The Day After: Access to the Single Market in Times of Brexit, Equivalence and Extraterritoriality

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This seminar celebrates the 70th birthday of Werner Meng. Werner was a friend of Switzerland, an Alumnus of the University of Lausanne and an adjunct faculty member at the World Trade Institute, places to which I have been affiliated for the last 10 years.

Switzerland, of course, is deeply integrated into the Single Market and yet not a Member of the European Union (EU). However, despite the popular vote of 6 December 1992, the Swiss government managed to build, largely unnoticed outside Switzerland, a substitute for membership in the EU or the European Economic Area (EEA), the 'bilateral approach', *la voie bilatérale*. Brexit, the aftermath of the Global Financial Crisis (GFC) and other developments have put some strain on that special relationship. But the challenges for the EU-Swiss relations seem quite pedestrian compared to the challenges the UK is facing in deciding its future relationship with the continent; it comes as no surprise that the Swiss solution is one of the models that have been discussed in Westminster. Werner Meng, it is hoped, would have had an interest in the legal issues that come with that development.

I. Introduction

Switzerland, not unlike Germany and the UK, has cold winters (or used to have them before global warming), lots of rain (hence a considerable dairy industry) and precious

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little raw materials. In light of that sub-optimal starting point and certain historic missteps we are all aware of, Schuman, Monnet, de Gasperi, Adenauer and others successfully advocated the creation of what is today the European Union: a confederation of sovereign states, centralizing certain state competences for the benefit of certain tasks specifically attributed to the Union, but leaving state sovereignty intact, including the right to leave.[1]

This paper explores the legal parameters in place for non-Member States of the EU to access the Internal Market, the flagship project of the EU.[2] Two of the wealthiest countries in the world, Switzerland and the UK, have decided to stay out of the EU, or, to be more precise: Switzerland wishes to remain outside, whereas the UK has decided to move out of the Union which it joined almost 50 years ago.

Both countries are well integrated into the regional value chains established in the last decades in Europe; it is fair to say that this is even more true for Switzerland than the UK, despite the latter's almost half century membership.

Pursuant to Article 3(3) TEU 'The Union shall establish an internal market', Article 26(2) TFEU defines the Internal Market as follows:

> 2.The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties.
>
> 3.The Council, on a proposal from the Commission, shall determine the guidelines and conditions necessary to ensure balanced progress in all the sectors concerned.

While the European Union has had to tackle several existential crises in the last decade – amongst them the Euro crisis, the ongoing migration crisis and the rise of political forces that do not share the political values that are the fundament of the European project – the Internal Market has been overall a success story, most notably in the field of goods and services. In the latter context, political pushback by trade unions afraid of wage competition for workers certainly have led to a significant overhaul of the *Posted Workers Directive*,[3] which now favours the protection of local workers over price competition: Not least due to the political commitment of then candidate *Emmanuel Macron*, the new leitmotiv of the Directive may be summarised as 'same salary for same work at the same place'. Shutting out, to some extent, market forces in this area aims at ensuring that, in particular, blue-collar workers are not squeezed out of the social status they have acquired over the last century.

One could even argue that this new approach to price competition in the field of migrant work is a manifestation of the recognition that labour, despite being one of the production factors, is unlike all other economic freedoms, due to its close linkage

1 While leaving the Union poses formidable challenges, as we currently experience in the context of Brexit, the act of leaving itself is easy, despite the historic consequences it may have: As this sentence is written, the Scottish First Minister states that the departure of Scotland from the Union with England is inevitable, not the least due to Brexit.

2 In EU parlance, to which we will subscribe for the sake of convenience, non-Member States are called 'third countries'.

3 Directive (EU) 2018/957 Of The European Parliament And Of The Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services, OJ L 173 of 09/07/2018, p. 16.

to individual human rights. It is also true that the free movement of workers, in particular its hands-off management by certain Member States, has caused a popular pushback fuelled by fear of the other, and of not being able to earn a living wage. This is particularly true for the UK, which opened its borders for workers from Eastern Europe long before the continental Western European Member States. In contrast, countries like Austria and Germany took advantage of the transition possibilities which allowed for incremental introduction of free movement of persons.

Despite these challenges, the Internal Market has been a success story, in which lawyers have for once proven that they can be useful members of society: thanks to the home state principle established in *Cassis de Dijon*,[4] and an increasing body of secondary European law, the Internal Market has become a reality.

In a nutshell, maybe the most important contribution to the creation of a single economic space has been the principle of mutual recognition, i.e. the axiom that if it is good enough for *Maurice*, it is good enough for *Moritz*:[5] whenever a product may be legally produced and marketed in a Member State A (say France, where *Maurice* lives), it must also be admitted to the market of other Member States (say Germany, home of *Moritz).* The UK, currently a Member State of the EU, is a beneficiary of this principle (that complements the harmonised legal rules that exist in certain areas, notably concerning industries that make up the majority of British exports).

II. Not all Third Countries are the same…

In contrast, Switzerland, a third country, has to jump through considerably more hoops, before Swiss products are cleared for access to the Internal Market: Pursuant to Article 29 TFEU, products 'coming from a third country shall be considered to be in free circulation in a Member State if the import formalities [in particular SPS and TBT measures] have been complied with and any customs duties or charges having equivalent effect which are payable have been levied in that Member State, and if they have not benefited from a total or partial drawback of such duties or charges'. Meanwhile, a Member State's actions, regulatory and otherwise, profit from the benefit of full faith and credit extended to the Member States of the Union, thanks to EU Treaty law and *Cassis de Dijon.*

The UK is on the path of exiting the European Union and may soon be in a position which – at first glance – may be comparable to Switzerland: very much integrated into the EU economy, an integral part of pan-EU value chains, but legally just another third country, like Albania or New Zealand. Of course, the UK is the world's sixth biggest economy, a permanent member of the UN Security Council and an important

4 CJEU, case C-120/78, *Rewe-Zentral v Bundesmonopolverwaltung für Branntwein*, ECLI:EU:C:1979:42, para. 8. Establishment of the home state principle for services in CJEU, case C-279-80, *Webb*, ECLI:EU:C:1981:314, paras 14 f.; for workers in CJEU, case C-340/89, *Vlassopoulou*, ECLI:EU:C1991:193, para. 16.

5 Not to be confounded with another principle applicable only to current Liverpool striker Mo Salah: https://www.fanchants.com/football-songs/liverpool-chants/mo-salah-if-hes-good-enough-for-you/ (15/10/2018).

military ally, which is currently particularly important, given the ongoing acts of military aggression against some Eastern European countries.

However, the narrative for the UK and Switzerland is vastly different: While both a post-Brexit UK and Switzerland may **be third countries, their situation is vastly different in terms of dynamic:** Switzerland has, after the great disappointment of the popular rejection of participation in the EEA, built dozens of legal bridges that make, as of today, Switzerland one of the most integrated countries in Europe: it is said that 150+ treaties link the country with the EU.[6] Many of the fundaments of the relationship between Switzerland and the EU were laid at a time when Switzerland's immediate neighbours – Germany, France and Italy – had a more important role in EU-decision making than is the case today. It will be recalled that especially the first two states have played the role of advocate for Switzerland's interest vis-à-vis other European powers for centuries. With the benefit of hindsight, it seems obvious that Switzerland received trade benefits normally reserved for family members, which one did expect Switzerland soon to be. Any trade benefit for Switzerland, in that perspective, was a benefit that was given to a future Member state, and a very successful one at that. Maybe there was no Swiss cherry-picking, but there has certainly been cherry-giving.

It is true that the climate between the EU and Switzerland has seen better days, not least as a consequence of the popular vote[7] that put a provision into the Swiss Federal Constitution (Article 121a) that required, inter alia, the Government to establish quotas for all foreign workers (including from the EU) and to terminate all international agreements not compatible with that quota policy: this was directly aimed at the Swiss-EU Agreement on the free movement of persons, that associates Switzerland to the EU labour market. As the EU communicated to its Swiss partners that it would not accept any infringement of the Agreement on the free movement of persons, the Swiss government ended up implementing the mandatory quota requirement by regulations that allow the state, under very restrictive conditions, to request employers in a branch of industry hit with high unemployment to give citizens and permanent residents a head start of a couple of days before advertising an open position. The EU thought this to be, if at all, a *de minimis* violation of the agreement, and signalled acceptance. Negotiations to establish a new fundament for the 'bilateral approach' are ongoing; we shall return to that issue later.

In contrast to the successful Swiss efforts to integrate well into the EU legal order – Switzerland is implementing most directives earlier and better than most Member States, despite its insistence of doing so autonomously – the UK is dropping out of the single market: it does so after a vote which was not required constitutionally and characterised by blatant lies and misinformation. Up to this day,[8] the ruling party has

6 For a complete list in German see: https://www.eda.admin.ch/content/dam/dea/de/documents/publikationen_dea/accords-liste_de.pdf (15/10/2018).

7 Held on 9 February 2014; For details in German see: https://www.bk.admin.ch/ch/d/pore/vi/vis413.html (15/10/2018).

8 See for example: https://www.politico.eu/article/brexit-8-tory-tribes-conservative-party/ (15/10/2018).

not made up its mind of what it wants which is remarkable as almost three quarters of the time allocated by Article 50 TFEU has passed by. Also, some in the British establishment like the idea that the UK could double-dip: having continued full access to the Single Market, however being able of its new non-membership to avoid all the downsides that come with membership: consumer and workers' rights, environmental protection, financial regulations and the like. The idea of becoming a pirate state may be attractive in the home country of Sir Francis Drake but is deeply unpopular in Brussels who insists that one cannot have it both ways. This is the big difference to Switzerland: despite all the rhetoric about sovereignty, the Swiss government and the business community understand that they have to be in regulatory alignment with the EU and accept the free movement of persons. While the rhetoric underlines the fact that EU regulations do not apply as such, but only they are autonomously and voluntarily adopted by the Swiss legislator in order to facilitate trade between the parties, no one is in doubt that Switzerland would be a model Member State, if it were a Member State. It is not, and even EEA Members, which are obliged under the EEA-Agreement to implement EU legislation, will look to check how Switzerland has done it.

Note that the EU would not have concluded an MRA[9]+ Agreement with Switzerland if the latter had not practised 'Autonomer Nachvollzug' since 1992 rather diligently with regard to all legislation of relevance for the Internal Market.[10] The MRA between the EU and Switzerland does away with the double burden of satisfying both EU and Swiss standards with regard to 20 product categories such as e.g., machinery, medical devices, electrical equipment, construction products, lifts, biocidal products. The agreement covers more than a quarter of the value of all Swiss exports to the EU, and more than a third of all imports from the EU.[11] Products covered by the MRA enjoy, by and large, the same access to the EU market as their EU or EEA competitors.

I should add that Switzerland, in its law on technical barriers to trade,[12] establishes the rule that Swiss operators can apply EU standards not only for export but also for domestic production. There are significant exceptions, but still, the ground rule is remarkable.

While the fundament for the Swiss-EU relationship has been the integration of EU law by international instruments ('the bilateral agreements') and the in principle selective, but with regard to economic law very comprehensive regulatory alignment

9 Mutual Recognition Agreement.

10 See Dispatch of the Swiss Federal Council on the Follow-up Programme after the rejection of the EEA-Agreement of 24 February 1993, BBl 1993 I, pp. 805, 816, available in German only under: https://www.amtsdruckschriften.bar.admin.ch/viewOrigDoc.do?id=10052538 (15/10/2018).

11 https://www.seco.admin.ch/seco/en/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit/Wirtschaftsbeziehungen/Technische_Handelshemmnisse/Mutual_Recognition_Agreement_MRA0/MRA_Schweiz_EU.html (15/10/2018).

12 See for details: https://www.eda.admin.ch/dea/en/home/bilaterale-abkommen/ueberblick/bilaterale-abkommen-1/technische-handelshemmnisse.html (15/10/2018).

with EU rules and regulations, ('autonomous adaptation', 'Autonomer Nachvollzug') a new element has entered the equation.

III. 'Equivalence clauses': The Brussels effect on EU neighbouring countries

Regulating (and, to some extent supervising) third-country economic activities – in areas as diverse as financial services, data protection or clinical trials – has become of major interest to the European Union. In a Staff working document of 2017,[13] the Commission undertakes to explain its pertinent policy positions (which seem to have been accepted by both Parliament and Council) with regard to financial services. This is not a coincidence: since the Global Financial Crisis, many countries have been acting on the idea that the problems they were facing during that time had their origins offshore; as a consequence, they want to ensure that the financial instruments and service providers having the capacity to infect their systems have to meet their standards as a condition for getting market access.[14] Most new EU financial services legislation therefore contain 'third country' equivalence provisions that allow the competent authorities (typically the Commission) to evaluate whether the foreign regulatory environment ensures that foreign service providers and products have the same quality as the EU ones. In addition, that policy aims at nullifying competitive advantages of EU operators as a consequence of less intrusive and therefore more business-friendly regulation: the EU wants to 'avoid un-level playing fields [and] regulatory arbitrage'.[15]

Consequently, these evaluations have proven to be far from an exact science. The Commission is of the opinion that 'equivalence empowerments do not confer a right on third countries to be assessed or receive a positive determination. [Rather, the] decision is a unilateral and discretionary act of the EU, both for its adoption and any possible amendment or repeal'.[16] In its decision of 21 December 2017[17] on the equiv-

13 *European Commission*, Commission Staff Working Document, 27/02/2017, SWD(2017) 102 final, https://ec.europa.eu/info/sites/info/files/eu-equivalence-decisions-assessment-27022017_en.pdf, 'EU equivalence decisions in financial services policy: an assessment' (15/10/2018).

14 Ibid., p. 4: 'Exposure to risks emanating from foreign jurisdictions was one of the vulnerabilities affecting financial systems in the EU and globally because of the interconnectedness of financial markets worldwide.' In 2009, the European Council set out political guidance to improve the regulation and supervision of financial markets in the EU. Also in 2009, the G20 launched a financial reform agenda – a set of commitments for the world's major economies to overhaul their financial systems, promote financial stability and improve global resilience to internal and external shocks.

15 Cf. the letter by ESMA dated 7 July 2017 at https://www.esma.europa.eu/sites/default/files/library/esma70-151-573_letter_to_com_vp_esma_views_on_tc_regimes.pdf (15/10/2018).

16 *European Commission*, (fn. 13), pp. 8 f.

17 *European Commission*, Commission Implementing Decision (EU) 2017/2441 of 21 December 2017 on the equivalence of the legal and supervisory framework applicable to stock exchanges in Switzerland in accordance with Directive 2014/65/EU of the European Parliament and of the Council.

alence of the legal and supervisory framework applicable to stock exchanges in Switzerland, the Commission found that for the purposes of Article 23(1) of Regulation (EU) No 600/2014, the legal and supervisory framework applicable to stock exchanges in Switzerland were equivalent to the requirements resulting from Directive 2014/65/EU, Regulation (EU) No 600/2014, Regulation (EU) No 596/2014 and Directive 2004/109/EC. However, the Commission explained:

> 30. This Decision also takes into account the Council conclusions of 28 February 2017 in accordance with which a precondition for further developing the sectoral approach with Switzerland is the establishment of a common institutional framework for existing and future agreements through which Switzerland participates in the Single Market of the Union.

Therefore, the Union only recognised the equivalence of Switzerland's regulatory regime until 31 December 2018, with the possibility of extending the duration. Accordingly, a not-so-subtle expectation is attached:

> When deciding on whether to extend the applicability of this decision, the Commission should, in particular, consider the progress made towards the signature of an Agreement establishing that common institutional framework.[18]

It seems rather obvious that the Commission considered the decision and the granting of market access rights as a part of its overall relationship with the Swiss Confederation. I will not discuss here whether this treatment is indeed compatible with WTO law, as this would be a topic in itself. Suffice to say here, that while Swiss Stock exchanges may have a greater impact on the EU than, say, the Indian Stock exchanges, given that Zurich is the fourth biggest European Stock exchange, prudential reasons for justifying the GATS' most favoured nation obligations are not beyond being tested.

The concept of 'equivalence' varies from subject matter area to subject matter area. For example, in the context of clinical trials, the Union asks for behaviour 'in accordance with principles equivalent to those of this Regulation'[19] to be determined by the competent authorities when and if there are controls. In contrast, sometimes an attestation of equivalence is necessary to be given only when what the EU considers to be the most important parts of the pertinent legislation are implemented, and the implementation on the ground (enforcement capabilities and regulatory environment e.g., regarding criminal law sanctions) are met. For example, whether sufficient enforcement capacity is provided for by the pertinent state.[20]

18 Ibid., para. 30.

19 Cf. Art. 25, para. 5 of the Regulation (EU) No 536/2014 of the European Parliament and of the Council of 16 April 2014 on clinical trials on medicinal products for human use, and repealing Directive 2001/20/EC; see also Art. 79 and implementing acts.

20 Cf. Art. 1 of the Commission Implementing Decision (EU) 2016/1250 of 12 July 2016 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequacy of the protection provided by the EU-U.S. Privacy Shield.

Recently, the General Data Protection Regulation (GDPR)[21] seems to go even further, by explicitly ordering extraterritorial application of EU law to foreign subjects, provided these subjects establish a link with the Internal Market, even if this link is not particularly robust. Article 2 GDPR reads in relevant parts:

> 2. This Regulation applies to the processing of personal data of data subjects who are in the Union by a controller or processor not established in the Union, where the processing activities are related to:
>
> (a)the offering of goods or services, irrespective of whether a payment of the data subject is required, to such data subjects in the Union; or
>
> (b)the monitoring of their behaviour as far as their behaviour takes place within the Union.

This effect's principle is, of course, an old friend of the EU[22] – and one that interested Werner Meng:[23] If what you do has an effect on us – and, *nota bene*, when you are Switzerland or the UK almost everything you do has an effect on the Internal Market, because it is as much your market as the market of EU Member States – then our law will apply. This used to be the point of view of the EU with regard to anti-competitive behaviour abroad. It seems that the EU is inclined to follow the U.S. and broaden its perspective on extraterritorial application, without, however, giving up the requirement of a proper basis for such expansive application: using the Internal Market would seem to fit that requirement.

IV. Market access for UK products after Brexit

British Prime Minister May has made abundantly clear what the UK aims for: A UK outside of the Union, benefiting both its goods and services from continuing access to the Internal Market, free to pursue its own regulatory policies and revitalise its links with the countries of the world that it remembers fondly as having been part of the Empire. To use the words of the former Mayor of London from a prepared speech to his then cabinet colleagues: How can the UK have its cake and eat it, too?

While the future relationship agreement between the UK and the EU is yet to be concluded, and surprises are always possible, it seems rather certain that, sadly, the 'bespoke solution', the 'red, white and blue' solution that ensures a continuation of essentially all advantages of membership while avoiding its downsides will not happen.

21 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119 of 04/05/2016, pp. 1–88.

22 CJEU, joined cases 89/85, 114/85, 116-117/85, 125-129/85, *Re Wood Pulp Cartel: A. Ahlstrom Oy and Others v. E.C. Commission (Wood Pulp),* Common Market Law Review 1988, p. 901.

23 *Meng*, Extraterritoriale Jurisdiktion Im Öffentlichen Wirtschaftsrecht/Extraterritorial Jurisdiction In Public Economic Law, Berlin 1994, passim.

Rather the following solutions seem more likely:

1. Brexit would be cancelled: Due to pressure from all parts of British society, in particular, the threat of an end to the Union between Scotland and England, Parliament with popular approval, or Parliament alone, or the Cabinet will cancel Brexit The EU will do away with technicalities and accept the withdrawal from the withdrawal.
   While nothing can be excluded currently in British politics, it seems highly unlikely that this will happen. If it happens, a number of EU and UK constitutional questions will have to be addressed.
2. The UK would leave the EU without an agreement addressing the future relationship: while there seems to be consensus amongst economists that this scenario would be most unfortunate, the likelihood for such a cliff-edge Brexit has increased lately, due to the rejection of the current Chequer's Masterplan[24] by both the EU and significant parts of the Conservative party. Both the UK government and the EU are now increasingly preparing for such a scenario.[25]
3. The UK would leave the EU but will stay permanently/provisionally in the Customs Union. Due to the mixed experiences the EU has made with its Customs Union with Turkey, this is likely to be excluded by the EU side. In light of the UK's inability to agree internally on any position, at least the temporary maintenance of the status quo seems to have gained friends both in Brussels and in London: both the Labour Party and the House of Lords seem to have embraced that position.
4. The above point would go hand-in-hand with a Deep and Comprehensive Free Trade Agreement, ensuring a largely frictionless trade in goods. Even if a Customs Union, temporary or with non-determined duration, were not agreed upon, it would be imaginable to agree on a Canada-style Deep and Comprehensive Free Trade Agreement, possibly with an MRA+ included. A *conditio sine qua non* for any such deal would be full regulatory alignment of the UK with the EU, which the Chequer's plan seems to accept: Union law will determine the UK regulatory environment, despite very limited participation of the UK in rule-making.
5. While the instruments used would be somewhat different from the ones used in the Swiss-EU relationship, the results would be somewhat similar: far-reaching regulatory alignment regarding goods as a prerequisite for privileged market access, without however, benefitting from the full faith and credit jurisprudence of Cassis de Dijon. And such a solution does not include financial services, for which the EU has now enacted dozens of equivalence provisions in its financial services regulations. Insofar as the 'future relationship agreement' could contain some mu-

24 See Policy Paper: 'The future relationship between the United Kingdom and the European Union' from 17 July 2018, https://www.gov.uk/government/publications/the-future-relationship-between-the-united-kingdom-and-the-european-union/the-future-relationship-between-the-united-kingdom-and-the-european-union-html-version (15/10/2018).

25 Cf, the '*Collection:* How to prepare if the UK leaves the EU with no deal – Guidance on how to prepare for Brexit if there's no deal.' https://www.gov.uk/government/collections/how-to-prepare-if-the-uk-leaves-the-eu-with-no-deal (15/10/2018).

tual recognition provisions of the type used in the Non-Life-Insurance Agreement between the EU and Switzerland.[26] This is doable for the Union, and, while a significant deterioration of the UK's current situation, better than the suicidal cliff-edge solution.

6. The EEA would give the UK everything it wants, including market access for and to the city of London. But there is a catch, in fact, two catches: one, everything stays the same, but the UK is now a rule-taker, not a rule-maker. Two, EEA membership comes with the acceptance of all four fundamental freedoms, including the free movement of persons. The latter is, so far, *anathema* to the post-Brexit UK.

V. Conclusion

Having your cake and eating it, too, or as the French say: keeping the butter, the consideration for the butter and the smile of the milkmaid is a business proposition which is too good to be true. It is, in other words, the lie that UKIP and Boris Johnson, with a little help from Vladimir Putin told the British Public.

The question of whether leaving the Union (or staying outside the Union) is a good idea long-term can be answered only on a political evaluation that is beyond the expertise of this author. What can be said from a legal perspective is that staying outside of the Union and being dependent on its Internal Market comes at a price: the significant loss of sovereignty, uncompensated by non-traditional exercises of sovereignty, such as the opportunity to shape and pass legislation in the Council of the European Union.

For obvious reasons the Union is not prepared to allow neighbouring countries the benefits of the Internal Market without adhering to its rules. Switzerland knows through experience, and the UK is belatedly learning that neighbours do not successfully negotiate regulatory divergence with the EU. If they want market access in certain areas and the EU is prepared to take that sectorial approach (as it was in the past in the case of Switzerland), the best deal they can get is to limit the number of areas where they have to achieve regulatory coherence. But achieving the right to diverge is always strictly limited and mostly concerns procedural aspects like timelines and the like.

Also, the closer a neighbour is and the more it is integrated or wants to be integrated, the more the EU will insist on equivalence and on their right to determine whether equivalence can indeed be attributed.

What that means can be shown when looking at Switzerland: like any other Member State (just without any input on the law-making side) the administration will go through every Directive and Regulation dealing with the Internal Market and will try

26 Agreement between the European Economic Community and the Swiss Confederation on direct insurance other than life assurance, Protocol No 1: Solvency margin – Protocol No 2: Scheme of operations – Protocol No 3: Relationship between the ECU and the Swiss franc – Protocol No 4: Agencies and branches of undertakings whose head office is situated outside the territories to which this Agreement applies, OJ L 205 of 27/07/1991, pp. 3 – 27.

to bring its law in line with the most pertinent parts of the new EU legal regime, not unlike that of an EU Member State.

Developments in the Swiss-EU relationship are not encouraging for the UK, although it is fair to say that some of these developments are a consequence of the EU trying (from its perspective) to avoid undesirable consequences and establish appropriate precedent. In order to continue with the 'bilateral approach', the EU expects dynamic realignment by Switzerland, the ending of unilateral flanking measures in the context of freedom of workers and the establishment of a bilateral dispute settlement mechanism that would refer all questions inseparable from EU law to the ECJ. This is a far cry from what Nigel Farage, Boris Johnson and their Associates promised the British electorate. But promises too good to be true tend to be lies. Without a doubt, the narrative that Brexit would not diminish any of the benefits ensuing from full membership, while avoiding all the inconveniences of such membership has proven to be one. If it was otherwise, European Union law would just be a restatement of general international law. This is not the case, as both Brexit and the ongoing negotiations between Switzerland and the EU demonstrate.