

Exiting the European Union Committee

Oral evidence: The Progress of the UK's Negotiations on EU Withdrawal, HC 372

Wednesday 31 January 2018

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Members present: Hilary Benn (Chair); Mr Peter Bone; Joanna Cherry; Sir Christopher Chope; Stephen Crabb; Mr Jonathan Djanogly; Peter Grant; Stephen Kinnock; Jeremy Lefroy; Craig Mackinlay; Mr Pat McFadden; Mr Jacob Rees-Mogg; Emma Reynolds; Stephen Timms; Mr John Whittingdale; Hywel Williams.

Questions 836 - 905

Witnesses

[I](#): Dmytro Tupchiienko, Data Protection Lawyer, EY, London; Michael Emerson, Associate Senior Research Fellow, Centre for European Policy Studies, Brussels; Dr Tamara Kovziridze, Co-founder, Reformatics, Tbilisi.

Examination of witnesses

Witnesses: Dmytro Tupchiienko, Michael Emerson and Dr Tamara Kovziridze.

Q836 Chair: First of all, I welcome our witnesses to the Committee today: Dmytro Tupchiienko, who is a data protection lawyer from Ernst & Young; Michael Emerson, associate senior research fellow at the Centre for European Policy Studies; and Dr Tamara Kovziridze, the co-founder of Reformatics, from Tbilisi. You are all extremely welcome. We are very grateful to you for giving up your time today as we look at the experience of Ukraine, Moldova and Georgia as part of our inquiry into possible models for the UK's future relationship with the European Union.

I will say at the outset that the acoustics in here are not fabulous and, if everybody could speak up, including members of the Committee and our witnesses, that would be really helpful. We have a lot of ground to cover, so succinct answers would assist us to get through all the things that we would like to discuss with you this morning.

Thank you, Mr Emerson, for your supplementary evidence—the paper that you submitted to us—which the Committee has before it. My first question is: why do you think that these three association agreements have received relatively little attention in the context of the debate about the UK's future relationship with the European Union? Since you mentioned that specifically in your written evidence, Mr Emerson, would you like to go first?

Michael Emerson: Thank you very much. I have to apologise. I am a bit hard of hearing, so I would be extremely grateful if everybody could speak loudly and clearly.

Chair: There is no need to apologise at all. We will do our best to speak up.

Michael Emerson: This question is very important: why has this huge agreement been ignored when it is highly relevant and sits somewhere in the land between Canada and Norway? That makes it further relevant. As to the reasons why it has been ignored, nobody has said why they ignore it, neither the Government nor the Commission, so I am free to speculate. My speculation is that the British Government spokesmen, who are happy to talk about Canada and Norway as nicely branded countries with which we have a lot in common, feel rather uneasy about talking about Ukraine, a country which I know quite well and Dmytro comes from. It is a lovely country but they do not really want to talk about Ukraine because it is not us. That is an utterly superficial, rhetorical matter, so I would dismiss that, although it is an important explanation. That is for the UK's side.

For the Commission's side and Mr Barnier, they know it exists and they know what it consists of. My guess is that they say, "This is too easily



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favourable to what we know of the British Government's wishes: to be in three of the four freedoms but not in free movement and no budget contributions et cetera." That sounds too good to be true, even. I have heard some of them say, "Yes, of course it exists, but this is for transition economies, so not really relevant." Mr Barnier is making speeches that there is nothing between Canada and Norway, which is simply not true. This exists: 2,000 pages of precise legal text.

Dr Kovziridze: It is my pleasure to be here and to give you information about our experience of association agreements and the DCFTA that might be useful in the Brexit context. To add a couple of other points to what Michael just said that could be relevant in this context, Michael rightly mentioned that these are the countries in the transition process. These countries are still distant from the EU in terms of their level of regulatory approximation, so how the legislative framework as well as its implementation works is still different. The whole objective of those agreements is to bring those two regulatory frameworks closer. More specifically in this case, it means that it has to become similar to the European Union in the case of Ukraine, Georgia and Moldova.

Secondly, these are smaller countries and may be considered to be less relevant, especially in the case of Georgia and Moldova, in the global context. Maybe it is not that attractive to draw comparisons to those. Politically, for some politicians, it might not be that wise to say, "We want something comparable to Georgia," because this might not be perceived as the right example, if we compare the level of integration and the level of relationships between the EU and the UK in this case.

Thirdly, these agreements are rather recent. There is very little track record or evidence of how good they proved to be, although some initial evaluations have already been made. We have a project jointly between CEPS and Reformatics, and we produced the first assessment—a book—about how difficult, how easy or how attractive it proved to be part of this association agreement. It is a very prudent and critical assessment.

Even though the content of the agreement is very deep and very thick, and there could be very interesting elements for the EU-UK context in it, on the superficial level, and viewed from a distance, it might appear that it is not relevant. But it is, and I hope we will have the opportunity to discuss it in greater detail.

Chair: Indeed. That is very helpful. Mr Tupchiienko, would you like to comment on that question?

Dmytro Tupchiienko: Mr Chairman and distinguished members of the Committee, before I start, I would like to reiterate that I am answering the questions not on behalf of Ernst & Young but as a barrister qualified in both Belgium and Ukraine.

Chair: We understand that entirely.



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Dmytro Tupchiienko: Thank you very much. My speculative answer, as Michael already said, would be that, given the possibility, the only thing which could be taken off the experience of the Ukrainian association agreement for the UK would be that a bespoke future agreement between the UK and the EU is possible. That is the only answer that could be drawn now. It is still too early to analyse the consequences of implementation of the Ukraine-EU association agreement, because the last ratification instrument was lodged with the relevant EU institutions only in early October, so it is still too early even to think about the *modus operandi*.

Q837 **Chair:** That is very helpful. My second question is this: you made reference, Mr Emerson, to the fact that one of the four freedoms does not apply to those agreements, which makes the point that the four freedoms can be divided, if there is a will. Very briefly, was there much discussion during the negotiation of the three agreements about whether free movement should or should not be included, or did the EU make it clear from the start, "We are not putting that in the mix"?

Dmytro Tupchiienko: In the case of Ukraine, it was made clear from the start that there will be no free movement *per se*. However, there are a few points in the association agreement that allow, within the scope of freedom of establishment, free movement of professionals, again with certain reservations, but not to the extent that it will be understood as free movement of persons.

The other thing is that the free movement of persons was also conjoined with such issues as the introduction of biometric passports in Ukraine, which are still in the process. For example, I still do not have a biometric passport; I still travel on the old one. I did not have the opportunity to get it. Can you imagine that, in a country of 45 million people, 40 million people are trying to get a biometric passport at once?

Given the other three remaining freedoms, they are also somehow censored in a way. There are certain restrictions, for example, with regard to unbundling of gas transportation or energy transportation systems, which are still in the early stages of performance.

Q838 **Jeremy Lefroy:** Thank you very much indeed and good morning. I just wondered whether the desire not to have free movement came from the European Union or from Ukraine.

Dmytro Tupchiienko: The answer is that it came from the EU.

Q839 **Jeremy Lefroy:** It came from the European Union, so Ukraine wanted it.

Dmytro Tupchiienko: Ukraine wanted it as much as possible but, given the time, just after the Maidan revolution, it was either take it or leave it.

Q840 **Jeremy Lefroy:** I see. It was the European Union that said, "We do not want freedom of movement."

Dmytro Tupchiienko: I would assume so.



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Michael Emerson: It was quite remarkable last year, in the context of the huge refugee crisis, that the EU agreed to visa-free travel for people with biometric passports, in a context in which this was being refused even to Turkey. The EU made quite a politically brave step in that respect.

Q841 **Mr Whittingdale:** I take what you say about not attaching complete importance to the differences but, none the less, Ukraine is a country where there is an ongoing conflict, where a large part of its territory is under foreign occupation, and where the greatest problem is probably endemic corruption from top to bottom. That is massively deterring foreign investment into Ukraine. Some people in Ukraine seem to think that moving towards the European Union would provide an economic bonanza and lift them out of poverty, and that, probably for the reasons I suggested, has not happened. What would you say have been the benefits to the people of Ukraine of the association agreement and the DCFTA?

Michael Emerson: For Ukraine, which is in the course of a dramatic struggle to assure good democratic governance and de-corrupted governance, this provides a fast-track roadmap into decent, modern regulatory governance. That legislative process is underway and seriously engaged. It is a huge legislative process. This is in a context in which the Government themselves are wobbly in terms of their commitment to oligarch-free, de-corrupted governance. You have these two major elements there in the Ukrainian body politic: one, you have elements of old-guard politics, and this new thing, which is a massive legislative process. If that was not there, there would be no structure, or much less of a structure, to the reform process. That is the first point. The second point, which is more easily expressed, is simply market access for goods.

Q842 **Mr Whittingdale:** You talked about the roadmap set out for reform, but progress along it seems to have stalled. The establishment of the anti-corruption court has not happened. The anti-corruption bureau is being harassed by the secret police. The main reformers are being removed, and there is a general feeling that reform is not taking place; if anything, it is going backwards. That seems to me to be potentially in breach of some of the requirements of the association agreement, and it is going to hold up foreign investment. Do you see that the association agreement is still helping to drive that? There does not seem to be much evidence of it.

Michael Emerson: My answer is yes. It is not unchallenged in the Rada—the Parliament—but it is there and it is a reference. In particular in the Ukrainian case, civil society is extremely strongly organised. Civil society hangs on to this and says, “Government, you are not doing what you are committed to.” It is a significant part of the political dynamics of the country.

Q843 **Mr Whittingdale:** Civil society is also now having some problems in



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terms of intervention from the state, and it is quite pessimistic. I entirely accept that it hangs on to that document, but it does not seem to believe that it is driving the reform process in the way that was hoped.

Dmytro Tupchiienko: Yes, in a way, but it is still too early to judge the effects of implementation because, as I said previously, it has been only a few months since the last ratification instrument was lodged. You are probably correct in your assumption that there is a huge risk of reversal, not to the extent that it will come back to the Yanukovych times, when there was a clear alignment with Eurasian partnership on the agenda, but there will be, in my opinion, a certain delay in implementation. According to the association agreement per se, the first evaluations are only due within a certain scope of time: three years, six years or eight years, depending on the EU budget period in various areas. You are probably correct in your assumption that the risk of reversal exists, and society is not able to uphold the agenda as it was written in black and white.

Q844 **Mr Whittingdale:** Can I look at the consequences in the opposite direction from the West? It may just have been an excuse, but Russia used the fact that the borders were opening, to some extent, between Ukraine and the West as an excuse to impose barriers in terms of the trade to the East. It had other reasons for doing that but do you think there has been a detriment as a result of that in terms of Russia's response?

Michael Emerson: This whole affair, of course, led to war with Russia. One could have a robust debate with Russians and Ukrainians as to whose fault it was. You have arguments on both sides, but still Russia was the aggressor in this war and it was triggered by the end of the Yanukovych regime. You will recall the political circumstances: people at the barricades, anarchy, the fleeing of Yanukovych to Russia and the beginning of the hybrid war in the Donbass, when Russian interests were helping the separatists. All of this reflects profound underlying tensions between Russia and Ukraine, which were brought to the surface by this clear act of pro-European, pro-western orientation.

Q845 **Mr Whittingdale:** Yes, absolutely, and my colleague Jonathan and I were in Donbass six weeks ago. I was exploring whether or not the Russian response in terms of restricting trade between Ukraine and Russia—and the fact that there is a war going on does not help either—countered, to some extent, some of the benefit that they had from the association agreement.

Michael Emerson: The Russian response has consisted in suppressing the CIS free-trade agreement between Russia and Ukraine, and sanctioning, which becomes mutual sanctions, so trade between Russia and Ukraine has collapsed. In addition, Russia sustains the separatist regime in Luhansk and Donetsk, and plays hard-to-get over the Minsk II agreement.

Q846 **Mr Whittingdale:** Can I look at the question raised of free movement?



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You mentioned visa liberalisation, which I think is the one thing that Ukrainians regard as a real result. Also in Moldova, which we are looking at, as I understand it, any Moldovan citizen has the right to apply for a Romanian passport and, therefore, can access the EU by that route, if they choose to do so. To what extent is free movement, at least in very small part, coming about? That is not in terms of large-scale migration for work, but Ukrainians have access, which they did not have before, into the EU, and the Moldovans can, if they want, obtain full access.

Dmytro Tupchiienko: In certain parts but not all of Moldova, the direct descendants of people who were born before March 1939 can theoretically apply for and get a Romanian passport. There are certain areas of Moldova, such as Transnistria or the north of Moldova, where the descendants of Russian people who were forcibly transposed there during the Soviet times or a lot of ethnic Ukrainians live. To a degree, lots of Moldovans can technically get access to Romanian citizenship, finally end up in the EU and enjoy all the rights and privileges of EU citizens. Moldova is a tiny country of only a few million people. In my personal opinion, I doubt it will put too much weight on, for example, the labour market or drawing of social-security benefits. There were lots of issues before that but I believe that the situation is stabilising now. You are absolutely correct that such a possibility exists.

Q847 **Mr Whittingdale:** Essentially, because Moldova is so small, they did not really mind. Can I ask one last question? It was also said that membership of the European customs union and membership of the Eurasian customs union were totally incompatible, but we have just had the signature of the Armenian comprehensive and enhanced partnership agreement. I wonder whether you think that carries any lessons for us or suggests a model we might look at.

Michael Emerson: Armenia, as you know, was pressurised by the Kremlin to quit the DCFTA and join the Eurasian Economic Union, which it did. The Armenian experience in the Eurasian Economic Union has so far been an unhappy one. Economically, it has not been beneficial and, in addition, it has cut them off from Europe to a large degree. However, in the course of this year, the EU signed an enhanced co-operation agreement with Armenia, and we are seeing, at the broad geopolitical level, some shift.

At the time that the Ukraine crisis broke out and it joined the DCFTA with the others, that marked a complete split in the six eastern European countries between the Eurasian camp and the European camp. The European camp is relatively solid; the Eurasian camp is a bit shaky. The Armenians are unhappy. By the way, Azerbaijan, of course, is not in the Eurasian Economic Union. What we see underway—and this was visible at the Eastern Partnership summit a few months ago—is a visible demand by the Eurasian countries, Belarus, Kazakhstan and Armenia in particular, to find some kind of compromise with a significant degree of co-operation with the European Union, and not to be locked up in a protectionist Eurasian Economic Union.



Q848 **Mr Whittingdale:** I have not studied the partnership agreement, because it has only just been signed, but is there anything we should look at in that, which might give us lessons?

Chair: Just a short answer: are there any lessons in that agreement that would make it worth looking at, in a nutshell? We need to move on.

Michael Emerson: First of all, there are lessons for Ukraine and Georgia et cetera. "Are there lessons for the UK?" is a different question. In terms of lessons for the UK, this has to be sorted out, simply, between the UK and the European Union. The particularities of the oligarchs in Ukraine have nothing to do with the British possible use of this model. I would seriously suggest that, in discussing the DCFTA model, one can even, for the British debate, drop the words "Ukraine, Moldova and Georgia." The texts are catalogues of European Union laws and policies, with which the UK may wish to associate. That can be taken straight. These are very interesting experiences but they are not, in that sense, directly relevant.

Q849 **Stephen Crabb:** Mr Emerson, can I come back to an answer that you gave to an earlier question? You suggested that the reason that the European Commission had not been speaking about these association agreements as a potential starting point for the negotiations with the UK was that—and you used this phrase—it would be too good to be true for the UK's interests. Can I just press you a bit further on that? Is it your understanding that the Commission is absolutely determined to avoid going down the road of a Ukrainian-style association agreement for the UK, precisely for the reason that it would be tantamount to having our cake and eating it?

Michael Emerson: A chink in Mr Barnier's armour appeared at a recent summit meeting. He distributed a graph to the Heads of State and Government, which you may have seen; it is public. It was a staircase. At the top of the staircase, you were Canada; at the bottom of the staircase, you were Norway, or the other way round. Ukraine was there in the middle of the staircase. If the British side receives from the Commission side, "This does not exist," you simply wave that piece of paper at them.

Q850 **Stephen Crabb:** If you were advising the British Government, would you be saying, "Do everything you can to keep this model on the table as a potential template for negotiations"?

Michael Emerson: Yes. I will say it a bit more precisely: the Prime Minister talks about a deep and special relationship, and David Davis talks about Canada-plus-plus-plus. If you were to try to understand what they had in mind—and we do not know what they have in mind—and help them imagine in precisely legally operational terms what that might mean, the answer would be, "Have a good look at this and put it on the table."

Stephen Crabb: Can I bring in the other panel members on the role of



the Court of Justice in the association agreements? A position paper was published by the UK Government last August, which specifically referred to the Ukrainian association agreement as an example of providing a dispute-resolution mechanism for interpreting the trade agreement that does not necessitate the Court of Justice having direct jurisdiction: effectively, an international arbitration mechanism. Is that a correct interpretation of the Ukrainian association agreement, Mr Tupchiienko?

Dmytro Tupchiienko: WTO arbitration, not international arbitration, is specifically mentioned in the agreement. The ECJ, or the Court of Justice of the EU, as it is called now, is mentioned only once in the Ukrainian association agreement. In the context of approximation of Ukrainian laws, which are superimposed on the Ukrainian legal system, dispute resolution is mentioned only in alignment with WTO arbitration rules. Otherwise, the ECJ is mentioned only in terms of it being beneficial to use the precedents as guidance in spirit and in fact, but not an obligatory issue.

Michael Emerson: I would just add a phrase to that. The role of the European Court of Justice is mentioned when there are issues of interpretation of European law; otherwise, the arbitrators can get on with it without the Court of Justice.

Q851 **Stephen Crabb:** It is your understanding that these association agreements preserve the supremacy of the domestic courts of the respective countries.

Dr Kovziridze: Yes, because there is a political element in this context. When we were negotiating the agreement, one of the key principles was everything but institutions. None of Georgia, Ukraine or Moldova is participating in any decision-making institutions of the European Union. That was a very purposeful principle of this agreement, and this was the policy of the European Union. This was definitely not something requested by the three countries. Keeping the court out of it is, in a way, a continuation of this, because these three countries are kept far from the institutional structures of the EU, since they are simply not members and there is no prospect of membership in the foreseeable future. It would not be in the EU's interests to introduce that element to the agreement. Therefore, the agreement has its own dispute-resolution mechanisms, like any trade or other agreement, which is where disputes are sorted out in the first place, bilaterally.

I want to add a couple of things about the very logic of the agreement and the freedoms, which were discussed here earlier. Regarding freedom of movement, as you know, these agreements were signed in the context of the Eastern Partnership policy, which was predefined and pretty much unilaterally defined by the EU and offered to the countries in the eastern neighbourhood. Free movement of people was never part of that, whereas the association agreement and the DCFTA were part of this EU policy. The three freedoms are not explicitly mentioned in those



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agreements. Content-wise, ultimately they lead to the realisation of those freedoms, but they are not yet in place.

One of the key elements of this agreement is conditionality and the legal approximation process. The very logic is that the three countries are supposed to bring their legislation and implementation practice close to the European Union, and this will take about 10 years. The maximum approximation period that is possible is 10 years, whereas it varies between two, three and five, depending on the directive and regulation, on the area and on the topic. It is an ultimate objective to have a stake in the internal market and to get to a situation where the three freedoms—not the free movement of people but the other three—are a reality.

The departing point is very different in the three cases from in the UK. When Michael said that the content of the agreement is a useful thing to look at, it is from the point of view of what areas, topics of co-operation, trade-related aspects and general economic or other aspects are covered, but the logic of the agreement and the way it sees the development of the relationship in the future would be completely different.

In your case, the departing point is very different. The legislation of the UK is very much like the EU legislation, or identical to it, which is not at all the case in the three states. For Georgia specifically, we were very cautious to take excessive legal-approximation obligations. We were probably the most difficult negotiator, because we were scrutinising those very burdensome rules and regulations very closely, and trying to find ways not to impose excessive regulatory burden on Government or on private business. Therefore, our agreement contains the fewest obligations in this respect, if we compare it to Moldova and Ukraine.

Q852 Joanna Cherry: I have a clarification question in relation to the European Court of Justice. As I understand it, the arbitration panel must refer questions on the interpretation of European Union law to the European Court of Justice, and the European Court of Justice's ruling is binding. That is correct, is it not?

Michael Emerson: The main game is arbitration: one appointed by each side and one third party; binding arbitration. The European Court of Justice comes in if there is a controversy over interpreting European Union law, in which case it is invited to deliberate on the subject.

Q853 Joanna Cherry: It must; it is obligatory. Is it not the case, Sir, that it is obligatory? If there is a dispute on questions of the interpretation of European Union law, the arbitration panel must refer the matter to the Court of Justice, and the Court of Justice's ruling is binding. That is a legal requirement of the agreement, is it not?

Michael Emerson: Yes.

Joanna Cherry: I just want to be clear on that, because it is quite



important.

Q854 **Craig Mackinlay:** Have there been any instances to date where arbitration and ECJ involvement have been tested in reality? That would be the proof of the pudding as to what the agreement really means.

Michael Emerson: In these three agreements?

Craig Mackinlay: Let us see what happens in a real example. Has it not happened yet?

Michael Emerson: No, no disputes yet.

Craig Mackinlay: We await one with interest.

Q855 **Emma Reynolds:** Thank you for coming before our Committee. In 2004, when Poland joined the European Union, I understand that both Poland and Ukraine wanted to maintain an open border because of fears of the impact on both economies. Can you explain why the European Union rejected that request?

Michael Emerson: There are some interesting things happening on the Polish-Ukrainian frontier these days. Of course, the Ukrainians appreciate visa-free travel into Poland a lot. Of course, there is no customs union, so there are customs checks. This is a point of considerable potential interest for the British side leaving the customs union but wanting to have the most facilitating customs procedures: what Poland and Ukraine do together, like Norway with Sweden, Germany with Switzerland, and Hungary with Serbia, is to have joint, shared manning of the customs posts. The customs business becomes a one-stop shop in which the two parties are both present. That is very good for speed. For Ukraine, it is also exceptionally important as a counter-corruption method. That is not relevant to the British-Belgian frontier, but it is important for that case.

Q856 **Emma Reynolds:** The European Union insisted, because Ukraine was not part of the customs union, that there had to be checks at that border.

Michael Emerson: Yes.

Q857 **Emma Reynolds:** Was there any discussion during the negotiation of the association agreement? Did Ukraine propose to join the customs union and was that considered?

Michael Emerson: It is a good question. The question has been raised politically at the highest level. President Poroshenko has started saying, "Hey, next thing to do: let us join the customs union". This became a subject of debate. With a Ukrainian colleague, I published a paper on the subject, which I can make available in the minutes. Basically, it is a silly idea, because the first thing that Ukraine would have to do in adopting the common external tariff would be to introduce tariffs for its CIS trade partners. More broadly speaking, as you know in the British case, joining the customs union means not being able to have your own trade policy with third countries.



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If you are Andorra in relation to Spain and France, where 99% of your trade is with the European Union, it makes sense. If it is only a half-and-half job, the cost of joining the customs union in this respect is a significant one. That is why the issue has been disposed of as not a good idea.

Q858 Emma Reynolds: Are there any lessons that we can learn, given that there is this hard external border between Poland and Ukraine, as to what our external borders will look like after we leave the European Union, both at Dover/Calais and within the island of Ireland?

Michael Emerson: The analogy is valid if the hypothesis is that the UK quits the customs union. Frankly, the Ukrainian customs service is so inefficient and still terribly corrupt that there is not much point looking at that too much if you are interested in the British-French/British-Dutch future border.

Picking up on the business of shared border controls, you can absolutely imagine that being strongly developed in the British case. Those of us who travel by Eurostar meet the British border guards in Brussels railway station, so that is more or less the same sort of business. Something like that can be imagined for facilitated trade and facilitated customs procedures, without being a member of the customs union.

Q859 Hywel Williams: Good morning. My country, which is Wales, shares one characteristic with former communist eastern Europe within the European Union, in that we get cohesion funding because we are so poor. Is there any similar procedure within the agreements or within the DCFTA as far as Moldova, Georgia and Ukraine are concerned? If so, how does it operate and how does it do?

Dr Kovziridze: The whole relationship between the European Union and the three states envisages EU external assistance. This assistance for the European Union is a soft policy measure, if I may put it like that, because the assistance is used to fulfil the obligations of the association agreement and the DCFTA—let us say, to draft the legislation and to implement it. The conditionality that is embedded in the agreement is very much linked with the assistance that we receive. This is true for the technical assistance.

For other assistance that comes from the European Investment Bank and other institutions, that is mainly spent on infrastructure projects et cetera. But overall the assistance that the European Union grants—to Georgia in this case, but it is true for other states as well—is very much directed towards the implementation of this agreement and towards the fulfilling of the obligations by Georgia. There is conditionality embedded in the assistance as well, as you very well know. To receive budget support, certain things need to be done, and these are related to policy-making. It is related to what policy Georgia is conducting, and that is controlled and checked. Based on that, the assistance is granted.



Q860 Hywel Williams: Cohesion funding has a regional policy type characteristic as far as Wales and other areas within Europe are concerned. It seems to me from what you are saying that that is not the case as far as these countries are concerned.

I have another question about Horizon 2020 and the Erasmus programmes that are aimed at particular sectors, in this case universities. Do those programmes operate across these three countries and, if so, how are they operated and are they successful?

Dmytro Tupchiienko: Chapter 28 of the Ukrainian-EU association agreement explicitly says that Ukraine may choose to participate in those agencies relevant to the implementation of the agreement, in this case particularly Horizon 2020. There will be budget contributions from Ukraine but only to the extent that is related to these particular agencies.

Hywel Williams: It is a buying-in type arrangement.

Dmytro Tupchiienko: It is indeed.

Q861 Hywel Williams: My country is clearly western-facing, to some extent—that is, there is a relationship between Ireland and Wales—as well as it being eastern-facing towards the rest of the UK. This is facilitated by Interreg funding, or it has been in the past. Is there anything like Interreg funding between these three countries and the European Union? If so, how does this operate and how is it doing?

Michael Emerson: I would like to come in on the agencies and programmes question. Here, the agreement is very nice from a British standpoint. There is a list of about 30 EU agencies that are officially open to neighbouring non-member states that wish to associate with the policy in question. One could expect the British Government, sooner rather than later, to comb through this list and say what they like. This has not been done in public, except for one remark about the pharmaceuticals or medicines agency, and possibly the civil aviation agency. There are loads of things in there that are open. This is linked to the DCFTA question: which of the chapters of EU legislation does the UK wish to continue to relate to? If we want to carry on with that, we can take the agency with it.

On the funding question, Tamara mentioned the European Investment Bank. Everything about financial assistance to the three DCFTA cases is completely irrelevant for the UK, except that the European Investment Bank is very important in funding investment in the UK, and the question as to what will happen there is not yet determined. The European Investment Bank will remain entitled to invest in this non-member state, but the amplitude of that seems to be not yet developed.

Q862 Stephen Timms: To your point about the list of 30 things that Ukraine and the others can join, can you confirm if the European Medicines Agency and REACH for chemicals regulation are both on that list?

Michael Emerson: Yes.



Stephen Timms: It might be quite helpful to see that list of 30, Chair. Perhaps it could be sent to us.

Chair: Indeed.

Q863 **Stephen Timms:** Do the association agreements make any reference to the European Charter of Fundamental Rights?

Michael Emerson: I speak under your control, but I believe there is no reference in the DCFTA to the Charter of Fundamental Rights. Ukraine, Georgia and Moldova are all signatories of the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, and that takes care of that, one may say.

Q864 **Stephen Timms:** Mr Tupchiienko, article 8 of the charter underpins the EU rules on the free exchange of data. This is an area of your particular expertise. Do the association agreements cover this question of free exchange of personal data?

Dmytro Tupchiienko: Yes. It is article 15, on protection of personal data. There will be some co-operation to ensure an adequate level of protection of personal data in terms of, for example, GDPR implementation.

Q865 **Stephen Timms:** That means that, under the agreements, it is possible for businesses and individuals freely to exchange personal data between Ukraine and the EU, does it?

Dmytro Tupchiienko: I would assume so, provided the relevant GDPR parts are carefully drafted and inserted into the newly drafted legislation after 28 May.

Q866 **Stephen Timms:** We understand that there is reference to financial services in the agreements. What access do banks in Ukraine, Georgia and Moldova have to the EU financial services market?

Michael Emerson: I am very glad you raise the question of financial services, because there is an exceptionally important point in the Ukrainian agreement that I will come to in a moment. On the Ukrainian side, they have very little. The Ukrainian banking system is in pretty bad shape. The biggest bank, PrivatBank, had to be nationalised recently after a big financial mismanagement scandal. Quite a few European banks are established in Ukraine, and they of course have full access to the European market for themselves. Other small Ukrainian banks are interested in their local business more than anything else.

The important point, in my opinion, for the British side is to have a good look at page 1,728 of annexe 17 of the agreement. You obviously have not read it yet, but the important point is that the agreement has a special annexe that says, for certain services—financial services and telecommunications—under strict conditions, Ukraine can have full internal market treatment for freedom to do cross-border services and freedom of establishment.



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This is saying that, if Ukraine fulfils perfectly all the EU financial services directives, it could have full access to the financial services single market. It is very surprising to me that the City of London people and so on have not picked up on this, because this feature is legally written out. The conditions are very strict. The Commission has to verify that Ukraine is fulfilling all its commitments to the directives in question, keeping up to date with the directives and so forth, but if it ticks all those boxes, it is in.

This is absent entirely in the already lively debate as to what the relationship between UK-based financial services and the EU will be. It seems to me an obvious issue that the UK could say, "Yes, we would like something like annexe 17 of the Ukraine agreement. We are perfectly qualified to meet the conditions as of now and intend to remain so."

Q867 **Wera Hobhouse:** Adding to this, in the current debate in the UK, the term "vassal state" has been floating around. Would you describe that as a bit of a vassal relationship, in that they have to agree with all the directives and European laws without having a say on them?

Dmytro Tupchiienko: Can you please rephrase the question?

Q868 **Wera Hobhouse:** I do not know whether you have followed the UK internal discussions about the vassal state, in that, in the transition period, the UK would have to agree to all regulations of the EU without having a say in it. Could the relationship you have just been describing, in terms of the possible access to financial services for Ukraine, be described as a rather one-sided relationship, where it has to agree with all the EU directives without having a say in them?

Michael Emerson: First of all, all the directives in question are, today, your directives. They are British directives. You signed up and you were very influential in establishing them. Of course, if the full internal market treatment is to be sustained, there will have to be a sustained, updated compliance with European law.

Q869 **Craig Mackinlay:** On the back of financial services and banking, is the situation this? Ukrainian X bank has decided, "We do not want to do any trade in the EU. We can do what we like, well or badly, or however we decide, under Ukrainian law." They can do what they please in Ukraine. Then Ukrainian Y bank decides, "Yes, we do want to do cross-border trade into the EU, and thus we need to comply with all the regulations that the EU requires of us." Is that the situation that exists? You can be a bank in Ukraine that decides, "We just do domestic things; we do not have to comply with all the EU rules," but the other bank decides it does and ticks all the boxes, as you so ably described, Mr Emerson. Is that the situation? Mr Tupchiienko, that is probably in your field of expertise.

Dmytro Tupchiienko: The short answer is no, because there is an explicit provision that directive 2006/48 has an expected timeframe for implementation, which is four years, and that includes, for example, requirements for access to taking deposits, relationships with third countries and prudential supervision. It is a must, not the will of a



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certain bank, and it is in the association agreement. The *acquis communautaire* in respect of financial services is superimposed on Ukrainian banking law or whatever legal domain. It is a must and it has to be implemented, in this particular case, within a period of four years.

Q870 Craig Mackinlay: On the back of my colleague's question, Ukraine is likely to become a rule-taker in terms of banking and financial services, and will have no input into the rules that are being put together and discussed in Brussels and elsewhere.

Dmytro Tupchiienko: I would assume so, yes.

Q871 Mr Djanogly: Good morning. I want to go back to the scope of the association agreements. We tend to concentrate on trade, but I remember looking at the Georgian one when it was signed, and what really struck me was how similar it was to an EU accession agreement in terms of the chapters. It was not just trade; it was economic liberalisation, democratic systems, energy policy and water policy. It just goes on and on and on. First, is it very different from EU accession? More fundamentally—Dr Kovziridze mentioned this before—is the whole purpose of these agreements aimed at eventual EU membership? Are these designed for the UK, which obviously is not in that situation?

Dr Kovziridze: Thanks for this question, because it was important, and it was very important for us to ask these questions prior to and during the negotiations, and even now. Formally, the agreement is in no way whatsoever a precondition for membership. During the negotiations, Georgia tried very hard to insert membership prospects in the agreement but it was not possible, so it does not contain any explicit prospects of membership.

What concerned us, and the area where we were particularly cautious, is that, as you rightly said, the content and the structure of the agreement, as well as the obligations that come with it, are very similar to accession countries because it covers almost all the areas. The number of regulations and directives that need to be approximated is quite extensive. During the negotiations, we tried to downsize their number and avoid excessive obligations, but there are things that need to be done to be part of this. Politically and economically, for us, it was important, and is important, to be part of this association process with the EU.

But the concern is this asymmetry, because the obligations that you take are very similar to accession countries. You have no say in determining the content of the EU legislation that you need to approximate. There is also an element called "dynamic approximation", which means that, as the EU legislation keeps changing, we have to keep changing and approximating our legislation with it. That is the reality of those agreements. Although they do not formally aim at membership, the obligations are very much membership-like.



Q872 **Mr Djanogly:** If you were to comply with all the association agreement provisions, how far off membership would you be?

Dr Kovziridze: It was mentioned to us in negotiations that it would be something comparable to Norway. I do not think that that is the case in reality, because the relationship between the EU and Norway is still much more intensive than the relationship between Georgia and the EU will be when we are done with the whole approximation process. It will take about 10 years to remove all the non-tariff barriers to enable the three freedoms.

The legal approximation is aimed at removing the non-tariff barriers. The DCFTA does not envisage any tariffs on trade in goods. It is the only FTA with the EU that is completely tariff-free. There are limited exceptions on two or three products but they are really minor; there are quotas on those. Trade is very free in terms of tariffs, but it is not free in terms of non-tariff barriers, and Georgia needs to approximate the legislation to gradually remove those non-tariff barriers in trade. Only then can the three freedoms be realised, and it will take time. Therefore, the trade-related impact of the agreement is not substantial so far, because it takes time to access the EU market. There are technical requirements and safety requirements that need to be satisfied to do that.

Michael Emerson: The question is what degree of flexibility the negotiator has to take all that stuff, the EU legislation, but not this or that item. How much flexibility and selectivity can there be? The answer in these agreements is that the Georgian negotiator in particular secured some degree of selectivity: that is to say, exclusion of certain items. We can mention the very important case of agricultural policy where Georgia and, indeed, Ukraine take no obligations to replicate EU law. This would come in a negotiating session with Mr Barnier. The question is whether you are cherry-picking or not. If the starting point is a comprehensive agreement, that is a good rejection of the cherry-picking objection. Within the comprehensive, there is, it would seem, some degree of freedom for differentiated treatment or exclusions, but not all that much, for the internal market.

Q873 **Mr Djanogly:** I understand what you are saying in theory. In practice, you mentioned agriculture in Georgia, but my understanding is that one of the main exports is wine. Because of the EU regulations surrounding wine, the big manufacturers have had to invest huge amounts of money to get their regulations so that they can produce the wine to EU standards and then be able to export it. In practice, is what you are saying practical? In practice, they are having to apply EU regulations on agricultural products.

Dr Kovziridze: This pretty much happens product by product. There are some products that Georgia can export without problems, but there are others where the so-called recognition has not yet happened. Therefore, exports of those products from Georgia are non-existent or very limited.



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Wine happened before the DCFTA, and there was a separate agreement on wine between the EU and Georgia. This is a bit of a special example.

Michael mentioned obligations in the agriculture sector. The agreement contains two chapters that concern agriculture. One is on food safety, and that is probably one of the most complicated chapters in the agreement. Georgia took the obligation to gradually approximate its legislation with about 300 EU acts, which is costly for the Government as well as for business. It needs a very careful approach.

Then there is the chapter on agriculture, per se. There, we managed to negotiate a text of the chapter that does not contain any legislative approximation obligations. Originally, the way it was presented to us—I can speak only for Georgia in this case—was, “This is the draft agreement; take it or leave it.” In reality, that is not the case because there is the possibility to negotiate either implementation periods and deadlines or even the content. As you know very well, it comes down to very specific obligations and wordings that may be very strict or rather soft and tentative.

Q874 Mr Djanogly: We heard about the level of market access from Georgia’s point of view, and you said it is a slow process. I would be interested to hear Ukraine’s experience. Since the DCFTA has been signed, what has the level of market access been? Is trade improving? Has it been beneficial for your country? Where do you see it going? How deep and comprehensive is “deep and comprehensive”?

Michael Emerson: For market access, the bottom step is the tariffs, which we get rid of. The next step is the technical product-safety standards—the safety of kettles, lawnmowers and that sort of thing. There are then 300 sanitary and phytosanitary regulations for food safety. The parties agree, basically, to do it. It will take them several years but, when they have done it, there can be full access.

There is a twist to this, which is worth the British side noticing. At the end of this technical standards game, there is an agreement on conformity analysis and assessment. It is called ACAA for short. You can do an ACAA if you are fully in alignment with EU technical standards and certification conformity procedures. The quality of an ACAA for the British in the future is that, once this has been negotiated and agreed, your goods pass “seamlessly”, to quote David Davis, into the EU market; that is to say, there is no need for any further conformity assessment verification. Any good that enters into the British market legally is automatically okay for the EU as well.

This animal exists, the ACAA. It has not been used very much. Israel is the first neighbour that has been able to negotiate an ACAA for pharmaceutical products, which is of particular interest to the UK. You should definitely do ACAAs.

Q875 Mr McFadden: I would like to continue the theme that my colleague just



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asked you about. We have a lot of debate in the UK about the difference between market access and membership. I want to explore this in terms of what these agreements give us. For example, in the Ukraine agreement, when it comes to manufactured goods, is the access the same as, say, for a French exporter exporting around the rest of the European Union, or is there a difference?

Michael Emerson: For technical product standards, yes, it becomes the same.

Q876 **Mr McFadden:** It is the same. Ukraine has the same access for its manufacturers.

Michael Emerson: They are identical.

Dr Kovziridze: It does not yet. Ultimately it will have, but not now.

Q877 **Mr McFadden:** Is this the process that you were saying would take some years?

Dr Kovziridze: Exactly. I will give you an example, and the logic is the same for Georgia as well. Let us say that we produce an industrial product. There is normally an institution in a country that issues a paper to say that it satisfies the safety and technical requirements so it is safe to use. The EU first has to recognise that institution as sophisticated and developed enough so that it can automatically recognise the papers issued by those institutions. It is a process. It assesses how these institutions function and what their procedures are, based upon which it issues the certificates of conformity, as they are called.

Only when this recognition happens will the Georgian—in this case—certificate of conformity be automatically accepted in the EU. Then the Georgian industrial product—the logic is the same for Ukraine and Moldova—can freely enter the European Union market without additional checks. Until that happens, there is a process of legislative approximation, checking of practice by the EU, monitoring of the process and doing assessments. Georgian institutions gradually become members of respective EU institutions of standardisation, et cetera. There is a process to get there.

The ACAAs that Michael mentioned are product-specific. Once you have the ACAA, this acknowledgement has taken place and then you can freely trade with the EU. You are then not allowed—and this is important—to place products on your market that are not compliant with EU requirements. For Georgia, it was important because, as a developing economy and an economy in transition, we import products that are comparatively cheap but still qualify from China or CIS markets. They are not produced based on the EU technical requirements, but they are on our market at the moment. Ultimately, once the ACAAs are concluded and the requirement is there that the same types of products should be placed on our market as are placed on the EU market, we have to import



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products produced in China that qualify to EU requirements, but not Chinese products that qualify to other requirements.

Q878 **Mr McFadden:** I take it from your answer that, first, it is the EU that decides whether the product meets the standard; and secondly, once that is decided, that affects products bought and sold purely on the domestic market and not just for export.

Dr Kovziridze: Yes, because the very requirement of this agreement is that our market functions just like the EU market. That should be the ultimate condition. We are not there yet, and it would not be realistic, or maybe desirable, to be there yet, because it is very costly. But that is the objective of the agreement.

Q879 **Mr McFadden:** Let me now ask you, Dr Tamara, about services. The UK is a service-dominated economy. We export a huge amount of services, be they financial services, legal services, creative industries, education and so on. These services are not affected by tariffs. It is all about common regulation, because tariffs do not really apply here. What is the situation in these three association agreements, broadly speaking, with regard to the export of services like those?

Dr Kovziridze: I can speak for Georgia in the first place. Our services market is very liberalised. We are not that kind of provider of services and not comparable to the UK obviously but, when joining the WTO, we liberalised the services market. There are very few restrictions on trade in services.

We adopted the same approach when negotiating the DCFTA with the EU but, in this case, the EU was more cautious about opening the market, so we ended up having reservations for services trade that are much higher on the EU side than on our side. Roughly speaking, there are slightly over 30 exemptions for Georgia and over 160 for the EU. The EU was much more cautious in opening services trade for Georgia, whereas the Georgian market was already open with fewer restrictions. We are not a very intensive provider of services. Tourism is one area that is very quickly developing, but there is still an asymmetry of potential there.

Q880 **Mr McFadden:** I am just trying to get an understanding of the legal freedom, for example, for a big Georgian legal, accountancy or consultancy firm to practise throughout the European Union. Does the agreement give that freedom to practise throughout the European Union or not?

Dr Kovziridze: In principle, yes, but there are some exemptions specified. As with the trade in goods, you would have a tariff-free situation but some agreements have exemptions; the same applies to services. In principle, yes. There are then restrictions on establishment when it comes to companies, et cetera. There is detailed content there. The answer in short is, yes, in principle, but with exemptions for certain areas and sectors.



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Q881 **Mr McFadden:** On all these areas—goods, services and agriculture—what is the EU’s legal expectation of Georgia, Ukraine and Moldova with regard to regulatory alignment? Is the market access dependent on keeping the same rules in place in a dynamic way as we go forward?

Dr Kovziridze: Yes. It is not the same or identical, but it is at least similar and comparable. The term we use is not “harmonisation” but “approximation”, meaning that it is brought closer. Every piece of legislation we draft is normally reviewed by the EU with comments and feedback given. It is a very closely monitored and scrutinised process that sometimes can absorb a lot of resources. It is not only that we say, “We drafted this legislation, we adopted the law and we think it is compliant with the EU regulations”; the EU has to say that, and reviews drafts of it.

Q882 **Mr McFadden:** Your domestic legislation is already being scrutinised and reviewed by the EU.

Dr Kovziridze: Yes, and it was scrutinised prior to the start of negotiations as well because there were preconditions to start the talks on the association agreement. The most elaborate and heavy part of the agreement is the legislation approximation requirement, because it is linked with constant back-and-forth and scrutiny.

There can be disagreements. Let us say that laws are adopted and Georgia thinks this is the maximum we can do at this moment, because other things are not realistic, politically unfeasible or simply expensive at this stage. If there are disagreements, we have to discuss further, agree and find a compromise if we want to keep relations in good shape. That is the day-to-day modus operandi at the moment of our relations with the EU.

Michael Emerson: Can I make a broader point on market access? We have been discussing whether the supplier of electric kettles can get his goods across the frontier. That is a technical question. But there is the earlier prior question as to what conditions the EU is likely to require to make a tariff-free free trade area. Here, one should expect, knowing the EU, that it will be more demanding than the Canada case. That means, in particular, that one can expect the EU to have requirements for conformity with EU competition law, environmental standards, labour law and intellectual property rights, to take four important examples.

If you have to pick up on these questions, you then find in the DCFTA the perfect specification of how to do it. You will be meeting this stuff in any case in the negotiation process, with or without explicit reference to the DCFTA. It is a very useful handbook for anticipating the content.

Q883 **Sir Christopher Chope:** Can I take Dr Kovziridze back to the issue of Georgian wine? Is there, at the moment, tariff and quota-free access for Georgian wine into the European Union? If so, are there any non-tariff barriers preventing the production of Georgian wine and its distribution



throughout the EU? It seems that in this country, where we like Georgian wine, there is not very great market penetration yet, and I was trying to find out why.

Dr Kovziridze: On wine, there are no restrictions in terms of tariffs or quotas. There is zero tariff on wine. In terms of non-tariff barriers, there was already, before the DCFTA, the so-called “wine agreement” between the EU and Georgia, which made it possible to export wine. There is no issue in terms of safety requirements, because what the EU regulations control is not quality—quality is a matter of competition on the market and perception by consumers—but safety. Wine faces the fewest non-tariff barriers on the EU market when compared with all other agricultural products produced in Georgia.

Exports to the EU of Georgian wine have substantially increased after the Russian wine embargo in 2006, but wine is mainly exported to markets where the awareness is higher. The Baltic states and Poland are the biggest consumers in the EU of Georgian wine and there is a growth tendency of exports, although wine is also exported to the UK, Germany and so forth. There are no technical, safety or tariff barriers; it is more a matter of market in the case of wine. In the case of other agricultural products, there are non-tariff barriers that first need to be removed.

Q884 **Sir Christopher Chope:** Which other agricultural products have non-tariff barriers?

Dr Kovziridze: Practically at the moment, even if there was a desire by Georgian producers, it would be impossible or very difficult to export dairy or meat products. We mainly export mineral water and wine. Recently, a recognition of fish products and honey took place. It is a process of product-by-product recognition. The way it works is that Georgia requests the process to be started and the request goes to the EU. There is then an assessment mission that assesses the sector, the Government institutions that work in the sector and the private companies that mainly operate on the market. It takes about six months to a year to finalise that process. If the result is favourable, gradually the producers can start to explore the opportunities.

Q885 **Sir Christopher Chope:** When the UK leaves the European Union, will the UK be able to enter into a bilateral agreement with Georgia that is more liberal than the current arrangements between Georgia and the EU?

Dr Kovziridze: Interestingly, the UK has already approached Georgia to conclude a free trade agreement. Initial consultations have already taken place and, as far as I know, the first meetings to explore the modalities of the negotiation process and the agreement have to take place soon. Georgia was the first one to be approached of all the third countries by the UK, probably because our reputation is that we are easy in negotiations in terms of how economically liberal we are. We are very much pro free market and open to free trade agreements. Whether this will be more liberal is to be seen. It is up to the UK now to propose the



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draft text of the agreement, as far as I know. I assume that it will be pretty similar to the DCFTA in terms of structure. In terms of obligations, it will obviously be different. Hopefully, it will be easier and more liberal.

Q886 Sir Christopher Chope: The European Union cannot place, under your association agreement, any constraints upon Georgia's ability to enter into a free trade agreement with the United Kingdom.

Dr Kovziridze: No, because we are not part of the customs union with the EU, unlike Turkey, for example. We are not restricted. We are not part of any other customs union, so we decide on our own which trade agreements to conclude. Since the conclusion of the DCFTA, we have concluded a free trade agreement with EFTA, China and Hong Kong, and we are now exploring an opportunity with India. We already had other FTAs but this is what came after the DCFTA.

Q887 Sir Christopher Chope: Would you agree that, essentially, these association agreements give privileged access to EU markets, but they vary enormously in their content and the determining factor is essentially political? Where there is a political will to enter into an agreement on a particular basis, that agreement is entered into. Where there is no political will, perhaps because of the EU's protectionist instincts, such an agreement cannot be reached. Any suggestion by Monsieur Barnier that there is a legal constraint upon the freedom to enter into association agreements of any nature is not a fair reading of the law.

Dr Kovziridze: It is a matter of political priority to decide specifically what type of agreement it will be and when to enter into it. The dynamics and the timeline are often defined by political factors.

What we have in place, in reality, are three association agreements that are very similar in structure and slightly different in obligations. Georgia has the least of all three, because we were very much against copy-pasting anything. We really studied the regulations, analysed them and tried to avoid excessive obligations where possible, while at the same time meeting the requirements and the political priorities that we had. There are similar agreements for the northern African countries, but they are much thinner in content. The DCFTA negotiations have only recently been initiated in those countries, specifically Tunisia and Morocco, but it is a very lengthy process and it is not perhaps comparable to Georgia, because we finalised the negotiations in less than two years. It was a very quick process.

Q888 Sir Christopher Chope: If the EU shares the ambition, the sky is the limit on the sorts of association agreement that there could be between the EU and the UK.

Dr Kovziridze: I think so.

Q889 Jeremy Lefroy: I have just a brief question, because these agreements have not been in place for a very long time and therefore you may not be able to say how effective the institutional arrangements are. I just



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wondered, from the experience of the three countries, what the institutional arrangements are and, more importantly, how effective they have been or whether they have not been put to the test. We heard earlier that the dispute resolution mechanism with Ukraine had not yet been put to the test. I wonder, for instance in the case of Georgia, whether any of the institutions have been put to the test in terms of disagreements.

Dr Kovziridze: Not really. There have been no arbitration or dispute procedures applied yet. The regular format of the institutional co-ordination set up obviously does take place. There is an association council at the ministerial level, and that takes place regularly. There is a set of committees that work, chapter-based, on trade and other issues. These committees meet regularly to make decisions on legislative approximation plans or discuss other strategic documents that Georgia needs to produce and that are required by the agreement.

Interestingly enough, this agreement is a very special one and probably the only one for Georgia that is configured this way. Although the agreement itself requires a ratification process if amended, there are annexes of the agreement that contain legislative approximation obligations. Basically, they contain lists of directives and regulations that Georgia has to approximate. These can be amended based on bilateral agreement between the parties without a parliamentary process. They can, in theory, either be extended or slimmed down. Extensions are required sometimes when the EU amends legislation. Because we have this obligation of dynamic approximation, we have to adjust our approximation obligations as well, for example. It is a very flexible legal text in this respect.

Michael Emerson: The Ukrainian case is different from the Georgian one in that the institutional framework is topped up with an annual summit meeting. This is an arrangement for big countries. The UK would presumably have a summit structure on top.

I will underline a very important point that Tamara has drawn attention to: namely, the legal distinction between the main body of the treaty text and the annexes, which is where all the detail is. The treaty text itself cannot practically be changed without a very onerous ratification process that takes years and years. The annexes can be amended by mutual agreement in the association council and its committees.

This leads into the question, which, as you know, has already been debated in the British case, as to whether there would be any flexibility with respect to new EU legislation. The answer, in terms of the rules, is that updating of the annexes can be done by mutual agreement. There is a presumption that there should be updating but, in practice, we observe now the Commission going through different chapters and saying, "Which ones should we really update? Which ones are unreasonable?"



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The question of whether it is reasonable or unreasonable is a very loose expression. Let us take the financial services question, where you will be aware of the enormously complex new MiFID II regulation that has just come into effect. The Commission is effectively saying to Ukraine and Georgia, "Look, you can give that a pass. You do not need to update for that. It would be excessively onerous." This is an illustration that there is some element of institutionalised flexibility with respect to amendment of the details in the system.

Q890 Peter Grant: Good morning, everyone. Could I start by looking back to the question of the Poland-Ukraine border? My understanding is that one of the requirements placed on Poland when it joined the EU was that it had to impose a border between Poland and Ukraine that Poland did not really want and Ukraine did not really want either. We have a very clear situation in Ireland. We have been to Ireland a few times now, and nobody wants a border between Northern Ireland and the Republic of Ireland. How likely is it that the European Union will agree to the UK leaving the customs union and leaving the single market with no border whatsoever, when it was so inflexible in telling Poland that Poland had to have a border even though it did not want it?

Michael Emerson: The strict answer is that, if we are out of the customs union, the UK could still be co-operating or being compliant with the Union customs code. The Union customs code is on all the details of customs procedures, which potentially includes the shared border guards, as well as other things such as transit arrangements and authorised economic operators—that is to say, enterprises with supply chain relationships that can get certified as good partners and have speedy and simplified passage through the customs. All that stuff is entirely open to the DCFTA partners and would be open in the British case.

Q891 Peter Grant: The requirement in Ireland is that there is no presence at the border; no physical infrastructure; not quick customs checks, but no customs checks whatsoever. Any association agreement will have to be agreed by the remaining 27 EU member states, including Poland. How easy will it be to persuade Poland to agree to a much better flexibility for the United Kingdom, which wants to leave, when Poland, which wanted to join, got a very hard deal? Is there likely to be difficulty in achieving the consent of the Polish Government, which is necessary for any agreement for the UK to be put in place?

Michael Emerson: If the issue is how difficult it will be for the EU 27 to negotiate, compared with the problems that Her Majesty's Government have in agreeing what they want, the EU side is remarkably organised and unified in its present behaviour. In addition, it has these texts. It has the experience of these agreements that exist. This is a legal bedrock that it will use, either explicitly or implicitly.

Q892 Peter Grant: It is a matter of fact that, although the EU 27 has agreed the negotiating principles, each individual EU member state has to agree to the final agreement. Poland or anyone else might say, "We do not like



that part of the agreement.” Poland effectively has a veto over the whole deal if it does not like the agreement that is being done. That is the reality of it.

Michael Emerson: Yes, absolutely. This is a mixed agreement that requires ratification of all member states as well as the European Parliament, et cetera, so any EU member state can veto it, as we have seen in the case of the Canada agreement where a Belgian regional government stopped it for some time.

Q893 **Peter Grant:** I want to look now at the comment you made—again, mainly to yourself, Mr Emerson—about the role of the European Court of Justice. I accept you said that the Court has a more restricted role in relation to the association agreement than it has in other EU business. But the UK Government’s position is absolutely, as far as we know, not negotiable and a complete red line that there will be no jurisdiction for the European Court of Justice in the United Kingdom after we have left. Is the position that the United Kingdom has adopted compatible with even the limited role that the Court has in relation to the agreements between Moldova, Georgia and Ukraine?

Dmytro Tupchiienko: As we already established, there will be referrals to the Court of Justice, specifically in terms of dispute settlements. They will not be referred to the Court of Justice per se as the forum, but there will definitely be referrals with regard to interpretation and taking into account the provisions. This interpretation will be binding.

Q894 **Peter Grant:** There is one further brief area I want to look at, just going back, Dr Kovziridze, to part of your comments earlier. My understanding from what you have said so far is that Georgia now has the benefit that your manufacturers have access to the European market on the same terms as EU members. In return for that, you have agreed that, in effect, your manufacturers now have to comply with standards that somebody else has set. I think you said that once the agreement is fully in place, even within the domestic Georgian market the goods must comply with European standards. What part will Georgia have in deciding what those standards are in the future? Will it have any part at all, or do you simply have to accept the standards that are agreed in the EU?

Dr Kovziridze: At the moment, we are in the mode of just accepting the standards, but there is an important detail that I want to share with you. Because we have come from the Soviet past and we had the old Soviet standards earlier on the market, and because we wanted to encourage the diversification of imports depending on the needs of the producers, starting from 2006, we unilaterally acknowledged technical standards of the OECD, EU countries and other important trade partners. It means that we unilaterally abolished any control of the industrial products that came with accompanying conformity assessment papers and certificates of conformity from those countries. That concerned import.



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For the purposes of the DCFTA, yes, you rightly mentioned that we simply have to accept it now. We have to approximate our legislation area by area, product by product, with the EU requirements. This is a period of about eight to 10 years. Ultimately, our standardisation and certification institutions will become part of the EU institutions, and we will not be a full EU member, so we will have some say ultimately in the process because we will participate.

We do not have this say now. As long as we do this approximation, we will simply take it as it is, and try to approximate it in such a way that we qualify and satisfy the requirements without imposing excessive burdens. We control that through fine formulations or, most importantly, the timeline for when we do this. We do it very slowly at the moment, because we are not a country that produces industrial products and exports them. It can realistically only happen if there is FDI coming into that sector, and a big investor does it and then sells abroad.

Q895 Stephen Kinnock: Good morning. I have a question about the arbitration panel. It is made up of one representative of Ukraine and one representative of the European Union institutions, if I am right. There is then a third party from another country. How is that third seat chosen? Who decides which country that person should come from and what their qualifications are for the role?

Dr Kovziridze: It is chosen by the two sides but that has never happened in practice so far. There has been no need to apply the arbitration procedures, so I cannot name any examples of which country representatives were chosen and specifically why. The agreement itself does not give a lot of detail at this stage. It is just that the two sides choose the third neutral party.

Q896 Stephen Kinnock: It is not clear what the process would be, whether it would be the European Union proposing somebody and Ukraine responding to that.

Dr Kovziridze: It is based on the agreement of the two sides. There is perhaps one relevant point about the Court of Justice and why it is the Court of Justice in the agreement that has to interpret the law. In our case, in these agreements, it is the European Court because it is all about EU legislation and its approximation. Should the UK conclude any form of association agreement with the EU, it will probably not be all about the EU legislation because EU products have to access your market as well. The configuration there, or who interprets what, might be completely different.

In our case, the essence of the agreement is that Georgia approximates its legislation with the EU legislation. The question may arise of what exactly that legislation says, and it is the EU Court that interprets, not the Georgian court. It can be a completely different set-up in your case because it is a bilateral thing. In our case, there is a higher level of asymmetry in that respect.



Q897 Stephen Kinnock: I am interested in the idea of a prudential carve-out, as I think it is called. In the services sector, particularly in financial services, if there is a view that there could be, because of the behaviour of the associate country, such as Ukraine, some financial instability, the European Union can revoke market access at any point. Can you give a sense of what might trigger the unilateral revocation of market access based on anything that might be happening in the Ukrainian or Georgian financial services sector, or any other, for that matter?

Dmytro Tupchiienko: You are referring to article 126, which is on page 2,014.

Stephen Kinnock: Exactly. That is the one.

Dmytro Tupchiienko: In cases of imprudent behaviour by a bank, as we have seen in recent times in Ukraine, certain licences may be revoked or, with regard to the protection of investors and depositors, certain safeguards may be imposed. We can theoretically imagine a situation in which bank X has access to the EU internal market in financial services, and takes deposits and provides services. This possibility may be stopped for the reasons of prudential carve-out in an extreme case.

Q898 Stephen Kinnock: That would be done entirely unilaterally by the European Union. There is no consultation. There is no advance warning and request for feedback, and no grace period to change the behaviour or whatever it is that might trigger it. It is just a unilateral decision by the European Union.

Dmytro Tupchiienko: The verbatim text says that each party may adopt or maintain measures for prudential reasons. There are no such things as you mentioned envisaged in the association agreement.

Q899 Stephen Kinnock: In this area of sectoral negotiations, for things such as mutual recognition of services and labour mobility, carve-outs can be negotiated on a sector-by-sector basis, which sounds a little like the Switzerland arrangement. Can you say a bit more about how that would work in practice? What would be the governance of that? Which European Union bodies and which Ukrainian bodies would come together and engage to agree on how to get more liberalisation in particular sectors? How does that work in practice?

Dmytro Tupchiienko: I can comment on such services as notary. It is clearly stated in the agreement that there are reservations on that particular issue, such that only citizens of Ukraine can perform or are permitted to supply notary services. My understanding, because the agreement is still very fresh, is that each regulatory body that governs a particular type of service horizontally will be consulted or will be advised in that particular regard.

Q900 Stephen Kinnock: I have a final question on the issue of ratification. The legal basis is article 217, which makes provision for some key aspects of the DCFTA to be implemented before they have been ratified.



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My question on that is: what happens if you have started the implementation but there is a ratification process going on in a national Parliament in parallel and then the national Parliament says no? Does the entire implementation of that provision stop right across the board, or does it continue even though the national Parliament has refused it?

My second, related, question is: if we were to go down the road of a DCFTA as the basis for the future relationship between the UK and the European Union post transition, what do you think the chances are of getting a DCFTA negotiated and ratified, or the process moving forward, before the end of a transition period, assuming that the transition period will end in December 2020? Is it realistic to expect that it could be done in that timeframe?

Michael Emerson: I have a couple of points in response. One is the provisional application business. In the DCFTA case, the largest part of the economic content of the agreement will be fully applied upon signature without waiting for ratification. Then the question is: what happens if the ratification runs into trouble? By the way, we had the case with Ukraine when the Dutch Government rejected ratification and it took a year before the Dutch got round to ratifying. In that particular case, the provisional application continued, but, if there is a definitive refusal of ratification, the game is off and you are back to the status quo ante.

Dr Kovziridze: Regarding the timeline, it is possible to keep parallel tracks of negotiating the DCFTA and the association agreement. This was the case for Ukraine, Georgia and Moldova. The negotiations started at different points in time, and finally everything was wrapped up in one agreement. It could be negotiable to just have a DCFTA—and it would perhaps be easier to negotiate; Georgia negotiated it in less than two years, although there was a preparatory period to prepare for negotiations—and in parallel to work on other issues that are not related to the DCFTA, but will ultimately be a part of the overall agreement that you will conclude.

You can have a situation where you first have a trade agreement and it applies without requiring the ratification of the EU member states, because trade is an exclusive competence and the signature of the EU institutions is enough in that case, with no ratification process from the member states. The other process goes in parallel with ratification and all that, and that part enters into force at a later stage.

Michael Emerson: On the question of the timing and what can be done before 2021, it is very interesting to notice that Ukraine, which negotiated this first, took seven years to do it. Georgia came along later, and step one in the process was that the Commission took the Ukrainian text, deleted "Ukraine", inserted "Georgia" and tabled that. Basically, the template was used as a starting point and the result was that it only took two years. This is an extremely important point, in my personal opinion, for the British negotiator to appreciate. Here, you have an absolute goldmine of agreed and verified legal language, which takes a huge



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amount of time to negotiate when starting from a blank page. That could be used.

The other point is one Tamara was referring to. There are parts of the business that are very important, which are referred to in the text, but are negotiated with separate agreements. The civil aviation area is one, and the energy community treaty is a second. Both of these are very big things. These can be negotiated separately.

Chair: One wonders if the British negotiators have asked for a copy of the Word file of all 2,000 pages.

Q901 **Craig Mackinlay:** I would like to explore as much as possible the realities of these borders. We have to consider the issue of Northern Ireland-Republic, Wales-Republic, England-France and other channel ports. I would like to consider Poland, if I may. Poland has the most unusual borders. It has Kaliningrad, which is proper Russia. You then move round to Lithuania, which is part of the EU. I would imagine that that is a very open border; well, there is no border. Then, of course, we move round to Belarus, which is part of Eurasia. Then you go down to Ukraine, where we have agreements in place but, because you are not in the customs union, you have rules of origin and all those types of complications coming into play. Then, of course, you move round to the more familiar territory of Slovakia.

What is happening on all those different sections of the border? I know, Mr Emerson, you said that the Ukrainian border controls are not up to a great standard. What do Polish customs and guards physically do there? Do they take lorries apart and say, "We are looking for rules of origin and we need the whole manifest," or is there a pre-clearance under this agreement on your table that allows these trusted traders and all those types of things to come into play? Poland is interesting because of these very different complex borders. How does that work? Does anyone have any experience? Maybe Mr Tupchiienko has, on the Ukraine side.

Dmytro Tupchiienko: There is no such thing as a trusted trader status. The only thing that has changed since the agreement came into place—or even before, some seven years ago—is that Ukraine started to experiment with checkpoints where both Ukrainian and Polish customs officers were sitting in one place and checking the goods. But there are still queues at the border and they are quite long. There is no such thing as pre-determined checks.

Q902 **Craig Mackinlay:** Is the treatment less or more light-touch than, say, the Belarus part of the Polish border?

Dmytro Tupchiienko: It is the same.

Q903 **Wera Hobhouse:** This is what I have heard, but correct me if I am wrong. Is the DCFTA more akin to a transition agreement? As I understand it, the ambition of the countries that have signed them is full membership. Are they useful as an end stage, something for the UK to



end up with, rather than, ultimately, a transition out of something?

Dr Kovziridze: If concluded in such a form or a similar form, it would not be a transition agreement in the UK's case. For us, the Georgian perspective is that we will continue to gradually come closer to the EU. Perception-wise, it is viewed as a step forward in this direction, because this is the highest level of integration that we have achieved so far. If we remove this aspect, and our perception and priority, it could be an agreement that is an end result and does not move anywhere else, backward or forward.

Our specificity is different, but you could have a trade agreement that is similar to the DCFTA and say, "Okay, that is it." In that agreement, you would probably still have transition periods related to some obligations on both sides. In your case, it would not be so asymmetrical, because it is not only about UK access to the EU market but vice versa.

Q904 **Jeremy Lefroy:** Please feel free to say that you do not have the expertise on this, although I am sure that you do. Would you see the possibility of a DCFTA existing, for instance, within UK membership of the European Free Trade Association, EFTA? For instance, there are already two different models within EFTA: the EEA model and the Swiss model. We have heard some evidence that there is no obstacle to the UK being a member of EFTA with such a deep and special agreement. Are there any clauses in these DCFTAs that would say you cannot be part of such a broader free trade association as EFTA?

Dr Kovziridze: No. EFTA's trade policy, in a way, is a mirror policy of the EU's trade policy. EFTA has, or will have soon, FTAs with all the three countries that have the association agreements. Ukraine has an FTA with EFTA, and it was possible after the DCFTA was concluded. Georgia recently concluded an FTA with EFTA, and it was only possible after we had the DCFTA with the EU. This was not a formal requirement but, in practice, the answer that we received from EFTA was, "Let us first wait for what the EU does". We wanted to have as many free trade agreements with our partners as possible, and we were requesting that EFTA explore the possibility of an FTA, but it waited for the EU first. Yes, if I understand your question correctly, you can have an FTA with EFTA.

Q905 **Jeremy Lefroy:** No, my question was more about having this type of agreement with the European Union and being a member of EFTA, in the same way as the Swiss are members of EFTA with one type of arrangement, while Norway, Iceland and Lichtenstein are members with another type of agreement. I wondered if there was any provision in these agreements that says you cannot be part of EFTA.

Dr Kovziridze: No, there is no provision like that. What would probably be restricted is if we became part of a customs union somewhere, because then the other members of the customs union have to have the same agreement with the EU. We cannot keep both, because the



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customs unions conducts one trade policy vis-à-vis the third countries. That would be a restriction.

Michael Emerson: We need to make a distinction between the UK making a free trade agreement with EFTA and the UK joining EFTA. In the first case, you can still have a very nice DCFTA with the EU and an FTA with EFTA. In the second case, no, if you join EFTA, your trade relationship, alongside the DCFTA, is the EFTA free trade agreement with Ukraine.

Jeremy Lefroy: That is understood.

Michael Emerson: That is much simpler.

Chair: On behalf of the Committee, can I thank you all for coming today and for giving such interesting and useful evidence, which will help us considerably in our deliberations?