House of Commons

Exiting the European Union Committee

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

Tuesday 6 February 2018

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Watch the meeting

Members present: Hilary Benn (Chair); Sir Christopher Chope; Mr Jonathan Djanogly; Richard Graham; Peter Grant; Wera Hobhouse; Stephen Kinnock; Jeremy Lefroy; Seema Malhotra; Mr Pat McFadden; Emma Reynolds; Stephen Timms; Hywel Williams.

Questions 906-964

Witnesses

I: John Springford, Deputy Director, Centre for European Reform; Professor Clive Church, Emeritus Professor of European Studies, University of Kent; and Professor René Schwok, University of Geneva.

Examination of witnesses

Witnesses: John Springford, Professor Clive Church and Professor René Schwok.

Q906 **Chair:** Good morning. Can I on behalf of the Committee give a very warm welcome to our witnesses who are appearing before us today, Professor René Schwok of the University of Geneva, Professor Clive Church, emeritus professor of European studies at the University of Kent, and John Springford, deputy director of the Centre for European Reform? You are all very welcome indeed. We are, as you know, looking today in particular at the relationship between Switzerland and the EU. This is part of a series of evidence sessions looking at alternative models, a matter much under discussion.

We have a lot of questions to ask this morning from members of the Committee. If you could keep your answers as succinct as possible, that would be extremely helpful because it would enable us to cover all the ground that we hope to during this morning's session.

I was going to kick off by asking each of you briefly to say whether you think the EU-Switzerland arrangement provides a model that the UK might usefully look at in trying to decide what its future relationship with the EU is going to be.

John Springford: Thank you very much for having me. There are two ways of thinking about the Swiss relationship. One is an institutional way of thinking about it and the other is an economic, sectoral way of thinking about it. If we think about the institutional way that Switzerland has integrated with the EU, it is not a particularly likely model for the UK. The reason for that is that the EU is not particularly happy with the institutional arrangements, which are essentially a set of bilateral committees between the EU and Switzerland, which aim to ensure that there is regulatory alignment in those sectors of the economy where there has been an agreement. Brussels is not particularly happy with this arrangement because it does not require the automatic download of EU law in the same way that we see in the European Economic Area and of course for EU members.

If we think about it in terms of the sectoral way of thinking about Switzerland's relationship with the EU, there is more opportunity for a basis of co-operation. As you may know, Switzerland has a relationship that is largely in manufactured goods, although there are all sorts of other areas where there is co-operation. If we are talking about trade, it is largely in manufactured goods. There are some agreements on services, and of course there is free movement as well, which is something that we can get into.

The idea of trying to base an arrangement between the UK and the EU on goods in particular is something that the EU might be more amenable to, given the fact that the 27 have a stronger comparative advantage in goods exports than the UK does, but our comparative advantage in services is far stronger. Given that the UK appears to want to end free movement, you could imagine some sort of trade being done whereby we make a swap of the free movement of services for the free movement of people.

Professor Church: I never like using the word "model" about the Swiss pattern of relations with the EU because that pattern is not planned, fixed—although it has, to be fair, been static for about 10 years now—or agreed. We also tend to overlook the geography of Switzerland and that it physically is in a very different place with very different relationships. Remember that as part of its move towards Europe it paid for the Gotthard Base Tunnel, which has just opened. Its relationship with the EU is based on deep Europeanisation and goes well beyond trade.

There are parallels in the process. Both Switzerland in 1992 and the United Kingdom after 2016 had to relaunch and re-orientate their relations with Europe, after a popular vote against the suggested movements or the existing norms. There are hints that might help the UK in negotiating their own bilateral arrangements, but I would not go further than that.

Professor Schwok: I agree with what has been said. To answer your questions, my main arguments are in the summary of my written evidence, so I just want to sum them up. I believe that Swiss-EU bilateral agreements are the worst form of EU agreements with third countries, except for all the others. Why? The agreement with Canada, the CETA, does not allow enough access to the EU single market. Under the EEA, or European Economic Area—that is, the so-called Norwegian model, its institutional framework is too cumbersome and complicated. It has a supranational dimension. It involves substantial financial transfers, too much for the UK, I guess. Sorry to say that. Anyway, EEA EFTA states—so Norway, Iceland and Liechtenstein—do not want the UK in the EEA EFTA pillar. Sorry to tell you this bluntly. I do not see EEA as a model for the UK.

The Ukraine DCFTA model with eastern European countries does not grant so much access to the internal market or the single market. Ukraine is under constant surveillance by the European Commission and is subject to a carrot-and-stick mechanism and conditionality. I cannot imagine the UK being in the situation of being supervised all the time and controlled by the European Commission.

In comparison, the Swiss-EU bilateral mechanism is less bad than the others, but as has been mentioned there are many drawbacks in the Swiss-EU—not "model", as you rightly say—experience. First, in reality, Switzerland's sovereignty is less well protected than it might appear in theory. In theory, it is good from a sovereignty point of view, but in practice the Swiss adapt themselves in silence to the evolution of EU legislation. The second problem is that this regime does not allow access to financial market services. We will come back to this later, I guess.

Thirdly, there is free movement of persons, which is precisely what I understand the majority of Brits do not want, and there is this guillotine clause. Maybe we will come back to this later. Fourthly, as John mentioned earlier, the EU does not want this experience, model or regime any more. It wants something more difficult for Switzerland in terms of sovereignty, so what the EU demands of the Swiss is something that is in theory less interesting from a formal sovereignty point of view.

Q907 **Wera Hobhouse:** Thank you very much and good morning. Can we explore this sovereignty aspect with the other two panel members? Is there any way Switzerland could maximise its strength to make trade agreements or co-operate internationally outside the EU? Are there any examples where it has worked positively?

Professor Church: Switzerland works through EFTA, and EFTA has a wide range of trade relationships. Autonomy in commercial policy has always been an element of Swiss national identity and purpose. To that extent, its sovereignty is not infringed. It can sign over arrangements with whom it likes, but of course it exports and imports rather more from the Union than we do. One of the lessons it has learned is that these deals do not necessarily make up for possible shortfalls in the European market.

John Springford: I agree with that. One thing that we know about trade agreements that Switzerland has made with countries through EFTA and by itself with countries outside the European Union is that they tend to be fairly shallow. They tend to be largely focused on tariffs and subsidies, which is generally true of free trade agreements, although there are some non-discrimination clauses and other things in them. They do not get into the kinds of regulatory alignment issues that you see with the single market, for example. The agreement with China that it signed recently allows for tariff-free access between two parties to each other’s markets, but it does not mean that you are going to end up with China recognising Swiss regulations and standards, and vice versa.

The autonomy that it provides Switzerland with allows it to ensure that it has trade without formal hindrance or taxes, but it does not mean that you get the free-flowing of products because essentially all standards are aligned.

The other point to make is about the principle of gravity, which is an important principle in trade economics and is very robust. Switzerland’s location in the middle of the European landmass means that its natural trading partners are Italy, France and Germany. It is surrounded by them. Ensuring that trade costs are low with those countries is the No. 1 priority for Switzerland, and the trade agreements it makes with countries outside Europe are of somewhat less importance economically.

Q908 **Wera Hobhouse:** If I now may go to the customs union, as you have heard the Prime Minister has now said firmly that we want to be outside the customs union. Switzerland is outside the customs union. How does Switzerland manage its customs arrangement with its neighbours? Obviously there are different borders; it is surrounded by five different countries. Could you describe to us the different arrangements?

John Springford: There is an extremely sophisticated customs operation. Swiss customs is a pretty huge operation. It is really quite impressive. The way that it works is similar to the technological solution that the Government put forward in their options paper for customs. There are cameras on pretty much every road crossing into Switzerland, where they take number plates and match those number plates to any car or lorry that has been flagged as a potential risk for smuggling or any kind of illegal activity. If that car or lorry goes over the Swiss border, it is checked.

They also do a lot of other risk-based work where there are unusual patterns of goods flows and so forth. They will conduct checks. They sometimes do what they call a "customs blitz" where for two or three hours they will stop all lorries that are going across a particular crossing. They cannot do it for any longer than that because word gets around the lorry drivers and they will avoid the crossing. Those are the formal controls. There is also quite strong collaboration between Swiss customs officials and German, French and Italian customs officials, to the extent that they do joint operations, go in each other's helicopters and that kind of thing, to try to track down smugglers.

According to some evidence that was given to the Northern Ireland Affairs Committee, which is worth looking at, by a senior customs official from Switzerland, they probably stop around 2% of lorries that are crossing the border. It is worth thinking about what that means in the Irish context. About 13,000 lorries cross the Irish border per day, so 2% of that means that you are looking at about 200 searches of lorries per day. That is broadly how it works.

Professor Church: Could I add a personal note to that? There are two things: first, they do not only stop cars that are on the blacklist. They can stop others. Fifteen years ago, I was living in Switzerland, in the north-east where the border is very odd and there are all kinds of inlets, exclaves and what have you. One day when I was fed up with work I went for a drive. The border police appeared from nowhere, and checked my number plate and passport to make sure that I was not a terrorist or anything.

I should also say that you are not aware of all these customs things. I used to live in a little village on the Rhine and very often I would go into the nearest Swiss town, park my car in a supermarket carpark under the trees, because it was summer, and walk through into the German city of Konstanz to look round and buy ice cream. There was absolutely no control of the border there. In that sort of area it is very fluid and very easy.

Q909 **Wera Hobhouse:** One of the big reasons why people voted to leave the European Union is the cost to be a member. Has anybody ever quantified what the customs checks and the border cost to the country?

Professor Schwok: We should be more precise about what we mean by customs. For me, there are four types of barriers, frontiers or hurdles. One is the so-called customs. Those customs frontiers were removed in 1972 on industrial products, but not on agricultural products. The second type of customs is about non-tariff, technical barriers. They have been removed mostly through bilateral agreements, but not on the Cassis de Dijon. We can relate to this later.

The third type of frontier or barrier is the so-called indirect fiscality: VAT, excise duties, et cetera. There is no agreement between Switzerland and the EU on removing fiscal barriers; nor is there between Norway and the EU on indirect taxation. The fourth one is so-called physical barriers: Schengen. You do not have to check people entering into Switzerland, as Switzerland is part of the Schengen area.

If we want to analyse which type of customs we are talking about, we should be more precise about which types of frontiers, barriers or hurdles we are talking about, and not use the expression "customs", which, in my view and the view of EU terminology, is clearly linked to the issue of strict customs on industrial goods, agricultural goods or fisheries.

Professor Church: If I could try to answer the question that you posed about cost, the Swiss have a relatively slim civil service, and the Government for many years now have been running at a surplus, so I do not think that one can imagine they are paying too much for the services that they provide.

John Springford: The key question about customs is the extent to which the delays, the paperwork and so forth have an impact on the amount of trade that would be done in the absence of tariffs, rules of origin, checks and paperwork. To my knowledge, there has not been—or I have not been able to find, and I did have a dig around to look for it—a study that has really tried to quantify the impact on Switzerland's trade of those non-tariff barriers.

Q910 **Mr Djanogly:** Good morning. What is likely to be the British opening bid is going to be a stand-alone agreement, and some people have been describing this as Britain wanting to have its cake and eat it. Does Switzerland have its cake and eat it compared to other countries, in your view? Should Britain want a unique relationship with the EU following Switzerland's example?

Professor Schwok: To get the free trade agreement on removal of customs is a good idea, but I am sure that you will never get the customs union, unless you want to remain in the customs union like Turkey. What

Turkey did is, in my view, foolish. The customs union, to be clear about it, means a common external tariff. Turkey is following the EU common external tariff, but that is not what you want. Switzerland did not get this and did not ask for this. Norway, Ukraine and Canada do not take the common external tariff; they just have a free trade zone.

In this free trade zone, there is the problem of rules of origin. I do not know how familiar you are with this, but it means that the EU does not want products from, say, Japan coming into Switzerland through the back door and entering the EU market, et cetera. Therefore, it has to control the real, true and genuine origin of the product. That is a hurdle, because if a lorry enters Ireland from the UK after Brexit, Ireland, part of the EU, will have to check the real origin of the product—of the car, in my example—to control that it is a genuine British car and not a Japanese car coming into the EU territory through the back door of the UK.

This will be a hurdle if you are not in a customs union, so you have the problem of the rules of origin. If you are in the customs union, you do not have the problem of rules of origin, but you have to align to the EU external tariffs and you cannot negotiate agreements with third countries, such as the US or China, because the Commission has a monopoly on negotiating external trade agreements.

Q911 **Mr Djanogly:** Professor Church, can I just say that I am asking a wider context than just the customs union here? I am talking about the whole package.

Professor Church: Do the Swiss think they have their cake and eat it? No, I do not think that they do. That is somewhat triumphalist. I do not think the Swiss political culture moves that way. Remember, they had to negotiate very hard between 1992 and 2004 before they got a series of bilateral agreements. They would like to go further, particularly on electricity, but this has not been possible.

Going back to my obsession with the Gotthard, they have provided many of the ingredients of the cake over the years. It has to be said that this issue is extraordinarily contentious in Switzerland. Just over half of the population thinks that the bilateral arrangements are a necessary evil; the other half thinks they are an appalling evil, and the country is yet to resolve the debate.

John Springford: Could I give a broad overview of where we are? If we think about what the UK appears to want, it is an end to free movement, which is something that Switzerland has. It is also a member of Schengen, so in terms of the movement of people it has gone further than the UK has. The UK apparently wants to reclaim more sovereignty, and in that sense you could say that Switzerland is an attractive model, in the sense that there is no formal operation of EU law. The European Commission does not provide a formal surveillance system that makes sure that Swiss law is completely in alignment with EU law. There is not a dispute mechanism, and the role of the European Court of Justice is very limited. It is only in one bilateral agreement, really. The issue is that the bilateral treaties that Switzerland has signed require the Swiss to bring the European acquis into their law at that point where the treaty is signed, so it is not as though you have total sovereignty.

In terms of the financial contribution, Switzerland pays not into the EU budget, but into a separate fund, which is essentially for the development of central and eastern Europe. It pays at about 50% of the rate per capita that the United Kingdom does.

In terms of goods versus services, we have a pretty good agreement. We can see that in Switzerland trade costs in goods are almost as low as they are between EU members, but in services that is not the case. There is a reason why Credit Suisse and UBS are in London providing investment banking services, because the EU will not allow those to be conducted across borders.

Q912 **Mr Djanogly:** I was interested that you and Professor Church are making the case that Switzerland is adding to the cake by paying. Would you see our chances of entering a Swiss-type agreement without paying as being realistic?

John Springford: No.

Professor Church: No, but I imagine that the payment system would be somewhat different.

Q913 **Mr Djanogly:** In what way?

Professor Church: The EU would not necessarily be suggesting that we put money into a cohesion fund. The money goes into the fund, but it is the Swiss who decide on what it is spent. It is a parallel thing. I am not certain that that would necessarily apply. It is very provisional.

Since 1988, the Swiss have required that there is a compatibility clause in most of their legislation, so that they know the relationship between what they are deciding and what the EU is. There is also a long history of what they call "autonomous adaption": they have changed their legislation in line, but it is not identical.

Q914 **Mr Djanogly:** Is it therefore arguable that Swiss MPs and civil servants spend just as much time looking at EU regulation and legislation as they would if they were in the EU?

Professor Church: No, it is not quite that. It would be civil servants. I am not certain that politicians do it. It is something that they have to do, but they are the ones who do it and make the decision of whether they take it further. Professor Schwok rightly mentioned the Cassis de Dijon. It was a unilateral decision of the Swiss to adopt large elements of the Cassis de Dijon a couple of years ago.

Q915 **Mr Djanogly:** If I could look at it from the other side of the coin, from the EU's perspective, there seem to be signs that it is finding the number of treaties and institutions, or in some cases a lack of institutional involvement, to be frustrating from a Brussels perspective. That being the case, it seems that Brussels is now saying to the UK, "We want you to follow a Norway or a Canada." It wants us to slot into a format. Does the UK need to go that way or should we say, "No, we want to be like Switzerland"? Has Switzerland queered the pitch for us? I suppose that is what I am trying to ask. Has Switzerland made it tougher for the UK to have a stand-alone arrangement?

Professor Church: The answer to that is yes and no. The "no" is that the United Kingdom is a different state in a different situation, so to that extent it has a certain freedom of action. On the other side, it is more difficult because the principles that have been emerging from Brussels since 2008, if not before, are that the existing Swiss pattern is difficult to manage because there are so many agreements. There are at least 50 different joint committees. It is legally uncertain, because there is no dispute mechanism, and it is static. To a large extent, the agreements reflect the EU acquis as it was back in 1999. They have not been adjusted. The EU wants to see a system whereby changes in EU law are more or less automatically taken up by the Swiss. I see no reason why the EU would not apply similar principles to any deal with the United Kingdom.

Professor Schwok: I want to make a rather ironic remark. The EU does not want the Swiss agreement to be a model because it believes nowadays that it is too favourable to the Swiss. It therefore wants to change it. It wants something less favourable to the Swiss. If it believes it is too favourable to the Swiss, that means it is a good model for the UK. That is my ironic point.

It is the same for Switzerland. The Swiss do not want the Switzerland regime to be the model, because the Swiss Government still believe, "We got such a good deal, so we do not want the Brits to imitate us because they will jeopardise and torpedo what we have." Therefore, ironically, I would say that, if both parties do not want it to be a model, that is a good reason for the Brits to believe that there is something to take—not a model, as has been rightly said, but some patterns of a regime that could be of interest for the Brits.

Q916 **Stephen Timms:** Can I ask you about the arrangements for data communications between Switzerland and the European Union? Switzerland has a data adequacy decision, given by the European Commission. I wonder if any of you can tell us how that was achieved. Was it the result of one of these bilateral negotiations, or was it because Switzerland applied for it in the regular way and was granted it?

Professor Church: I have to confess ignorance on that point, I am afraid.

John Springford: I can offer a very small overview, which is not in a huge amount of detail. There has been an agreement bilaterally that

Switzerland will take up the general data protection regulation, which is also going into force in the UK. Essentially, that means that, where a Swiss company is for example selling goods online across borders to the EU, that Swiss company has to comply with that data protection regulation, with all the privacy concerns and cyber-security provisions within it. Other Swiss enterprises that have to comply include any Swiss enterprise that has a subsidiary based in the EU, like Credit Suisse, and any company that is essentially taking up work that has been outsourced by an EU company to Switzerland. A Swiss company that is, say, operating solely in Switzerland or doing international activity outside the European Union is not covered by the regulation.

Q917 **Stephen Timms:** This sounds like a partial implementation of the GDPR. Has the Commission raised any concerns about Swiss handling of personal data? Have complaints or issues been raised?

John Springford: Not to my knowledge.

Professor Church: There is a certain concern inside Switzerland that they are not going as far with digitalisation as they ought. Obviously there would be a European dimension to that concern.

Professor Schwok: May I just remind you that Switzerland is part of Schengen, part of Dublin and part of several agreements with the EU on data, co-operation of police, et cetera? That was the choice of Switzerland, but you can make another choice. On the shopping list of the Swiss, there was this wish to get an agreement on data protection, co-operation, biometric passports, et cetera, but you can have another shopping list.

Q918 **Stephen Timms:** Presumably the partial implementation of the GDPR that you have described is superseding some earlier arrangement. It has always been possible, I imagine, to send personal data between Switzerland and the EU countries.

John Springford: Yes.

Q919 **Stephen Timms:** No problems that any of you are aware of have been raised about that?

Professor Church: No.

Q920 **Stephen Timms:** European data privacy regulation is based on article 8 of the European Charter of Fundamental Rights. Does Switzerland apply that charter? Is that charter a feature of Swiss life in any sense?

Professor Schwok: No, it is not. There is no agreement. The agreements are in my table. No, there is no agreement on this. To your question, there is clearly no agreement on fundamental rights. Norway picked up part of the Charter of Fundamental Rights and civic participation, but the Swiss did not at all. It has nothing except free movement of labour: nothing political or human rights.

Q921 **Richard Graham:** Thank you very much, gentlemen. Good morning. I want to explore a little the business of Switzerland's level of market access. Professor Church, in one of your earlier written comments you mention that Switzerland has free trades in goods with the EU. Professor Schwok, in your very useful market access table, you comment, on mutual recognition, that that is not part of the agreement with Switzerland. My understanding, for example on the agreement with agricultural products since 2011, is that that is precisely based on the concept of mutual recognition. My question to all three of you is: how important is mutual recognition to the business of free trade in goods? Let us start with Professor Schwok.

Professor Schwok: As I put in my table, I think in the fourth line, there are two kinds of mutual recognition principle. There is a broad one you can find in the agreement with Canada, Ukraine, et cetera, and this is part of the agreement between Switzerland and the EU. There is something difficult to explain, but deeper, going into the details of Cassis de Dijon. Cassis de Dijon is a judgment by the European Court of Justice in 1978 about mutual recognition without previous harmonisation. This is very complicated and difficult to explain in a few words.

The Swiss did not make an agreement on this, contrary to the Norwegians, who made an agreement on this. The Swiss autonomously said, "Okay, we will take part of the Cassis de Dijon principle." It is difficult to explain. I understand that you would think the Swiss are crazy. "We do not ask for reciprocity." The Swiss accept products from the EU on the Cassis de Dijon principle mechanism, but the EU does not recognise the Cassis de Dijon towards Swiss products. I will take two more minutes to explain this because it may not be obvious why you would have such an asymmetric mechanism.

Q922 **Richard Graham:** I think, Professor, you are saying that mutual recognition is not quite a "no" and not quite a "yes". Professor Church, what is your take on the mutual recognition?

Professor Church: It figures in one of the early bilaterals. There are rumours circulating in Switzerland that, if they have a framework agreement, the Swiss only want five elements in it, not the whole 120-odd, and one of those would be mutual recognition. The exact detail of that rumour has not been brought to my ears, I am afraid.

Q923 **Richard Graham:** Mr Springford, what is your take on mutual recognition?

John Springford: Going back to the remarks that I made a little bit ago, when the agreement was made on the free movement of goods, the EU's acquis in that area was essentially written into a lot of the Swiss laws and standards, in order to ensure that there was not necessarily complete harmonisation, but at least alignment in effect. When it comes to agricultural products, a similar thing happened, where the EU's regime—sanitary and phytosanitary is the phrase: animal welfare, making sure that things are kept in a clean condition, pesticides use and so forth—was largely brought into the Swiss regime in order to allow that to happen.

In terms of mutual recognition, there have been some mutual recognition agreements, for example on making sure that standards testing bodies in Switzerland are able to say whether something meets EU standards, and then that good can just be shipped across the border. We should not see all goods as somehow being completely mutually recognised. This is largely a process whereby the EU standards and rules in goods have been adopted by Switzerland and then they can be sold in the EU.

Q924 **Richard Graham:** None the less, would you broadly agree that the concept of mutual recognition is precisely the mechanism that gets you over the weaknesses of, say, the Swiss-China free trade agreement, because you are recognising the validity of each other's regulatory regimes and laws?

John Springford: It is something that, if it were in place, would allow trade to be free. The question is whether regulators would be willing to mutually accept.

Q925 **Richard Graham:** Sure, but they start from the same point, which is great. Can I move on to the business of the services agreement? Professor Schwok, you very helpfully reminded us that one of the great urban myths is that the EU denied Switzerland access to its financial services market and therefore this scheme cannot be an interesting model for the UK. It was of course Switzerland that did not want to include financial services in the agreement.

On that basis, I am interested, Mr Springford, that your assumption is that financial services cannot be included in the agreement. In fact, you have written that Britain's access to EU financial services "would be curved" and that "a Swiss-style agreement largely limited to goods is Britain's best hope: it represents the limit of market access that the EU has been willing to accept". What makes you so sure that the EU would not want to have a deal on financial services as well? Have there not been indications already fairly recently that services will be included?

John Springford: It depends on what you say a services agreement would be. The idea that we would, say, completely call to a halt all data flows between the UK and EU is obviously nonsense, and there would have to be some sort of agreement there. The idea that it would be impossible for a French bank to buy any form of derivatives on the derivatives market in the UK is also nonsense. We are talking about something that is quantitative and not qualitative.

We know the way in which the EU has been willing to negotiate financial market access with countries outside the bloc. It is okay in terms of wholesale markets between banks and financial institutions, although there are some strict equivalence provisions for that, but it is not really okay between businesses and financial institutions or consumers and financial institutions, because the EU has been unwilling to accept mutual recognition in those areas.

The other point to make is that Michel Barnier and others have made pretty clear that the banking passport will not be possible, and that that means we will end up with subsidiarisation of the sector, so Deutsche Bank in the UK will have to become a subsidiary. That will mean that there will be higher capital costs for a lot of financial institutions.

Q926 **Richard Graham:** It is certainly a conceivable negotiating position. Professor Schwok, what is your view on this? Clearly the original motivation for the Swiss in not having financial services open was in order to protect the domestic market from being gobbled up by German, French and Italian financial services companies. That is a very different starting position from our own.

Professor Schwok: Nowadays the Swiss financial community is divided. Some Swiss banks, and especially the largest one, want access, but some smaller ones want to protect their territory. Therefore, they have two lobbies in Brussels, one pleading for getting access to financial markets and the other one saying, "No, we prefer to keep protecting our small banks, insurance, et cetera. We will establish subsidiaries for our largest banks in the EU, and we will solve the issue." The view is not such a clear-cut, univocal view.

Q927 **Richard Graham:** Are you aware of any analysis that has been done in the EU, or indeed in Switzerland, of the value of the financial services markets in the UK, especially in the City, to continental Europe?

Professor Schwok: The EU is keeping this as a bargaining chip to put pressure on Switzerland, to force the Swiss to accept another institutional framework that is less interesting from a sovereignty point of view. Theoretically, the EU always claimed that it would welcome the Swiss finance industry at the level of Norway in the EU financial market. You may say that it was double-talk by the EU and it is not genuine about that, but I think it is genuine and would accept full access for the Swiss banking and insurance industries to the financial market of the EU.

Professor Church: Yes, there is a great deal of concern in the EU about Swiss banking, and European pressure has played a considerable part in leading the Swiss to abolish what we call "banking secrecy", at least for foreigners. It still applies within Switzerland for Swiss citizens, but they now subscribe to all the OECD formulae. That shows why some of the banks are, as Professor Schwok says, somewhat concerned about greater access.

Q928 **Seema Malhotra:** I just have a very brief question. It is really a point of clarification around the role of the ECJ in Switzerland's relationship with the EU. Some of the comments you have made in your evidence have described the compatibility clause, which I understand to be that, with every new federal legislation, there is a summary of the EU's position on a relevant matter. I am not sure whether that is then something that you are obliged to adopt and abide by, or whether it is there for information.

I also understand from evidence given that you will not be covered by the ECJ judgments, but that there may be a relationship whereby, in your table, obligation to conform with the ECJ's jurisprudence for bilateral agreement 1 is no in theory and yes in practice, and for bilateral agreement 2 it is yes. I was wondering if you could just clarify what the relationship is with the ECJ, how that functions, and what representation or say Switzerland has.

Professor Schwok: Can I answer in four parts? First of all, nowadays in current Switzerland-EU agreements there is no mention of the ECJ. There is nothing about the ECJ. That is the first point. Secondly, practically, Swiss tribunals apply ECJ jurisprudence if necessary. This is allowed and recognised, but only the tribunals do that.

Q929 **Seema Malhotra:** Who makes the decision?

Professor Schwok: Sorry?

Seema Malhotra: Who makes the decision about if it is necessary?

Professor Schwok: The judges in the tribunals. Sorry, I am partially deaf and it is difficult to hear you. The independent judges in the federal tribunals say, "If it is necessary, we will look at ECJ jurisprudence and apply it." Thirdly, in the current negotiations about the new institutional framework, the EU clearly wants the Swiss to recognise the jurisprudence of the ECJ, because until today it is practically recognised, but not officially recognised.

Fourthly, there is another issue, and some people have mixed this up. This is affirmation 7: a misconception in the UK. There is confusion with another issue. The other issue is that, in the negotiations about the future institutional agreement, there is the issue of what happens in disputes between Switzerland and the EU on, for instance, the application by Switzerland of the evolution of the EU legislation. What happens if the Swiss do not do what the EU expects from the Swiss, et cetera? Today, the issue is settled by a mixed committee of high-level servants. If they do not agree, there is no mechanism to solve the issue. If the two camps do not agree, there is nothing written in the agreements on who will solve the issue finally.

Now, in discussions, the EU says, "We want the ECJ to be the final referee that will say, 'You do not agree, both camps, so there will be a judgment by the ECJ and this judgment will be binding to Switzerland and the EU.'" Sometimes there is confusion. The Swiss refuse this. They say, "These are foreign judges, and William Tell created Switzerland against foreign judges, so we do not want foreign judges."

Professor Church: There is a phrase in the first known charter of the Swiss cantons that said, "We will not accept foreign judges", and this is still used. The issue is extremely sensitive in Switzerland.

Professor Schwok: The Swiss prefer an arbitration mechanism. If the civil servants do not agree, there will be an independent arbitration mechanism with one Swiss, one EU and one external, and this independent mechanism will settle the issue. I just wanted to be clear about the ECJ and how it is involved in the debate in Switzerland.

Q930 **Seema Malhotra:** For clarification on that final point, the discussions on the point about agreement or divergence happen at the official level rather than in a political forum. Then, if there is no agreement, things just are left. Has any consequence come from an agreement not being reached, or has an agreement always been reached by this independent arbitration process?

Professor Church: I am not aware of vast numbers of disagreements, but the fact that they can exist worries the EU. That is why it has been pushing for judicial supervision, although if my understanding is correct it was Jean-Claude Juncker himself who floated arbitration on a visit last November.

Professor Schwok: Strangely—and this is affirmation 6—there are no disputes. In 15 years, there have been several disputes, but they always found agreement. The Swiss are pragmatic people. They usually adapt. They are gentlemen or gentlewomen, and they find a gentlemen's agreement.

Q931 **Jeremy Lefroy:** Good morning. Given the point that is made about foreign judges, as a point of clarification, is Switzerland a member of the European Court of Human Rights and the International Criminal Court?

Professor Church: Yes, it is certainly a member of the European Court of Human Rights.

Q932 **Jeremy Lefroy:** It accepts that?

Professor Church: It had a long, difficult relationship with the Council of Europe. It oddly enough regarded it as a highly-threatening supranational body in the early days, so it was not until 1963 that it actually joined, but, yes, it is subject to it. Despite the high level of Swiss judicial procedure, it is not unknown for the courts to censure Switzerland.

Q933 **Jeremy Lefroy:** Is the Switzerland a member of the ICC in The Hague?

Professor Church: To the best of my knowledge, but I do not know, to be honest.

Q934 **Jeremy Lefroy:** This idea of not accepting foreign judges is not a universal principle, but is applied in the case of the ECJ?

Professor Schwok: Are you familiar with the Swiss People's Party?

Jeremy Lefroy: Yes.

Professor Schwok: It is the largest party, and close to UKIP.

Professor Church: But much better organised.

Professor Schwok: It has 30% of the members of the Parliament, which is not the case in the UK. It is a different system. It just launched a popular initiative. We will have a referendum precisely on sovereignty, the damage from belonging to the Council of Europe and the European Court of Human Rights, and precisely those mechanisms I explained earlier, which could jeopardise the sovereignty of Switzerland. Those in sovereignty circles no longer accept that Switzerland is part of the Council of Europe's European Court of Human Rights.

Q935 **Peter Grant:** Thank you, Chair. Good morning, gentlemen. I am interested in what happens between the two parts of Ireland when Britain leaves the European Union, as are a lot of people. I know that there are similarities and big differences between the Swiss and Irish borders, but I want to look at the practicalities of the Swiss border. First of all, am I right in thinking that apart from Liechtenstein all of Switzerland's neighbours are EU members?

Professor Church: With the exception, of course, of Liechtenstein.

Q936 **Peter Grant:** Yes, apart from Liechtenstein. Professor Church, you mentioned earlier the ability to cross the border back and forth, usually without any let or hindrance. Is that because there is no infrastructure at the border, or because the infrastructure is there but very seldom used?

Professor Church: I tried to get the publisher to publish a book showing my car with an English registration sitting next to a disused Swiss border post in Thurgau. The flag was there, but there was nobody at home. I think that has been the result of the EU, and the fact that, as you say, they are among neighbours and have these relatively sophisticated mechanisms for tracking people, but they do not need a heavy infrastructure. Of course, contrary to Ireland, the border has never been militarised in that sense. The Swiss People's Party has on occasion demanded that troops are sent to the border because it does not think that the border force is sufficiently strong, large and robust, but this has never been acted on.

Q937 **Peter Grant:** For the 2% of vehicles that are stopped and checked, where are they stopped? Are they stopped at the border, or are they allowed to enter Switzerland and stopped somewhere else?

John Springford: Yes, they are stopped at the border.

Q938 **Peter Grant:** The issue in Ireland, and we have complete unanimity from everybody I have spoken to on either side of the border so far, is of no infrastructure at the border. It is part of the Good Friday agreement. It is non-negotiable and simply cannot be allowed to happen. Is it possible for the Swiss to manage their borders with other EU countries without having any infrastructure at all?

Professor Church: There is infrastructure. If you drive in as a motorist, you will be invited to pay a levy to enable you to utilise motorways, but this is not threatening. It is unthreatening and relatively flexible. It bears no relationship to the old Northern Ireland border. Yes, if in a different universe there was a really bad relationship between Germany and Switzerland, there are the infrastructures, which could be manned up.

Professor Schwok: Could I make two remarks? This is my affirmation 3 about Ireland and the Swiss case. First of all, yes, in Switzerland and with their neighbours they found a lot of innovative technical solutions, and you can imitate those. I do not want to mention them. I notice that they have been mentioned in another Committee on Northern Ireland by Swiss experts on customs, et cetera. It is easy to imitate and be pragmatic. I am sorry to repeat myself, but there is another political dimension: Switzerland is part of Schengen. If you are a member of Schengen, you have removed physical barriers on movement of goods and persons. This of course makes it easier not to have controls on the border.

John Springford: For the Northern Irish border, that is also not necessarily a problem. We have the common travel area, which essentially operates in much the same way that Schengen does.

Professor Schwok: Sorry to interrupt you: it causes a problem because Ireland is part of the EU.

John Springford: Yes, but, in terms of having border controls on the flows of people, that is not on the table for the Northern Irish-Republic of Ireland border. That is not necessarily the issue.

On infrastructure, there are border cameras. One of the issues with the UK's current strategy of leaving the customs union is that, yes, we can minimise the amount of border infrastructure that there is, but any kind of customs border requires some kind of border. It requires some checks to stop smuggling. It means that you have to have some checks to ensure that, say, animal standards are kept to. There are some single market-type checks that have to be kept up. It is not that that would necessarily be very intrusive, but we do not know what the reaction will be by republican communities, which, predominately, are pretty populous in the border regions of Northern Ireland.

Q939 **Peter Grant:** Finally, I want to go back, Professor Schwok, to one of your earlier comments because, as it happens, I am speaking in a debate tomorrow about possible EFTA membership for the United Kingdom. If I understood your earlier comment, you had said that regardless of whether the UK wanted to join you did not think the existing EFTA members would allow that to happen. Is that based on public statements from the Governments of the four EFTA members, or simply what you have picked up from private discussions?

Professor Schwok: I did not catch the question, sorry.

Professor Church: Can I answer? It has been quite widely discussed that there would be reservations. Switzerland, Norway, Iceland and Liechtenstein are much smaller countries than the EU, and the idea of having a kind of elephantine United Kingdom in it would be very destabilising. I have always argued that, once the United Kingdom decided to leave EFTA and apply for membership, EFTA shifted its raison d'être from being an alternative free trade area to being a highly successful and useful forum for smaller nations dealing with the European Community. René will correct me if I am wrong, but I do not think that any Norwegian Prime Minister has come out, banged the table and said, "Never," or anything like that, but if you ask civils servants they say, "God help us, no."

Professor Schwok: We have to differentiate between joining just EFTA and joining EEA EFTA. This is not the same. Maybe they could accept the UK joining EFTA but it is not in the UK's interests to do so. What would you get? It would not solve your direct bilateral problem with the EU, and maybe you would have more difficulties in negotiating with the US or China on a trade agreement. I do not see how it is in your interests. Joining EFTA because you want to join the EFTA pillar of EEA is something else. Clearly, we have official statements by Norwegian and Icelandic officials saying, "No, we do not want the UK in this pillar," because this pillar is a supranational pillar and they will be slaves of the UK in this pillar.

You have to understand how it works in this pillar. You cannot opt out individually. All the countries of the EFTA pillar are linked and, therefore, they have to speak with a single voice towards the EU. They do not want to be in the situation of being subject to the difficulties between the UK and the EU. You do not want to be subject to the difficulties between Norway and the EU. Therefore, I am very sceptical, and many Norwegian and Icelandic officials say they do not want the UK in this group.

Professor Church: Can I add two points to that? One is that it has been suggested that the UK might like to consider becoming an associate of EFTA. The other problem is that, if you enter EFTA, it does not automatically follow that EFTA would allow the United Kingdom to join its existing free trade deals. That would be a matter for negotiation.

John Springford: As Professor Schwok said, it is really important to differentiate between the EEA and the Swiss bilaterals. The agreement that is still in force between EFTA as a body and the EU is an agreement in fish. Everything else has pretty much been superseded, either by the European Economic Area agreements or by the Swiss bilaterals.

Professor Schwok: There is no agreement between EFTA and the EEA. There are agreements between EFTA states and the EU. Do you understand the difference? EFTA is not an international body as such.

Q940 **Hywel Williams:** Good morning. Can I ask you about the way that Switzerland decides whether it wants to form an agreement with the EU or not? I understand that there have been referenda and votes on various bilateral agreements. Is that a national Swiss decision? Do individual cantons have any particular say so? Is there a veto system? How does it work?

Professor Schwok: The Swiss have a lot of bilateral agreements with all types of countries. I think they have 38 agreements. Sometimes they are the same as the ones Norway and Iceland got with those countries; sometimes they are different. Switzerland kept its so-called treaty-making power by not being in the customs union of the EU. Some of those agreements are spectacular because they are with China and Japan, so Switzerland is in advance. With Iceland, it is the only country to have an agreement with China, for instance. It is interesting in this regard.

Professor Church: The decision is made by Parliament and Government that they wish to negotiate a deal in this particular sector. Yes, sometimes it would be challenged—if you get 50,000 signatures, you may challenge large numbers of pieces of legislation—but it is not, as a matter of principle, always put before the people. It is negotiated by the Government.

If you go back to the 1990s, after the Swiss rejected entry to the European Economic Area, the Government came up with quite a long shopping list of sectors where they would like agreements to fill the gaps. Some the EU did not want to negotiate, so they got knocked off, and the EU added its own. From time to time, including at the moment, people come along with the idea of a third round of bilaterals. The things that stick in my mind are electricity, insurance and, sorry, the third one has escaped my memory at the moment, but there is a shopping list.

Q941 **Hywel Williams:** On an unrelated matter, I saw that one of the agreements with the EU is in respect of audio-visual services. That has been specifically excluded in the Canada deal. Do you know why it was included with the Swiss? I think I know why it was excluded as far as Canada is concerned, but is it a matter of culture and language, or what is it?

Professor Church: Yes. Remember, leaving aside the small number of Romansh speakers, Switzerland is a three-language state. It is inevitable that there is an incredible amount of interchange between the French Swiss community and France, the German Swiss community and Germany, and so forth. They regard themselves as European. They want to be involved in that. Media was very important for Swiss artistic professionals, because if you did not have that it would be much more difficult to sell Swiss intellectual products abroad. They definitely wanted to have that.

John Springford: On your previous question, very briefly, it is worth remembering that the European Union pushes for things that it really wants. A good case of that would be the aftermath of the referendum on free movement after 2014, where the Swiss people voted to have quotas on the number of people who could exercise their free movement rights in Switzerland, and then, as a response, the European Union used some of the provisions available to it to suspend agreements between the EU and Switzerland. It said, "You are only going to have quite partial membership of the Horizon 2020 research programme. We are not going to allow Erasmus to carry on."

There is that threat within the bilaterals; there is a guillotine clause, which means that, if one bilateral is defied or broken up, the EU can suspend all the other ones. That was clearly hanging over the Swiss relationship. Ultimately, the Swiss agreed that they would have extremely mild constraints on free movement as a result.

A similar case is with the financial contribution to central and eastern Europe. That was something that the European Union was pushing for as part of the enlargement process, simply because there was going to have to be a lot of investment in central and eastern Europe, which it wanted more people to be involved in. It said, "You have some real rights here in terms of market access, so we are going to try to push up the number of obligations that you have."

Q942 **Hywel Williams:** I was thinking specifically in terms of the February vote in 2014. How binding has the Government in Switzerland taken that to be? You said that the restrictions are mild rather than severe.

Professor Church: The expression you find in the Swiss press is "lite". To be fair, what happened was—again, René will correct me if I have got the detail wrong—that the Government, as Swiss Governments always do, faced with the decision said, "We have to implement this. We could do it this way." It put out proposals to consultation, which got dropped on from a great height. In the end, it was one of the Committees of the Ständerat, the Upper House, that came up with this scheme for giving preference in jobs to Swiss residents, not just to Swiss citizens.

Professor Schwok: Sorry to correct you. The Swiss did not apply the constitution. It is just window dressing. It is affirmation 2. There is no national preference to residents or to the Swiss. There is no quota. There is just information for the unemployed. They will get the announcement of the job five days in advance. That is not a major privilege. The employer who put out the advertisement for the new job will automatically get the files of the unemployed with similar profiles. As an employer, I can still decide I want to hire an Irishman, a Maltese man, an EU citizen; I do not have to hire a Swiss national or resident. It is not a real preference. It is neither a resident preference nor a national preference. It is just privileged information for the employer and for the unemployed in the region. This "lite" decision by the Parliament is window dressing.

Q943 **Hywel Williams:** It is pragmatic, perhaps.

Professor Church: The point I was trying to make is that the window dressing is applied not just to Swiss citizens but to residents. But I quite agree that, as often happens in Switzerland, pragmatic Euroscepticism overcame deep rooted anti-Europeanism. They realised that this was going to cause them all kinds of problems. The interesting thing is that this was not immediately challenged by the Swiss People's Party. The reason for that was that, if it challenged the implementing legislation and won, it would still go back to a situation it felt was extremely unsatisfactory anyway. As René has said, it is now collecting signatures for a full-frontal attack on free movement, but that is going to be at least three years down the line.

Q944 **Jeremy Lefroy:** I have a very quick follow-up. In terms of free movement, there has been some concern expressed, which may or may not be correct, that the arrangements agreed in December, in outline, for EU citizens and correspondingly UK citizens living in the EU, will not apply to EEA or Swiss citizens and correspondingly UK citizens living in the three EEA countries or Switzerland. Is that your understanding? Does there have to be a separate agreement for those four countries, on top of the 27? Has there been any negotiation on that at all?

Professor Church: There is great unease among the Swiss community in Britain about how they are going to be affected by minimum income requirements and so forth. The Swiss Government have a programme called Mind the Gap, which is designed to help people who find themselves in that situation. Yes, you would have to have specific arrangements for communities like the Swiss in Britain. I am not fully in touch with that, but that is my understanding.

Can I go back to one point? The so-called guillotine, which it is better to think about as a tripwire, rather than a guillotine, only applies to the first range of bilaterals. The second bilaterals, including Schengen, are all freestanding. That was introduced by the EU, because it was aware of the effectiveness of Swiss direct democracy, and the first bilaterals were a package that satisfied both sides. The EU's feeling, particularly among its officials, was that you needed to ensure that somewhere down the line the Swiss could not cherry pick and turn down the one that was most offensive to them.

Q945 **Emma Reynolds:** Briefly, in follow up to the question about the referendum four years ago, as I understand it, there was quite a prolonged series of negotiations between the Swiss and the EU. If the Swiss had tried to go ahead with something less "lite" than they ended up with, what was the EU proposing to do? You talked about Horizon 2020 and Erasmus, but would there have been any implications for market access?

Professor Church: I do not think we know. Can I just correct you? It was not a referendum. A referendum in the Swiss sense is what I call a challenge, and that is the ability to question a Bill that has been passed by Parliament. This was an initiative, brought about by right-wing forces. The EU's position was that the Swiss had created a problem for themselves and it was up to the Swiss to solve it, which was why in the end it quite happily accepted the window dressing.

Q946 **Emma Reynolds:** Can I ask about free trade agreements? Could I ask John Springford on this? You talked about the free trade agreement between Switzerland and China earlier in the evidence session. Is it not the case, given that Switzerland has a relatively small economy compared to China, that there are still significant barriers to goods that the Swiss are trying to export to China, for example the luxury good tax of around 20% that the Chinese put on such products?

John Springford: Yes, that is right. The agreement between China and Switzerland is a little imbalanced. In order for it to be logged at the World Trade Organisation, it has to cover substantially all trade between Switzerland and China, which is largely in merchandised goods, not really in agriculture or in services. Tariffs on pretty much all the different types of products are coming down to zero. In the Swiss case, they have come down to zero pretty much straightaway. China has, in several quite sensitive areas, only agreed that tariffs will come down to zero over time, and there are some areas where tariffs will not be zero at all. A good example of one where tariffs will slowly come down to zero is Swiss watches, but there are all sorts of other areas where discrimination is possible. A luxury goods tax is one of them.

It is not as though the Swiss-China agreement is particularly deep. It is fairly shallow. It largely deals with tariffs only. It does not really deal with behind-the-border measures that can be used to discriminate against Swiss companies, for example. This is a function of both the difference in economic size between China and Switzerland and the amount of weight that they have. In some ways, having two partners who have quite different sizes makes trade agreements a bit easier, in the sense that large entities do not necessarily trade as much as small ones. Switzerland is a very open economy. It trades about 40% or 50% of its gross domestic product. You can end up in a situation where you have some really quite shallow and slightly unbalanced agreements.

Q947 **Emma Reynolds:** Theoretically, if Switzerland was part of a larger trade bloc, it would perhaps be able to negotiate more favourable trade agreements for its watchmakers and other exporters, if it had the weight of a bigger economy behind it.

John Springford: That is certainly the case. If you look at the trade agreements that the EU has put on the table with Korea, which is a smaller economy, or Canada, things have generally been relatively straightforward, compared to trade agreements between the United States and the EU, which have always been very difficult, and between China and the EU, which nobody has ever really countenanced. Being a smaller economy can get you lots of trade agreements, which will bring your tariffs down, but the biggest barriers to trade are no longer really tariffs, which are already quite low. They are behind-the-border measures, discrimination, taxes, as you talked about, implicit subsidies, allowing environmental degradation in order to get competitive advantage. These are much more difficult to negotiate if you are a small economy.

Professor Schwok: The Swiss deal only in economic matters. They do not mix these up with human rights considerations, political considerations and conditionality considerations. Human rights and democracy violators like China prefer Switzerland to the EU, because the EU is talking about human rights, politics, et cetera. The Swiss focus on trade, finance, investment and nothing else. With Colombia, with Vietnam, with China, it is easier if you have this strict economic dimension in your agreements. Whether it is right or wrong is a moral dilemma, but I am explaining to you why it is sometimes easier for the Swiss to have a trade agreement, because it is just about trade and economics, and not about the political human rights dimension.

Q948 **Sir Christopher Chope:** You have been describing the EU's frustration at many of the arrangements that have already been entered into with Switzerland, and we know that there has not been a major agreement between the EU and Switzerland for some 10 years. What is motivating each side in this? Does the EU resent the fact that Switzerland does not want to join the EU and that the Swiss are very strong and keen on their sovereignty, or does the EU think that it is not to mutual self-benefit for them to enter into any agreements? What is motivating the two sides in this?

Professor Schwok: I did some research on this. My personal answer, based on interviews, is that it is unfortunate. High-level servants and legal experts within the Commission are frustrated with these agreements, because there is no institutional dimension to them. There is no Court of Justice; there are no settlement mechanisms; there is nothing clear. They are frustrated with this and have started to say, "If there are disputes, what can we do?" But higher people in the Commission—and I interviewed three of them, including Michel Barnier—were not aware of this issue. They said, "We do not care. What are you talking about? I did not know."

I was close to Barroso. He taught in my institute for several years, and I had lots of talks with him. He told me, "We never mentioned this in the Commission at the highest level. It was of no interest." I talked to several politicians: Ministers in France and Italy. They told us, "We do not care so much about it."

Therefore, as I told you, it is unfortunate that lower-level civil servants or people from the Commission's legal service have put this on the agenda, and now they are forced, in a sense, to deal with it. If you talk to the highest people, Angela Merkel, Macron or others, they do not care so much. Their answer is, "It works with Switzerland. It has been working for 15 years, so why do we want to change this? We have no disputes; we have no problems." This is unfortunate, but it happened and now we are blocked because this is the official position of the EU. That is my own analysis of how it evolved to this blunt situation.

Professor Church: In the early days, there was an element in EU negotiation with Switzerland that was affected by the fact that it was thought that the Swiss would join at some stage. That has now completely gone. I doubt whether there is any civil servant at any level who believes that is going to happen. This is not an attempt to punish Switzerland; it is a piece of administrative tidying up. It has resonance beyond the lower parts of the civil service, because it has been endorsed fairly emphatically by the European Parliament, so obviously fits in with member states' interests.

John Springford: Can I come in very briefly on the sectorial question? When we are talking about economic governance, one reason why the EU is unwilling to move a good deal further from allowing market access in goods—where you have a framework, however imperfect, to sort out any issues—to including services is, first, that services are much more highly regulated than goods. If I go and contract a lawyer, I want to know that that lawyer knows what he is talking about and the law of the country that I am involved in. If we are talking about banking and financial services, there is always the risk of consumers and businesses getting ripped off, because they know an awful lot less about how financial market work than financial market participants do. That is why a lot of services, particularly professional services, are quite highly regulated.

The price of market access in that sector to the EU is: "You have to take on our regulations and our standards. You have to take on our supervisory mechanisms." Some of those we might disagree with. There has been a lot of contention in the UK about the bankers' bonuses provisions, for example, and whether they really contribute to financial stability. That is the price. The Swiss relationship does not provide for enough regulatory autonomy and a secure enough dispute resolution mechanism for the EU to agree to move strongly into the field of tradeable services.

Q949 **Sir Christopher Chope:** Can I just touch on one other subject? Is there is a frictionless border at the moment between Switzerland and the EU?

John Springford: No. There clearly is not. We can talk about the amount of friction, but it is clearly not zero. If you want to export a good across from Switzerland to the EU, you have to fill in quite a lot of paperwork. You have to pay tariffs if that good has significant content that has been imported to Switzerland from outside the EU. There are spot checks on lorries. There are other customs issues, like VAT. The Swiss are not part of the EU's VAT regime, which means there are spot checks to ensure that VAT has been paid. It is not a very friction-full border. It is one of the lighter-touch borders, but you cannot say it is frictionless.

Professor Church: The Swiss went through a number of phases before they adopted VAT because they quite clearly realised that for their trade it was going to be necessary. It was rejected on a number of occasions before it was accepted.

Q950 **Sir Christopher Chope:** Professor Schwok said in his affirmation 3 that the abolition of controls at the border crossing between Switzerland and the EU results mainly from Switzerland's accession to Schengen. If we look at Ireland, neither the Republic of Ireland nor the United Kingdom is in Schengen, but we have the common travel area. Is that not, in a sense, an equivalent external border for Ireland and the United Kingdom together, as, indeed, those who are members of Schengen have a common external border? Is there not an equivalence there?

Professor Schwok: You are right. It is rather similar. You do not have physical checks because you have this travel agreement.

Q951 **Sir Christopher Chope:** Why is it that people are making such a big issue?

Professor Schwok: I explained why Switzerland could not have controls with EU countries, because it is part of Schengen, but, yes, you already have an equivalent to Schengen between Northern Ireland and the UK.

Q952 **Sir Christopher Chope:** Why should that be a problem in our negotiations with the EU?

John Springford: I do not think that it is a problem. We are not saying that nobody can cross the Northern Irish border without being checked or even any idea of having spot checks; everybody will just be allowed to go across. The border checks will happen behind the border by employers. This is the route we are going down. Say somebody from the EU 26 goes to the Republic, then goes to Northern Ireland and then tries to work. It will be to up to the employer to enforce the border by saying, "Okay, do you have the right to work?" We are not talking about the right to cross the border or hang out in Northern Ireland for a while. It is more about enforcing other forms of rights.

Q953 **Sir Christopher Chope:** Do you see any issue with the Irish Republic, unlike the United Kingdom, not having yet joined up with the Schengen Information System?

John Springford: In terms of the relationship with the UK?

Q954 **Sir Christopher Chope:** In terms of border security and checks at the border. It means that the Irish do not have access; they do not know so much about the people approaching the border from their side as we do from ours.

John Springford: That is potentially a problem. I am sure it is something that Ireland will come under pressure to implement. It seems to be in the interests of the UK, the Republic and the 26 that you have good information flow and access to each other's data on potential criminal or terrorist suspects.

Q955 **Mr McFadden:** Good morning. I want to ask a little bit about EU agencies and programmes. I am thinking about the European Medicines Agency, the European Aviation Safety Agency and so on. Professor Schwok, you have said that Switzerland participates in a few of these, in the table that you have provided us. Can you say something about the basis upon which it participates in these kinds of European agencies, and how it chooses which ones to participate in and which ones not to?

Professor Schwok: I put together a list. It is table 2 on page 4. Switzerland is a member of only four agencies, and Norway is a member of 17 agencies. They are environment, medical products and two others that I do not remember. Again, my point is that it is a shopping list. Maybe the Swiss did not want to join more, so if you want to remain in more—because you are already in them—just ask, and you will see what answer you get. It is not part of the so-called Swiss model. It is just part of the shopping list. It is about whether you want to put more or fewer agencies in your basket.

Q956 **Mr McFadden:** I want to understand a little more about how Switzerland participates in these agencies. For example, if it is participating in the European Medicines Agency, does it have the same voting rights and decision rights as EU members or different ones?

John Springford: From what I remember, the Swiss do not have the same voting rights in the European Medicines Agency as a full EU member. Professor Schwok, I do not know if you know the answer to that.

Professor Schwok: I am not such an expert. Usually, they take part in the shaping process and not in the making process. They are shaping parts before they take the real decision, which is taken by only EU representatives. There is a lot of preparation in special committees; this is what is called the shaping part. In the shaping part, you can influence. Usually, the decision is taken by consensus in the shaping part.

Q957 **Mr McFadden:** Mr Springford, you referred earlier to Horizon 2020 and Erasmus. Would it be the same regarding these programmes?

John Springford: Yes, it is the same. In terms of making decisions about how much money is going to be spent within each of the Horizon 2020 buckets—money for academic scientists, money for R&D—Switzerland does not have the ability to make those kinds of decisions or vote on them, although there is some decision-shaping, which is planned, because it is largely run by experts in any case, who are not necessarily hugely political.

Q958 **Mr McFadden:** As a participant, Switzerland pays into these institutions?

John Springford: Switzerland pays in and has received a disproportionately large share of the funding in Horizon 2020, because it has such excellent universities.

Q959 **Stephen Kinnock:** Good morning, gentlemen. I wanted to ask a little more about the system that has been put in place in Switzerland around hiring and recruiting for jobs. My understanding is that, if there is an area of the country that has higher than average unemployment, jobs can only be advertised for local workers in that area. There is a period of time under which that has to be in place. Can you clarify what that period of time is? I have also read that it is regions and sectors. Are there particular sectors that apply? Can you set out in a bit more detail how that system works.

Professor Schwok: Nowadays, in Switzerland, the average unemployment rate is 3%. Until 2020, if there is an unemployment rate of 8% in one branch, the mechanism that I explained of earlier advertisement will be put in place. After 2020, if the unemployment rate is 5%, this mechanism will apply. This mechanism, again, is window dressing; it is just informing the unemployed about the job five days in advance. After five days, the whole of Europe will be informed about the job.

The employer will automatically get some files that are similar to the announcements from local residents, Swiss or non-Swiss. The employer will still be able to hire a person from outside Switzerland in the EU if he wants to do that. It is not a genuine preference for nationals or residents. Sorry to repeat myself, but it is just window dressing to give the impression that they are doing something. The employer is just made aware that he should maybe look at the files of the people in the local area.

Q960 **Stephen Kinnock:** When you say it is window dressing, do you think that is the general view of the Swiss people?

Professor Schwok: It is not the official view of the Parliament. It is not the official view of the main parties that voted for this. I am an independent scholar. I am not part of the Swiss People's Party, but I have to admit that this legislation does not apply what the Swiss people wanted to put in the constitution, article 121a.

Q961 **Stephen Kinnock:** I know that this is a different type of speculation but let us say that we made that our policy. If we wanted to maximise access to the single market and this was one way in which we could argue that we had greater control over the movement of labour, given the experience in Switzerland, you do not think that it would fly in the UK, in terms of public consent?

Professor Schwok: In my view, it does not solve the issue that Swiss people wanted to put in the constitution, which was national preference and quotas. This does not solve the issue. It is good. I am also an employer. I hire people in my institution. It is good that, as an employer, I am aware of people living in my area, I get their profiles and I do not have to look for someone far away if I can get the profiles beforehand, but it is no more than that. In terms of public relations, you can say, yes, the Swiss are doing something against free movement of people, but it is just PR, to be honest. It is not a real quota; it is not a national preference.

Personally, I am against quotas and national preference, but I have to admit that it is not the quota or national preference that the Swiss people wanted when saying yes to this popular initiative in a referendum in 2014.

Q962 **Stephen Kinnock:** You have said that you do not think the other EFTA countries would want the United Kingdom to join EFTA or to join the EFTA pillar of the European Economic Area. If you look, for example, at the interview that the Prime Minister of Norway gave in Davos recently, which was broadcast on BBC News, she said it is absolutely clear that it is in Norway's best interests for the UK to have the softest possible Brexit. General consensus is that the EEA would be the softest possible Brexit. What is your evidence to suggest that the EFTA countries would not want the UK in EFTA or in the EEA pillar of EFTA? Do you have any concrete evidence for that?

Professor Schwok: It would be an elephant in the shop of the EFTA pillar.

Q963 **Stephen Kinnock:** Why do you think the Norwegian Prime Minister said that it is in Norway's national interest for there to be the softest possible Brexit?

Professor Schwok: Because Norwegians, Icelanders and especially Liechtensteiners found tricks to negotiate quietly with the EU on the free movement of people. Having the UK in the group, you cannot find tricks and negotiate. For instance, Liechtenstein got exceptions on free movement of people and nobody is aware of it. It does not apply free movement of people, for obvious reasons, but nobody is aware. Nobody cares. It can do it discreetly. If you are in the middle of the shop, you cannot negotiate discretely on fisheries or all types of matters.

Another point is the EFTA pillar is a supranational pillar. You have to understand how it works. If there is new EU legislation relevant to EEA, they have to opt in all together. If one of them wants to opt out, they all have to opt out. Let us say the UK is a member of the EEA EFTA pillar and there is new legislation on fisheries. The UK does not want it for whatever reason, but the Norwegians want to opt in. They cannot opt in. They cannot adapt to the new legislation, because it is a general supranational pillar. They have to opt out, although they want to opt in.

You will be slaves or hostages of the Norwegian or Icelandic people. You want to opt in; they do not want to, so you have to opt out, and you will suffer retaliation, so-called rebalancing measures, from the EU. It is a supranational pillar, and I am not sure that you want to be in a supranational pillar.

Q964 **Stephen Kinnock:** You could argue that, when the European Union introduced qualified majority voting, that was, by definition, a massive step in a supranational direction, so you are part of that in the EU as well. On free movement of people, articles 112 and 113 of the EEA agreement are the legal basis in the EEA agreement for both pulling the emergency brake on free movement of labour and introducing the quota-based system that is the case in Liechtenstein. The legal precedent has been set using articles 112 and 113.

Do you not think that, as the EEA agreement has existed since 1993 and is well established and understood, that any country that is subject to the EEA agreement would have the legal right to invoke articles 112 and 113? Whether you are Norway, whether you are the United Kingdom, whether you are Liechtenstein, the law is there in the treaty and the precedent has been set.

Professor Schwok: You have a legal right to invoke it, but if you do it you will suffer so-called rebalancing measures from the EU, which is what I call here retaliation. It is a risk, because there are rebalancing measures and you can suffer from this. You will suffer more if you are a victim of retaliation due to the position of Iceland or Norway. You see my point. Therefore, I am not sure it is what you usually look for.

Chair: That concludes the session. On behalf of the Committee, can I thank you, once again, for coming today, for giving up your time and for helping us enormously with the answers you have given, as we continue this exploration of what model the UK might seek as it leaves the European Union?