

# The Last Parachute

A UK-EU Association  
Agreement?



EFTA 4 UK Discussion document 26/11/2017

## **Brexit Timetable:**

- **23 June 2016 - the UK votes to leave the European Union in a public referendum.**
- **29 March 2017 - Theresa May sends Article 50 letter to European Council President Donald Tusk to notify him of the UK's intention to leave the EU.<sup>1</sup>**
- **19 June 2017 – Negotiations formally begin in Brussels.<sup>2</sup>**
- **29 March 2019 - UK is provisionally scheduled to leave the European Union.<sup>3</sup>**

*“...Sed fugit interea, fugit irreparabile tempus”*

- Virgil

## Executive Summary

- We believe the best option for the UK post-Brexit would be to adopt an ‘off-the-shelf’ model such as the EFTA/EEA relationship with the EU which is enjoyed by Iceland.
- The Government is currently seeking a bespoke Free Trade Agreement with the European Union, not to replicate any existing arrangements between the EU and a third country.
- The Prime Minister is aiming for a new arrangement which is more comprehensive than the EU-Canada CETA agreement.
- It is unlikely that the UK will be able to achieve such a deal; and even if one is reached, it would take several years to negotiate, ratify and be implemented.
- There is at present a very real risk of a ‘no-deal’ Brexit which would be damaging to the UK economy and international relations.
- If the UK does not seek to replicate an ‘Icelandic’ or ‘Liechtenstein’ style relationship then the only remaining feasible approach for the UK is to sign a UK-EU **Association Agreement** incorporating a Deep and Comprehensive Free Trade Area (DCFTA) and a specific Chapter on Northern Ireland.

## Introduction

This may well be the last report we write, as there isn't much time left for the UK to decide what type of relationship it wants to have with the European Union after Brexit.

At the time of writing, we are less than 16 months before the Government's intended Brexit date and we seem to have made little progress so far.

To summarise, the Prime Minister has so far ruled out the UK staying in the EU Customs Union (or an approximation of it), being subject to the ECJ (for anything other than an interim period), ruled out remaining in the European Economic Area (EEA) and she doesn't want a 'basic' FTA.

EU chief negotiator Michel Barnier has repeatedly stated that the UK's choices as he sees them are between the Canadian CETA model and the EFTA/EEA Norway Option.

How can this deadlock be resolved? There is only one way we can think of, if Mrs May won't countenance an Icelandic or Swiss approach – an **Israel**-style approach.

Israel and other countries such as the Ukraine have signed **Association Agreements** with the EU, incorporating Free Trade Agreements.

In this report we will look at some of these agreements and how such an agreement could work for the UK.

We will also discuss the potential drawbacks of such an approach compared to other approaches.

In addition, we will discuss why we believe that the UK should consider re-joining The European Free Trade Association (EFTA).

## **Association Agreements**

The **Institute for Government** Think-Tank has looked previously at the possibility of the UK and EU signing an Association Agreement after Brexit.

They have reported:

**“An association agreement is a treaty between the European Union and a non-EU country that creates a framework for cooperation between them.**

**Its legal basis is defined in Article 217 of the Treaty of the Functioning of the EU which provides for “an association involving reciprocal rights and obligations, common action and special procedures”. The EU uses an association agreement to create “privileged links” with a non-member country. These privileged links can involve setting up a free trade area between them, or creating broader economic and political cooperation of areas of mutual interest – for example, on defence and security, migration, environmental protection and energy, science, and education.**

**Association agreements were originally created by the EU to prepare non-member countries for accession. The very first such agreement was signed by Greece in 1961. But the EU has since used these agreements for far wider reasons, from improving trade with non-member countries such as Morocco, to developing deeper, long-term political relations with countries who are not candidates for accession such as Ukraine.**

**The EU also has special types of association agreements including ‘stabilisation and association agreements’ with Western Balkan countries and a so-called ‘Deep and Comprehensive Free Trade Area’ (DCFTA) with Ukraine, Georgia and Moldova. One example considered is the 2014 EU-Ukraine Association Agreement, because it provides opportunities for unprecedented levels of access to the EU’s Single Market – particularly in financial services – for a non-EU country.”<sup>4</sup>**

Association Agreements then; are bilateral agreements between the European Union and a state that go beyond traditional Free Trade Agreements (FTAs) and can cover a wide range of areas.

They can contain at their core a special type of agreement called a Deep and Comprehensive Free Trade Area (DCFTA).

As reported in the *Independent* Newspaper:

**“Although each of the existing DCFTAs have their unique features, in broad terms the DCFTAs allow participating countries deep access to the EU’s internal market but without Freedom of Movement.**

**Currently the UK cannot strike trade deals independently of the EU, but the countries participating in DCFTAs can, as evidenced by Georgia’s deal with China.**

**Often lambasted for taking years to finalise major trade deals, the EU managed to complete two of the DCFTAs, Georgia’s and Moldova’s, in 18 months. For UK financial and other services firms, the DCFTAs include Freedom of Establishment of a subsidiary, branch or representative office of a company in any business or service sector, other than weapons.”<sup>5</sup>**

The report ‘**An Assessment of the Economic Impact of Brexit on the EU 27**’<sup>6</sup> commissioned by the European Parliament states that:

**“The new Association Agreements that came into force in 2016 with Ukraine, Georgia and Moldova are characterised by their comprehensive political and economic content, and inclusion of DCFTAs, which could lead to a high degree of inclusion in the single market for three of the four freedoms (free movement of goods, service and capital, but not people). The EU’s doctrine that all four freedoms are an indivisible package is thus applied to the EU itself and the EEA, but not between the EU and other close neighbours, or FTAs with the rest of the world.**

**Whereas the Canadian CETA is limited to trade policy issues, the DCFTA is part of a much wider Association Agreement, covering coordination over foreign and security policies, justice and home affairs, and possible participation in a wide range of EU agencies and programmes.”**

A House of Lords Select Committee document reported what experts had said regarding Association Agreements:

**“Mr Michael Emerson, in a paper published in October 2016, cited the 2016 Association Agreements between the EU and Ukraine and Georgia as recent examples.**

**He argued that these provided a high degree of access to the Single Market for three of the four freedoms (goods, services, capital, but not the free movement of persons).**

**He also suggested that such agreements provided for the first time a “departure from the doctrine that all four freedoms always come together in an indivisible package”.**

**Mr Andrew Duff, Research Fellow, European Policy Centre (EPC), confirmed in written evidence that movement of labour under Association Agreements was subject “to work permits against the backdrop of visa liberalisation”.<sup>7</sup>**

## **Israel**

The EU-Israel Association Agreement was signed in 1995 and came into force on 01/06/2000.<sup>8</sup>

Its full title is ‘Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the State of Israel, of the other part’.<sup>9</sup>

It covers a wide range of areas, from trade in goods to political dialogue, Standards, public procurement, harmonisation of phytosanitary and veterinary standards and customs cooperation to name a few.

It states:

**“Quantitative restrictions on imports and all measures having Equivalent effect shall be prohibited between the Community and Israel.**

**Products originating in Israel shall not on importation Into the Community be accorded a treatment more favourable than that which the Member States apply among themselves.**

**Customs duties on imports and exports, and any charges having equivalent effect, shall be prohibited between the Community and Israel. This shall also apply to customs duties of a fiscal nature.”**

## **Ukraine**

As the European Commission website states<sup>10</sup>:

**“The EU and Ukraine have provisionally applied their Deep and Comprehensive Free Trade Agreement (DCFTA) since 1 January 2016. This is part of the broader Association Agreement (AA) whose political and cooperation provisions have been provisionally applied since November 2014.”**

**Michael Emerson**, an Associate Senior Research Fellow, Centre for European Policy Studies (CEPS) wrote in a recent letter to the Financial Times that:

**“The EU’s deep and comprehensive free trade area (DCFTA) with Ukraine includes the possibility to secure “full internal market treatment” for financial services and some other services. This requires full compliance with EU regulations and directives, which Ukraine does not yet achieve, but the UK does and could continue to sustain.”<sup>11</sup>**

## **Problems with the Association Agreement model**

As we see it the problems with this model are as follows:

- The EU might not give us this type of deal – see the later section of this report ‘Having our cake and eating it’.
- Unlike the EEA countries who participate (but have no final vote) in the Single Market rule-making process, the UK would have no say in the EEA *Aquis* but be obliged to follow large sections of it.
- Since AA’s are so broad, an agreement on the Northern Irish border *could* be included, but it is difficult to imagine what form it might take.
- Signing an AA incorporating a DCFTA would solve a lot of problems regarding trade with the EU, but it wouldn’t resolve the problem of no having trade deals with any other third country in the world, which is a distinct possibility after Brexit.

## **Having our cake and eating it?**

The EU27 (the remaining states once the UK leaves) have to balance two major factors in deciding how good a deal to give to the UK.

On one level, the better the deal that they give the UK the better for their own economies (i.e. they will face fewer non-tariff barriers and costs when trading with the UK); however if they give the UK ‘too good’ a deal, other countries may question the wisdom of staying in the EU if they can follow the UK’s example and get a similar ‘sweetheart’ deal outside.

The EU and especially the Commission, is going to be loath to do anything that could threaten the integrity of the European Union and its Single Market. For this reason, the EU might prefer to give the UK a FTA rather than a DCFTA – meaning lesser access to the Single Market than the UK would prefer.

## **No voice in European rule-making?**

Being outside of both the European Union and European Economic Area (EEA) we would have very little input into European standards.

The UK would become a 'rule taker' not a 'rule maker' and the EU could limit our access to the Single Market if the UK was to significantly diverge from EU standards.

The European Parliament report we cited earlier elaborates on this:

**“These Agreements set out in legally precise terms the entire agenda for defining the relationship with the EU, sector by sector, for virtually all EU competences. The structure of chapters is more or less the same as that used in many of the EU’s other association or partnership agreements with third countries, but the key issue is how far these chapters entail legally binding provisions and compliance with the EU acquis. The DCFTAs entail a high degree of compliance with EU acquis, and thus are a category apart from the most advanced agreements with non-European countries such as the CETA with Canada.**

**The DCFTA is asymmetric in privileging EU law, whereas the CETA is strictly symmetric with reference to each party’s laws. As a result the DCFTA, when fully implemented after transitional arrangements (that would in any case be irrelevant in the UK context), can assure a very high degree of access to the EU single market, close to the EEA case at least for trade in goods, but not for the movement of people or services. The coverage of EU law is very extensive, but not quite as complete as for the EEA.**

**For some service sectors the DCFTA offers the possibility of ‘full internal market treatment’, conditional on full compliance with the EU acquis, notably for financial services and telecommunications.”**

Our understanding is that if the UK signed a DCFTA with the EU we could cite our decades of regulatory harmonization to get significant access to the European Single Market but we would need to *maintain* that “high degree of compliance with EU acquis” if we wanted to keep it.

## Legal basis?

Even if the UK government decided the AA/DCFTA route was attractive and worth pursuing, the EU wouldn't be obligated to sign such an agreement with us.

Article 217 allows for such agreements, it doesn't necessarily follow that we will get one:

# CONSOLIDATED TEXTS OF THE EU TREATIES AS AMENDED BY THE TREATY OF LISBON

## *Article 217*

The Union may conclude with one or more third countries or international organisations agreements establishing an association involving reciprocal rights and obligations, common action and special procedure.

The EU's Article 50 suggests *some kind* of agreement should be concluded after the two-year Article 50 period, but it is very vague:

### **“Article 50**

1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.
2. A Member State which decides to withdraw shall notify the European Council of its intention.

**In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements**

**for its withdrawal, taking account of the framework for its future relationship with the Union.**

That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.”<sup>12</sup>

Similarly vague is **Article 8** of the European Union consolidated Treaties<sup>13</sup> which states that:

*Article 8*

1. The Union shall develop a special relationship with neighbouring countries, aiming to establish an area of prosperity and good neighbourliness, founded on the values of the Union and characterised by close and peaceful relations based on cooperation.
2. For the purposes of paragraph 1, the Union may conclude specific agreements with the countries concerned. These agreements may contain reciprocal rights and obligations as well as the possibility of undertaking activities jointly. Their implementation shall be the subject of periodic consultation.

Even if we take both of these texts into account, it doesn't explicitly mandate the EU to give us an Association Agreement but Article 8 does seem to heavily imply they *should*.

If the government does decide to go down the AA/DCFTA route, then Mrs May and Mr Davis should cite Article 8 regularly and be realistic to both Parliament and the public about both the advantages and the drawbacks of this approach.

On the plus side, since the Association Agreements are all unique, the government could honestly say they have reached a bespoke British deal with the EU.

## Maintaining influence in 'Europe'

As we would no longer be in the EU or EEA, the UK stands to lose influence in our immediate 'neighbourhood'.

In order to mitigate this, the UK should hire hundreds of new civil servants to set up a new, specific **European influence unit**.

The role of this new body would be to support and co-ordinate the work of the UK's new ambassador to the EU, the UK's ambassadors to the 27 remaining EU member states and the UK's envoys to the bodies listed below. This way, we could still promote the UK's interests and have a voice on the European continent.



United Kingdom  
Delegation to the  
Council of Europe



NATO Parliamentary Assembly  
Assemblée parlementaire de l'OTAN



COUNCIL OF EUROPE  
CONSEIL DE L'EUROPE



UNITED NATIONS  
ECONOMIC COMMISSION  
FOR EUROPE



Organization for Security and  
Co-operation in Europe



## European bodies:

There are a number of bodies which the UK is already signed up to which will allow the UK to co-operate with other European nations.

Firstly, we have **UNECE** (The United Nations Economic Commission for Europe) which discusses (amongst other things) the environment, reducing non-tariff barriers, trade facilitation and promoting Standardization as well as the rules and regulations around the automotive industry.



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### Our work

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Economic Cooperation & Integration

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Environmental Policy

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Forests

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Housing & Land

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Population

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Sustainable Energy

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Statistics

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Trade

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Transport

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Secondly, we have the **OSCE** (Organization for Security and Co-operation in Europe) which covers a staggering amount of policy areas. See below:



The image shows a screenshot of the OSCE website's navigation menu. The menu is a dark blue vertical bar on the left side of the page, with white text. At the top, it says "WHAT WE DO" with a downward arrow. Below this, there are 20 categories listed in two columns. The right column of the menu is partially obscured by the OSCE logo and name, which is also in white on a dark blue background. The logo consists of the letters "OSCE" in a stylized font, with each letter in a separate blue square. Below the logo, the full name "Organization for Security and Co-operation in Europe" is written in a smaller font.

WHAT WE DO ▼	
ARMS CONTROL	
BORDER MANAGEMENT	
COMBATING HUMAN TRAFFICKING	
COUNTERING TERRORISM	
CONFLICT PREVENTION AND RESOLUTION	
CYBER/ICT SECURITY	
DEMOCRATIZATION	
ECONOMIC ACTIVITIES	
EDUCATION	
ELECTIONS	
ENVIRONMENTAL ACTIVITIES	
GENDER EQUALITY	
GOOD GOVERNANCE	
HUMAN RIGHTS	
MEDIA FREEDOM AND DEVELOPMENT	
	MIGRATION
	NATIONAL MINORITY ISSUES
	POLICING
	REFORM AND CO-OPERATION IN THE SECURITY S
	ROMA AND SINTI
	RULE OF LAW
	TOLERANCE AND NON-DISCRIMINATION
	YOUTH

This body has 57 participating States – compare that to the 28 EU member states (soon to be 27) and it has its own Parliamentary Assembly. See graphic on next page from OSCE Website.

The OSCE has 57 participating States from Europe, Central Asia and North America:

- Albania
- Andorra
- Armenia
- Austria
- Azerbaijan
- Belarus
- Belgium
- Bosnia and Herzegovina
- Bulgaria
- Canada
- Croatia
- Cyprus
- Czech Republic
- Denmark
- Estonia
- Finland
- France
- Georgia
- Germany
- Greece
- Holy See
- Hungary
- Iceland
- Ireland
- Italy
- Kazakhstan
- Kyrgyzstan
- Latvia
- Liechtenstein
- Lithuania
- Luxembourg
- Malta
- Moldova
- Monaco
- Mongolia
- Montenegro
- Netherlands
- Norway
- Poland
- Portugal
- Romania
- Russian Federation
- San Marino
- Serbia
- Slovakia
- Slovenia
- Spain
- Sweden
- Switzerland
- Tajikistan
- the former Yugoslav Republic of Macedonia
- Turkey
- Turkmenistan
- Ukraine
- United Kingdom
- United States
- Uzbekistan

**NATO** has 29 independent member countries including the EU's 'main pillars' France and Germany. It also has its own Parliamentary Assembly.



The **Council of Europe** has 47 Member States, a Parliamentary Assembly, and importantly, a Committee of Ministers from all member states.

It deals with many issues from cybercrime prevention, prevention of human trafficking, pharmaceutical safety standards, blood transfusion and organ transplantation standards, Human rights, democracy, criminal extradition and the European Court of Human Rights.



COUNCIL OF EUROPE    CONSEIL DE L'EUROPE



EUROPEAN COURT OF HUMAN RIGHTS



Parliamentary Assembly



## WTO

When we leave the EU, the UK will regain its seat at the **World Trade Organisation** (WTO).

Ramses A. Wessel (Professor of International and European Law & Governance) and Steven Blockmans (Professor of EU External Relations Law and Governance) writing in their paper 'The Legal Status and Influence of Decisions of International Organizations and other Bodies in the European Union'<sup>14</sup> stated:

**“The influence of the WTO on the EU cannot be understated. WTO primary and secondary law have had a considerable influence on EU primary and secondary law and their interpretation.**



**Much of the EU's primary law on the free circulation of goods has been inspired by GATT**

**1947...Moreover, many pieces of secondary EU legislation either transpose WTO norms or have been modified to bring them into line with world trade standards after adverse WTO judicial decisions.”**

This means that post-Brexit, the UK could still influence EU rules (albeit indirectly) at the global level, working through international bodies.

## EFTA

Whatever form of relationship the UK reaches with the EU, the UK should seek to rejoin the European Free Trade Association (EFTA) of which we were a founder member.

This Free Trade Association has 27 FTAs covering 38 countries and territories outside the EU including Canada.<sup>15</sup>



Unlike the EU, EFTA has a unique ‘two-track’ trade deal system. EFTA’s negotiators work to negotiate trade deals for the bloc as a whole, while allowing member states to negotiate their own bespoke trade deals.

An example of this is that all of EFTA has a trade deal with Hong Kong, but EFTA member Switzerland has a separate trade deal with China.

EFTA has many experienced trade experts and negotiators on the payroll, while the UK hasn’t had to negotiate its own trade deals for decades and is now currently scrambling to recruit sufficient personnel. Britain could become part of the EFTA trade network and still sign her own separate deals when we have re-established the necessary negotiating teams; a win-win situation for the UK.

If the UK rejoined EFTA, it would of course boost the organisation’s profile and clout during negotiations.

Following the precedent of Switzerland<sup>16</sup>, the UK could negotiate ‘observer status’ at various committees in Brussels and Strasbourg to monitor developments in legislation and add appropriate comments and suggestions.

**Joining EFTA is essential, since when we leave the EU, since we stand to lose access to all the EU-third country trade agreements that the EU has signed in the last few decades.**

## Conclusions

The Israel/Ukraine style approach wouldn't be our preferred Brexit 'route'. It could be very difficult to negotiate and implement when compared to other options we have outlined in previous reports.

However, Mrs May and her government have been quick to rule out various 'off the peg' alternatives to EU membership.

An Association Agreement is currently the only approach that hasn't been explicitly ruled out by either Mrs May or Monsieur Barnier.

If the government are unwilling to try to emulate the Icelandic approach or Swiss approach, then it must seriously consider the Association Agreement route. It really is the last parachute on the plane.

Our best hope for a 'Smart Brexit' and to avoid a 'no-deal' crash out therefore, is for the UK to apply to rejoin the **European Free Trade Association** (EFTA), (which the UK helped to create in the 1960s) and then broker an Association Agreement deal including a DCFTA with Brussels using Israel and the Ukraine as precedents.

Using this method, we could still enjoy significant access to the Single Market, control migration into the UK, regain control over our fishing grounds, regain our WTO seat and repatriate swathes of borrowed sovereignty from Brussels.

However, we arguably wouldn't have as much input into EU single Market rules as the non-EU EEA countries such as Iceland or Liechtenstein.

Each Brexit 'model' has its advantages and disadvantages and time will tell whether the approach we discuss in this report will be suitable for the UK in the long term.

EFTA 4 UK is in no way affiliated with EFTA itself, we are a grassroots organisation made up of concerned British citizens.

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<http://efta4uk.eu/>

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