markets is desirable. There would probably be a better functioning single market for the EU 27 if one entity was ultimately responsible for any cross-border activity. I have a huge amount of sympathy for that. If the French and Germans in particular, as two large regulators in capital markets, are comfortable with that move, it is likely to happen. I am not convinced that my German colleagues are fully supportive of there being a single European supervisor and of their national competent authority having responsibility only for their domestic activities. I am not yet convinced that the political discussion is advanced enough to give us an indication as to where they are going.

If I were in that position, I would perhaps consider that, rather than having three pillars, when the UK leaves, the EBA would be a much-reduced entity, because the Single Supervisory Mechanism was created after the EBA was formed. The Single Supervisory Mechanism under the auspices of the ECB means that all cross-border banks of any size are now regulated and supervised by the ECB. On the EBA's rule-making capacity, if more and more members become Eurozone members, why would they require an EBA? The single rulebook could be written by the Single Supervisory Mechanism or by the ECB itself, rather than by a separate entity.

Would that be an opportunity to combine the customer-focused entities and agencies? The EU 27 could combine insurance and securities and markets in one entity, because it would have a customer protection mandate and a cross-border mandate. They might use that as an opportunity to look at what type of structure they want and what the objective should be for that future agency. My suggestion is that the European Supervisory Authorities might not stay, in their current form, as foreseen in the legislative proposal that is on the table. An awful lot of change could be about to happen.

The Chairman: You mentioned moves to integrate further EU members into the Eurozone. In political terms, do you see Sweden, Poland or the Czech Republic being induced to do that?

Dr Kay Swinburne: The Commission has various tools at its disposal. It would like to persuade people of the merits of joining. We will likely have an announcement in the new year of at least one new member state joining. I think it will happen quite quickly.

There are initiatives using things such as the EU budget, where the Commission might be able to incentivise certain member states. I think it will go for what could be considered the low-hanging fruit first. I am not sure that, given current political sentiment in Poland or Hungary, for example, that they, or indeed Sweden, have any prospect of joining the euro in the near term, but there are other member states, particularly smaller ones, that could be persuaded to do so and incentivised in one form or another to be part of the bigger project.

The absence of the UK takes the handbrake off. It is important to realise that the UK being the only member state to have a permanent opt-out from using the euro as a currency changes the dynamics considerably.

Q141 **Lord Bruce of Bennachie:** You clearly have a pivotal role in the co-negotiation. You said that the chair of your committee fortunately has a good handle on the international scale of things.

The whole thing has been set up with the UK in mind. We are about to leave, and the whole thing has to be restructured. Is it appropriate to have harmonisation across Europe, to an extent? How much flexibility can there or will there be? We have gold-plated to our own benefit, and we see that is an advantage.

At the same time, we were told that, as regards the Basel standards, the EU was "materially non-compliant" on both capital and liquidity standards. To what extent is it going to change dramatically? To what extent will the EU side be looking to the UK, saying, "We've been so close for so long that we really need to find ways of continuing to harmonise, both across the 27 and in national entities, in ways that do not make the UK useless or less useful than it otherwise could be"? Do you think there is a way of getting that squared?

Dr Kay Swinburne: It would be fair to say that harmonisation is a word that is rarely used, certainly since my time from 2009 onwards. We talk

about the single rulebook, and we talk about a single supervisory body that devises the rules and is mandated to enforce each member state's national competent authority, taking those rules and delivering the outcome that was supposed to be delivered, so that you harmonise the effect of the legislation and the way it is implemented. We rarely talk about harmonisation these days in the traditional sense of the EU, because it is much more about the single market and the way the single market operates—the irony being that the single market is a UK initiative, and the UK has been at the forefront of it.

Do I think that will continue? Yes, I do. The Commission will use the ESA review right now to deliver a much more unified implementation of legislation. ESMA in particular has been so busy doing level 2 rule-making—the regulatory technical standards for the flurry of legislation over the last five or six years—that it has not had the time, nor the capacity in human resource, to do the other part of its mandate, which is to ensure the equal implementation of the different pieces of legislation in the different member states.

There are huge variations in interpretation between the different member states, even today. For example, MiFID II will be implemented on 3 January. The UK and our firms have been working tirelessly to meet that deadline. To find out, no more than 10 days ago, that 17 member states do not even have the directive part of MiFID transposed into their national statute, which means that they will not be compliant on 3 January, is quite shocking. There will be a much bigger push to get consistency of implementation over the next few years, rather than necessarily trying to harmonise in the traditional sense, which is taking things away from people.

Lord Bruce of Bennachie: Will that consistency include taking account of the UK's position? As you say, we have been leaders and rule-makers, helping to create the initiatives, and the EU 27 do not necessarily want the benefits they have had from the UK's role to disappear. If we are not at the table, how are they going to accommodate us? Will they want to accommodate us, or will they ignore us?

Dr Kay Swinburne: I can give you my view on how I see that working, but it is very much my personal view. Within a free trade agreement structure, you would need some form of regulatory forum, not just for financial services but for all highly regulated sectors. I used to work covering pharmaceutical companies, and there are some very technical, highly regulated sectors where the UK has been a lead entity. It is not that there is just one area of expertise.

For me, that regulatory forum needs to be at the highest level possible, and sub-entities would do the individual parts, with a separate one for financial services, and separate ones for life sciences, chemicals and so on. That needs to be done at a very high level. You then need an arbitration system if you are to have a mechanism such that you retain similar outcomes to your rules. On day one they are identical. The question is about preventing divergence over time. How do you keep

those rules at least aligned enough so that, under an FTA agreement, they would still be considered as having the same output and result?

For me, it is clear that you can do that. If the will is there, you can deliver it, but it will not happen in a short period. It is an extension of any free trade deal that is already in place. CETA has a form of forum and there is an arbitration system at its heart, which was reformed for CETA, but we would have to go at least several steps beyond that in co-operation between our regulators and between our technical specialists. All the technical committees where we currently have a leading voice would have to have a role on the forum. It would be a unique situation.

Lord Bruce of Bennachie: Are there members of your committee or of the Parliament who are concerned that, with the UK leaving, the financial services regulations and regime will weaken to the detriment of the EU 27? Would they therefore argue that, somehow or other, an accommodation for the UK is desirable?

Dr Kay Swinburne: Many of my colleagues express concern off the record about the expertise that the UK brings to the table on financial services being lost. In fairness, that is not unique to financial services. They express concern across many other highly technical sectors. Their concern is that we will not be there while the rules are being formed. They would like us at least to be in a dialogue when they are being conceived, so that we at least have the same journey direction or destination, rather than starting from completely opposite points of travel.

There is a will to have that type of mechanism in place. Everybody is aware that it is highly ambitious, and it would be unique, but the UK leaving is also a highly unique situation. To have the same rules on day one is a unique opportunity to carve a brand-new template for free trade deals in the future and perhaps to be ambitious. I had enough discussions with Commissioner Barnier when he was in his role as Commissioner about the use of financial services in FTAs that I genuinely believe that it is viable and something we should aspire to. As I said, I would extend it beyond FS and put it into any highly technical regulated sector, because we will need to keep a large number of these things aligned.

That does not mean that I believe we should be a rule-taker. In certain sectors, such as financial services, I would genuinely worry that we have such a specialised regulator here, which has so much more data, in both quantity and calibre, that I would not want to be a rule-taker from the EU 27. I genuinely believe that we need to be shaping the rules, and we need to lead and not just follow. If we can lead and bring others in the same direction, that, for me, is the optimum solution. I may be an optimist, but I believe that many other people are optimistic about what could happen in this negotiation.

Q142 **Baroness Liddell of Coatdyke:** Much of the evidence we have received shows that different parts of the financial services industry will be affected by Brexit in different ways. Which areas, EU-wide, among the EU

28, will be hardest affected by Brexit?

Dr Kay Swinburne: The biggest problem for individual firms will be if they are customer focused. If they have retail customers that they service from outside the EU, that will be a problem, because consumer protection legislation, and the way it is implemented and enforced, is all done nationally. The idea that countries would allow a third country to protect their consumers in an equivalent way is not something they are prepared to accept. Even my most pro-British colleagues would say that, for retail customers, you will need an entity that is regulated within the EU 27. The wholesale markets are very different. Most of my colleagues appreciate that wholesale markets are a very different scenario and that, as a global player, you do not need to be regulated directly in the EU 27 if there is an agreement that you comply to the regulatory requests of the EU 27.

At this point, I do not see us moving away from large market infrastructure pieces of legislation. Our regulators shape them and are keen for them to be fully implemented, whether it is EMIR or MiFID. We have two others being implemented this year, which are much quieter. There is SFTR, which deals with the repo markets and trade reporting in those, and CSDR, which is the first piece of regulation that regulates the settlement providers in the post-trade space. Those are all being implemented in 2019. Our regulators are fully behind them and want to see them continue. If they conform to that legislation and they do all the activities to a standard that is designated as acceptable and compatible, those pieces of market infrastructure will be viewed differently. The cut-off for me is whether it is a retail-facing business or much more a professional wholesale market-based business.

Asset management causes me most concern. There is a global standard that allows you to delegate authority to an asset manager for fund investments. That is a practice that has been global. It is not solely an EU practice. The EU is currently looking at ways in which it might want to authorise that delegation of business. There are a small number of member states where it would have a large impact on their economy if you took responsibility away from them. I am talking predominantly about Ireland and Luxembourg, which have become specialists in funds, in the way they list them and the way they supervise them. If you centralised that process, the unique selling point of their regulators—their national competent authorities—would go. Then there would be a real issue for them, given the dependency of their economy on funds business, which might be seriously impacted.

I speak regularly to the different member states that will be affected, and they do not want that to happen. They want the global standard to be adhered to. They see no reason to break something that is working perfectly adequately. They believe that they have sufficient oversight. They have skilled national competent authority individuals who are able to make that assessment. I would worry that, if you centralised it too much, the skill set would be lost; you would lose a connection on the ground much closer to the firms, where you are aware of what they are

doing on a daily basis, by elevating it to a much more centralised, international body that might not have that ability to listen on the ground.

Q143 **Baroness Liddell of Coatdyke:** I am glad that you mentioned delegation. Equivalence and passporting are talked about a lot, but we do not hear much about delegation, although it is a key conundrum. I am glad you referred to it. You talked about equivalence and its limitations, and passporting is back in the news again today. What do you think the impact of passporting cessation is likely to be on each side of the channel?

Dr Kay Swinburne: In insurance, for example, it is very problematic. You would need specific authorisation either to pay money into an insurance contract or to have a pay-out from an insurance contract, if it is cross-border. Therefore, those contracts, millions of which affect citizens on both sides of the EU, will now be a major problem. I understand that regulators may play a role in trying to find a way forward, but, ultimately, it has to be a political decision. Various bodies have been to see the Brexit team at the Commission to talk about the contracts affecting individuals, of which we know there are millions in Germany and at least 1 million in France, so we know that it affects some large member states and their citizens. At the moment, we have no indication as to where the political decision will go.

I understand that the Brexit team at the Commission said it was inappropriate to discuss such things as continuity of contracts until the second phase of negotiations had happened. I would have liked citizens' rights not just to be about freedom of movement of people but to be about continuity of contracts, and for that to have been included in the first phase. It is important enough that it should have been part of the Article 50 negotiations, rather than being left to the future free trade deal and what might happen in the end game. I would have liked citizens' rights to be much more comprehensive than just the right to reside in a particular member state. Continuity of contracts will be highly politicised, but it needs a technical solution.

Baroness Liddell of Coatdyke: How about EU 27 counterparties? How are they likely to be affected? Are they worried about it?

Dr Kay Swinburne: We are seeing major concern at the moment, particularly from corporate treasury departments of multinational companies that have their headquarters in the EU 27, and typically use the global capital markets, particularly in London, to raise their financing. They do that because that is where the liquidity is and where it is cheapest for them to raise their funding. They would not want anything to prevent them using London or that made it more costly for them to use London as their finance-raising location of choice.

A large amount of lobbying is taking place right now among the corporates that are located and headquartered in the EU 27 countries, making sure that their Governments are fully aware of the implications

for them. Many of the corporates I have been speaking to talk about potentially moving their global treasury functions, if necessary, out of the EU 27 and into the UK, in order to continue unfettered access to global financial markets.

There are things on both sides where there are pressures building up to find solutions, and the corporates, as we have seen from some of the trade bodies in the UK, are taking a lead and doing a lot of preparatory work. Much of that is also being done by trade bodies across the EU 27. They are genuinely doing a huge amount of analysis. The impact assessments have been done privately, and they are presenting those right now to member states' Governments.

The Commission does not currently have a mandate as to what the terms of that future discussion will be. As the EU 27 sit around the table and talk about where their priorities are, each member state will have different priorities. Member states where, for example, delegation of asset managers' powers will have a major impact may have only one or two priorities. I would not want to be the large member state ignoring those priorities during the discussions, because everyone has to agree at the final stage. They need to make sure that they bring all the member states along, particularly the smaller ones with vested interests. The smaller member states, for once, will have a strong hand to play in making sure that it is proportionate and workable by the time we get to the end game.

The Chairman: Dr Swinburne, you agreed that you could stay longer.

Dr Kay Swinburne: Yes, absolutely.

The Chairman: Thank you very much.

Q144 **Lord Woolmer of Leeds:** Good afternoon, Dr Swinburne. You sounded very optimistic about a number of areas, and several times on supervision and co-operation on supervision. Whether or not the UK has an agreement or what the nature of the agreement is will be important. What are the barriers to the UK participating in common supervisory arrangements in the EU? How can those barriers be overcome?

Dr Kay Swinburne: There are several ways in which you could envisage some of that co-operation happening. It happens daily. It happens on the ground all the time. There is no reason for us to assume that there would be any difference to that, because it is not just within the EU 28 that that co-operation happens; currently, it is global.

I spend a lot of time with global regulators when we have a new piece of legislation in Europe that we are taking through the committee, and many of those regulators and supervisors spend a lot of time looking at the legislation that we are proposing and talking to us about the way it interacts and how it would affect them. I imagine that the UK will take a very proactive role in that legislative process, just as many other third-country regulators and legislators do now. I have dialogue globally, and I

am comfortable that that dialogue happens on a regular and detailed basis.

The UK will be able to start to shape what that future dialogue will look like. Because of the lead role that the FCA and the PRA have taken in ESMA and the EBA respectively, I genuinely believe that they will continue to have a major influence on the direction of travel. They will not have influence on the detail, but they will have influence on the direction of travel. I hope that the UK will ultimately continue to do the analysis and provide the data as it is required, and the detailed proposals that they are going to put before Parliament here, and make that available to their EU counterparties.

I would not stop at the EU. The UK is in a position to start taking a much stronger lead in the global fora that operate in financial services. Whether at the Basel Committee or at IOSCO, there is a lot of scope for us to take the lead in initiatives in many fora. I hope that, with global standards having emerged as the way forward in financial services, we can persuade our colleagues in the EU 27 not to step back from that, and that they need to continue to go in that direction.

There were some comments about the way in which the EU 27 are perceived not necessarily to adhere to all the global standards. I would suggest that much of that is detail, rather than the principles. In principle, Basel has definitely been implemented across all the member states. It is a question of detail.

French accounting standards are fairly unique. There are all sorts of exceptions within the French accounting system, which mean that people always think that exceptionalism is shown for French banks, for example. I would argue that they are implementing Basel, but, because they have global exceptions to IAS, they are therefore within the rules, but doing things slightly differently. It is still within the rules.

Lord Woolmer of Leeds: You say that there is a lot of day-to-day co-operation, sharing of information and so on all the time. More formally, do you expect that the UK—our relevant authorities—would be allowed to attend meetings and boards of supervisors in an observer capacity on level 2 and 3 discussions?

Dr Kay Swinburne: Whether or not observer status would be granted has certainly been discussed in the ECON Committee as a possibility. The Commission currently has observer status at those meetings; people can sit and observe, but they obviously do not contribute in any meaningful way. Norway currently does so at Council meetings; I understand that it does not do so within the European Supervisory Authorities. The Norwegians sit in on the political discussions and they participate in the technical working groups of the Council, but I understand that they do not participate in the ESAs.

When we set up the ESAs, we never foresaw that the UK would be leaving. There is now a huge opportunity, with the ESA review on the

table and starting its political journey through co-legislation, and some of our British MEPs might consider submitting amendments during the process which would consider opening up these fora to external observers, so that there would at least be a confidential dialogue amongst regulators about the direction of travel and perhaps a greater, more detailed dialogue about technical aspects of regulation.

They obviously sit around the table when it comes to colleges, where there is a cross-border entity, with the global regulator sitting there. The large investment banks have their colleges set up now. Those colleges will continue. The UK, as one of the larger regulators and supervisors, would be a leading voice and would shape a large amount of what happens. The common ground between the cross-border entities means that there is an incentive for everybody to keep rules aligned. I hope that continues.

Q145 The Chairman: Dr Swinburne, I do not necessarily want to inject new thoughts into this process, but I understand that Mr Barnier has finished his press conference in Brussels. We understand that, according to him, the transition period will end on 31 December 2020. In other words, it will end at exactly the time of our payments into the multiannual financial framework. It is a shorter transition period than the UK Government envisaged. How do you think we will solve issues that involve all those contractual opt-outs and other cliff-edge issues in light of that information? What do you think the prospects are?

Dr Kay Swinburne: In fairness, I am not sure that three months makes a difference, given the quantity of work that is required. What needs to happen is a political agreement on the future relationship by that time. In my experience, the EU is very good at finding solutions, even late in the day. Where there is a political will, it will find a way to deliver. That relies on good will being shown by both sides.

Any gestures the UK can make to show that it intends to stay aligned with the regulatory framework, and that it intends to keep co-operating with the EU entities and to play a good neighbourly role, will be seen in a very favourable light. There are some good will gestures that the UK can show, and I understand that there may be some of those on their way very soon.

The Chairman: I would like to pick you up on the word alignment, which causes great consternation among the UK media and policy workers. What is your understanding of the applicability of EU rules during the transition period—rules that will be formulated without the UK at the table? Do you foresee any input for the UK on those new rules between March or April 2019 and the end of the transition period?

Dr Kay Swinburne: My mandate finishes in March 2019; the parliamentary elections are shortly after the time when UK Members will leave. There is a lot of work to be done on the transition deal that happens just shy of two years after that, but you will not have your MEPs sitting there from March 2019 onwards, nor, I understand, will the UK

have anything other than observer status at the Council, potentially, during that period, in the way that Norway has observer status.

As regards the timing of any legislative proposals that may be coming during that period, the new Parliament means a new Commission. The new Parliament gets into place in July 2019. The new Commission will not be in place and go through its hearings with the Parliament until the autumn; it is usually mid-autumn. It will be the end of October or the beginning of November before the new Commission is in place. As for how quickly it can set its priorities with a new President and how quickly it can decide what its legislative work is going to be, it will be well and truly into that year. We normally find that it is almost March or April of the following year before we have the first fruits of the prioritisation that the new President has done.

My suspicion is that we may be worrying too much. The timing is such that there will not be much work going on. It is a question of whether the ECJ has full jurisdiction over what we are doing after we have left. In transition, it most definitely will. I assume that once transition is over that is the end of the ECJ's jurisdiction. I am not a lawyer, so I defer to those with legal judgment for that.

Q146 Lord Woolmer of Leeds: On the question of transition, Mr Barnier is now reported as saying that the transition period will have to end by 31 December 2020. The distinction has been made on transition in this country by our Committee, between a standstill period to enable the finalisation of the long-term relationship agreement and, after that, an implementation period to enable various institutions on both sides to adjust to it. Is this distinction between a standstill period to enable the finalisation and the detail of the future partnership relationship, followed by a period of implementation to gradually bring in the new arrangements, recognised in the European Parliament?

You said that you thought that three months does not make a difference. Are you saying that you think the full partnership future relationship can be agreed in detail, signed, sealed, delivered and ready to be put to the Parliaments and so on by 31 December 2020? If you are that optimistic, do you think there will need to be some ongoing period of implementation, itself complicated in how it is done?

Dr Kay Swinburne: I have obviously not had sight of Commissioner Barnier's text this morning to describe what he is proposing, but 2020 neatly ties in with the multiannual financial framework.

Lord Woolmer of Leeds: Indeed.

Dr Kay Swinburne: The MFF is where the budgetary contributions are decided, and the EU itself would then have to find a method by which it plugged the gap that the UK will leave in its financial framework. I can see why, with our paying fully into the budget, it would come to a natural end at that point. I believe that a political decision on the principles going forward—what the new future relationship is supposed to look like—can be agreed in principle by that date. Even if it was three months longer, it

would make no difference. The deadline will be the deadline, and people will work to the deadline to deliver what needs to be delivered.

No one among my colleagues in the Parliament, or indeed among the member states I talk to, wants a cliff edge of any kind, whether in 2019 or two years later, or whenever that period may end. They want there to be an agreement that there will be some form of movement towards the next phase. They understand that the UK did not want a long transition period. When I talked to colleagues a year ago, they assumed it would be a transition period of at least five to seven years, while the new free trade deal was being negotiated. The UK said that it did not want that; it wanted a short transition period.

I am not a lawyer or a specialist on the WTO, but I understand that there is a legal category that you need to be put into under WTO rules that effectively allows you to use transitional arrangements to benefit from existing standards and tariffs that you have agreed as an EU member. There is a legal requirement for the next phase to meet WTO standards.

I am not an expert on trade, but I am sure there are many people who can tell you what criteria we would have to meet in order to benefit from the WTO exception that would allow us to continue a role with the EU, as partners implementing this phase, before we get to the final free trade deal. I am not optimistic that this can be done within a couple of years. The Canadian free trade deal was considered to be fast, and it took seven years. If we can do this within a three or four-year window, it will be a first globally. I will be very surprised if it is quicker than that.

Lord Woolmer of Leeds: The UK Government's position, as they have told Parliament, is that they hope and expect to have a political agreement on the framework for a future relationship by October next year. That would be put to Parliament at the same time as the European Union (Withdrawal) Bill. You talked about it taking much longer than that even to get political agreement.

Dr Kay Swinburne: There are two phases. One is political agreement to get to an end point. The other is to flesh out what that end point would look like. There would have to be an awful lot more detail that then happens sector by sector, effectively, to scope out the free trade deal. That would be normal procedure when scoping an FTA anyway.

I understand that trade negotiations in the early phase take at least a year to scope, if not longer. I hope the scoping will be done during the interim period, and that by the time we get to the other side we will have a detailed plan of where the new FTA is supposed to be heading in each and every sector. It is a huge amount of work, and I do not underestimate how much work will have to be done on both sides.

Q147 **The Chairman:** Dr Swinburne, I do not want to impose on your good will. You have been very good to continue with us for as long as you have. I have one brief concluding question. You are a huge expert on scrutiny in the European Parliament of what is happening in the UK. You

must also be familiar with our processes of scrutiny here in the House of Lords and the House of Commons. Do you have any insights into how we need to continue to do scrutiny post Brexit, particularly in light of equivalence and the very close relationship in financial services?

Dr Kay Swinburne: I want to put on record the fact that I really appreciate the House of Lords doing these evidence-taking initiatives. On files such as MiFID, you were the only scrutiny from the UK that I received. Having been scrutinised and questioned by many Governments and Parliaments across the EU 27, the UK House of Commons has never asked me to give evidence, so I am very pleased that you ask on a regular basis and that you do this level of scrutiny.

That leads me to believe that the system in the UK needs to be reviewed. As a member of a committee in the European Parliament, I am able to draw on large amounts of resources and personnel to support the committee. Our secretariat is very large. I have resources that allow me to do impact assessments if we feel that the Commission's impact assessments are not good enough. We have a policy unit that supports our work. We have external panels that allow us to call upon experts to give us advice—for example, when we have to do monetary dialogue with the ECB president. We have external consultancies on our books that we can call upon to do external studies for us at any point, and we can call hearings and workshops on any topic that the committee decides to investigate. We have a very comprehensive set of tools at our disposal, with significant financial resources to make sure that, as non-experts, we have experts advising us at every stage.

When we set up the European Supervisory Authorities, we looked around the global supervisory agencies and we decided that we did not want the European system to mimic the US system, where the agencies are much more independent. Once they have the primary legislation handed to them, as a very large dossier, they effectively have little oversight of what goes on at the rule-making stage. We decided that was not a suitable system for modern-day financial services, because it gave too much interpretive value to the regulators themselves, with no scrutiny or accountability. For me, calling someone in front of a committee on an ad hoc basis is not proper scrutiny; it needs to be done routinely.

We did not want it to be the US system, so we set up a specific system where the Parliament and the Council have oversight of every rule that is made and the right to reject a rule if it is not in line with the political intent. If Parliament here has no oversight of the agencies' rule-making and no ability to call them back in any way or to tell them that they are not in line with the original political intent, we are in a very difficult position, where you give a huge amount of authority and discretion to unelected, unaccountable entities that then claim their independence as a way forward.

We restructured our regulators post financial crisis and post the ESAs. The FCA, the PRA and the Bank of England are now structured to work within the ESA structure. Where scrutiny is done by the European bodies,

you would now, in national law, not have an equivalent in place. I suggest that someone needs to examine domestic law, and who now scrutinises them and holds them to account.

The Chairman: If you have further thoughts on that, feel free to write to us. Indeed, feel free to write to us on anything that we might have omitted.

I think that brings to an end our public evidence session, Dr Swinburne. We have been very grateful to have you, and you have really helped us to delve deeper than we would have done in your absence. Thank you for coming. Happy Christmas.