

Brexit at the crossroads

Where to now?



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EFTA 4 UK Discussion Document

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.¹**
- **19 June 2017 – Negotiations formally begin in Brussels.²**
- **29 March 2019 - UK is provisionally scheduled to leave the European Union.³**

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

- Virgil

Executive Summary

- 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.
- It is highly unlikely that the UK will be able to achieve such a deal; and even if one is reached, it will take several years to negotiate, ratify and be implemented.
- There is a very real risk of a 'no-deal' Brexit which would be damaging to the UK economy and international relations.
- The best option for the UK would be to adopt an 'off-the-shelf' model such as the EFTA/EEA relationship with the EU enjoyed by Iceland.

Introduction

In March 2017, Prime Minister Theresa May wrote to European Council President Donald Tusk to notify him of the UK's intention to leave the EU.⁴

This officially began the negotiation timetable of two years (laid out clearly in Article 50) which can only be extended with the full consent of the EU member states:

"The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period."⁵

Our negotiating time is therefore finite, and while the Brexit process rumbles on there are early warning signs that the prolonged uncertainty is already having negative effects on the UK economy, such as a reduction in the rate of foreign direct investment (FDI).⁶

The UK's position

The Prime Minister has made several statements and speeches in which she has described her vision for Brexit:

"We seek a new and equal partnership – between an independent, self-governing, Global Britain and our friends and allies in the EU.

Not partial membership of the European Union, associate membership of the European Union, or anything that leaves us half-in, half-out. We do not seek to adopt a model already enjoyed by other countries. We do not seek to hold on to bits of membership as we leave.

No, the United Kingdom is leaving the European Union. And my job is to get the right deal for Britain as we do. We do not seek membership of the single market. Instead we seek the greatest possible access to it through a new, comprehensive, bold and ambitious free trade agreement."⁷

- Theresa May, 17 January 2017

"I've always said that we're not looking to take a model off the shelf of a relationship that current exists because the UK is unique. We're already in the European Union and so we have a relationship with the EU already. When we come out we want to make sure we negotiate a good deal, a bespoke deal, a deal that is right for the United Kingdom."⁸

- Theresa May, 18th Sep 2017

"One way of approaching this question is to put forward a stark and unimaginative choice between two models: either something based on European Economic Area membership; or a traditional Free Trade Agreement, such as that the EU has recently negotiated with Canada.

I don't believe either of these options would be best for the UK or best for the European Union. As for a Canadian style free trade agreement, we should recognise that this is the most advanced free trade agreement the EU has yet concluded and a breakthrough in trade between Canada and the EU.

But compared with what exists between Britain and the EU today, it would nevertheless represent such a restriction on our mutual market access that it would benefit neither of our economies.

Not only that, it would start from the false premise that there is no pre-existing regulatory relationship between us. And precedent suggests that it could take years to negotiate. We can do so much better than this.

As I said at Lancaster House, let us not seek merely to adopt a model already enjoyed by other countries. Instead let us be creative as well as practical in designing an ambitious economic partnership which respects the freedoms and principles of the EU, and the wishes of the British people."⁹

- Theresa May, 22nd Sep 2017

The UK's position analysed

In the quotes on the preceding page, Mrs May sets out clearly that she wants a unique relationship between the UK and the EU – not Single Market membership, but something more comprehensive than the EU-Canada CETA deal.

We believe that had the UK government planned out such a deal well in advance, held friendly informal discussions with EU countries – and only *then* issued the Article 50 notification, it *might* just have been possible to get such a deal.

However, time is rapidly running out – at midnight on 29 March 2019, the UK will leave the European Union. So a deal needs to be agreed and ratified by the European Council and Parliament (and potentially, national governments) by then.

This would be challenging enough if the UK chose to follow an existing 'off the peg' approach – but by her own admission, the PM is not seeking an off the peg relationship with Europe.

The Prime Minister has of late seemingly admitted that a bespoke deal cannot be agreed and ratified in time for 2019, so she is now proposing a 'transition' or 'implementation' period after the UK formally leaves the EU:

"A period of implementation would be in our mutual interest. That is why I am proposing that there should be such a period after the UK leaves the EU. Clearly people, businesses and public services should only have to plan for one set of changes in the relationship between the UK and the EU.

So during the implementation period access to one another's markets should continue on current terms and Britain also should continue to take part in existing security measures. And I know businesses, in particular, would welcome the certainty this would provide. As of today, these considerations point to an implementation period of around two years."

How the Prime Minister believes this implementation idea could work in practice is unclear. Since we would be outside of both the EU and European Economic Area (EEA) after March 2019, the UK would be entering into an unprecedented legal and administrative grey area.

The EU's position

In November 2016, The Prime Minister of Luxembourg Xavier Bettel said:

"They [the UK] want to have their cake, eat it, and get a smile from the baker, but not the other things. There are European values which cannot be separated. No cherry picking."¹⁰

In March 2017, the EU's chief negotiator Michel Barnier said about the future UK-EU relationship:

"There will be a free-trade agreement at the centre of this partnership, which we will negotiate with the United Kingdom in due course.

This free-trade agreement cannot be equivalent to what exists today. And we should all prepare ourselves for that situation.

The United Kingdom chooses to leave the Single Market and the Customs Union. It will be a third country in two years from now.

By making this choice, the United Kingdom will naturally find itself in a less favourable situation than that of a Member State.

It will not be possible to cherry-pick and be a participant in parts of the Single Market."¹¹

On the 21st September 2017 he said:

"At midnight on 29 March 2019, the United Kingdom will leave the European Union and will become a third country. This is the UK's sovereign decision. It must be respected.

The question facing us over the coming months is serious, but simple: will the United Kingdom leave in an orderly fashion with an agreement, or not? If we want a deal, time is of the essence.

The future trade deal with the United Kingdom will be particular, as it will be less about building convergence, and more about controlling future divergence. This is key to establishing fair competition.

Naturally, if the United Kingdom wanted to go further than the type of free trade agreement we have just signed with Canada, there are other models on the table.

For example, Norway and Iceland have chosen to be in the Single Market, to accept the rules, and to contribute financially to cohesion policy.

But one thing is sure: it is not – and will not – be possible for a third country to have the same benefits as the Norwegian model but the limited obligations of the Canadian model."¹²

Mr Barnier also said in September 2017:

"Norway, Iceland and Liechtenstein have chosen to be part of the Single Market, to accept their rules, and who make a financial contribution to European cohesion. But I also think of Canada with who we've just negotiated a highly ambitious free trade agreement. Canada is not part of the Single Market and therefore has neither the opportunities nor the obligations.

I'm sure everyone understands it will not be possible for a third country to combine simultaneously the benefits of the Norwegian model with the weak constraints of the Canadian model."

The EU's position (continued)

The Politico news website reports that in meetings around Europe, Mr Barnier said the UK will not be able to achieve a bespoke deal with the EU.

They report he discussed the various models for a future relationship for the UK such as those the EU has with Turkey, Norway and Switzerland. He reportedly said:

"We are not going to mix up models. But each model is available."¹³

In a recent interview (October 2017), Michel Barnier said:

"The British want to conclude a free trade agreement. We are looking at the Canadian model hypothesis, as a reminder of the CETA free trade agreement that Canada signed with the EU last year. It is possible that a customs agreement could be added, such as the one signed between the European Union and Turkey.

There are other models, such as a framework agreement or an association agreement covering different elements: trade, defense, security, even interuniversity collaboration and scientific research. We will work on it.

But each model is unique and has its own balance in terms of rights and obligations. It is not possible to combine a free trade agreement and at the same time become part of an internal market. To go out is to go out.

In any event, the United Kingdom will become a 'foreign' country on March 30, 2019 and will no longer be part of the European Internal Market. This is the sovereign decision of the British. From the outset of the exit negotiations, the UK government made it clear that the country would leave the internal market and the customs union. But the only way to maintain frictionless relations with our internal market is to participate in this unified market. As Norway participates in our internal market, without being a member of the European Union.

Well today, this option is also open."¹⁴

EU's position analysis

Mr Barnier couldn't be clearer: we can either have full Single Market access for goods and services via participation in the EEA via the European Free Trade Association (like Norway or Iceland), or we can attempt to get a Free Trade Agreement which would be suboptimal for UK citizens, financial services providers, importers and exporters even if it was as extensive as CETA.

The UK no longer has the time left to negotiate an entirely bespoke agreement with the EU that will entirely satisfy all of the aims the Prime Minister has previously set out.

Sir Ivan Rogers, Britain's former permanent representative to the EU advised ministers that the view of the EU27 was that a free trade agreement could take as long as ten years.¹⁵

He said that even once concluded, the deal might not survive the process of ratification in the EU member states.

More recently, Sir Ivan Rogers told the House of Commons Treasury Committee:

"Notwithstanding the Prime Minister's language about neither Canada nor Norway but bespoke, unique and specifically British, the other side thinks it is clear from the red lines that she has laid down so far that the maximum the UK could be up for, if I could put it like that, is a free trade agreement. That is a free trade agreement that looks very like the Canada free trade agreement.

There is frustration so far that the British side has not been able to articulate something more concrete than, "Neither Norway nor Canada but bespoke".

I understand the bespoke, and we can come back in detail to what that might mean area by area. However, from other capitals often it is read as meaning the Brits would rather like the benefits of three of the freedoms whilst suspending or ending the fourth freedom. The Brits would rather like to have continued, largely unchanged, market access in all the areas that they want, and see no reason why that market access should be diminished.

I am afraid that is not at all mainstream European thinking. People think there is a radical difference between a free trade agreement and single market and customs union membership. The Brits need to understand that there will be a radical difference as a consequence of exiting, in terms of levels of market access in multiple sectors that they care about. They cannot suspend free movement of people because that is no longer applicable to them, live outside the jurisdiction of the Court of Justice, but still have everything that they liked about the levels of market access when they were inside the venture."¹⁶

International Trade Committee report

The International Trade Committee's first report¹⁷ called on the Government to publish a White Paper about the possibility of the UK re-joining the European Free Trade Association (EFTA).

They stated:

"We recommend that the Government now evaluate the implications of the UK re-joining the European Free Trade Association (EFTA), which would offer an opportunity for a smoother transition as the UK exits the EU in 2019."



Re-joining EFTA

The Committee calls on the Government to publish a White Paper about the possibility of the UK re-joining the European Free Trade Association (EFTA).

This is a group of countries outside the EU to which the UK belonged before it became a member of the EU's predecessor in 1973. EFTA has 27 Free Trade Agreements, covering 38 countries, which the UK might stand to benefit from if it were to re-join the Association.

The Committee was impressed by the potential benefits of EFTA membership, given the close alignment between the UK's economy and those of EFTA members, although the Government has not proposed this as an option.

Overall analysis

Up until now, the Government has simply been stating their 'shopping list' of desired outcomes – continued frictionless trade, no further large payments to the EU, no ECJ oversight, no hard border in Ireland and an end to Free movement of people (FoM) from the EU.

In order to achieve this, there would need to be an entirely *sui generis* EU-UK agreement, which the EU won't give us, for fear that other EU member states would leave and seek the same type of deal.

Even if this was not a concern, the length of time such a deal would take would take much longer than we have, even if we factor in a two-year implementation period after 2019.

The EU's chief negotiator has repeatedly stated that we could have an arrangement like Canada, or like Norway, or Turkey – but we can't have a bespoke agreement.

So, as a BBC Comedy character once wryly remarked:

“Let's flag down a black cab and head for Real Street here.”

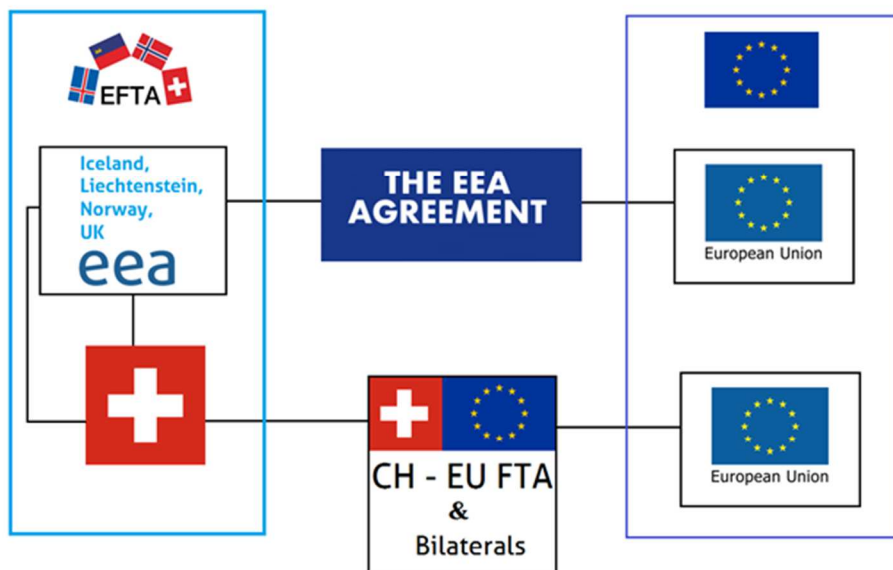
Our best hope for a 'Smart Brexit' and to avoid a 'no-deal' crash out therefore is for the UK to rejoin the **European Free Trade Association** (EFTA), which the UK helped to create in the 1960s and then broker a deal with Brussels using the EFTA countries as precedents. This should be relatively quick and straightforward, leaving time for the UK to deal with the myriad of other Brexit-related tasks it needs to deal with.

During the negotiations, the UK government should repeatedly cite **Article 8** of the European Union consolidated Treaties¹⁸ 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.

The below graphic represents the new European framework that we are talking about.



Re-joining EFTA



Benefits of EFTA for Remain supporters:

- Maintain close, friendly links with rest of Europe (EFTA 4/EU 27)
- Tariff-free market access for goods and services
- Minimise other trade barriers with the EU
- Easy movement of students and workers
- ‘Replicated’ access to the Single Market
- Close co-operation on science and education programmes
- Competences/powers brought back from Brussels could be devolved to the Scottish Parliament, Welsh Assembly and Northern Ireland assembly.

Benefits of EFTA for Leave supporters:

- UK regains control of its territorial fishing waters
- No longer part of EU Customs Union; UK can sign own trade deals and seek access to EFTA FTA portfolio
- British citizens get their old-style passports back – no longer ‘EU citizens’
- Reduced contributions – financial saving can be put towards NHS or schools
- Much less interference from European Courts
- EFTA countries (especially Liechtenstein) have negotiated stricter rules and opt-outs around freedom of movement than EU member states. Similar measures could manage EU migration into the UK
- Regain from the EU our ‘top seats’ at the World Trade Organisation and other International bodies such as UNECE to maintain influence on the world stage.

As Ms Allie Renison, Head of Europe and Trade Policy at the Institute of Directors wrote in their recent report '**Navigating Brexit: Priorities for business, options for government**':

"We urge the government to consider the merits of rejoining Efta...there are some significant benefits to being part of Efta with respect to governing trade ties with Norway, Iceland and Switzerland, who make up six per cent of the UK's trade. The UK will need to negotiate new trade arrangements with them in any event to maintain our existing preferential access afforded to us through the EU's various Efta agreements. Efta also has a number of technical cooperation agreements with the EU in the area of customs and trade facilitation"¹⁹

Further Benefits of joining EFTA

- The EU and EFTA have agreed a **Common Transit Convention**²⁰ in the movement of goods which would undoubtedly make things easier for UK firms after Brexit.
- 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 Iceland 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.

In addition, if we left the EU and returned to EFTA we would be exempt from the:

- **EU Common Agriculture and Fisheries Policies;**
- **EU Customs Union;**
- **EU Common Trade Policy;**
- **EU Common Foreign and Security Policy;**
- **EU Justice and Home Affairs**
- **EU Monetary Union (EMU).**

If we transfer from the EU to EFTA, we can still have a good working relationship with Brussels, however.

Parliamentarians from the EFTA states have regular meetings with MEPs and officials from the EU, and EFTA has offices in Brussels.

EFTA countries participate in many mutually beneficial European programmes such as:

- Reciprocal Healthcare systems²¹
- Education programmes²²
- Science and research programmes²³
- Co-operation with EUROPOL²⁴

The government should be now writing its reapplication letter to our friends in EFTA.

No Brexit 'model' will satisfy all sections of the British public. But this approach would fulfil the result of the referendum, satisfy a large proportion of the British public and go a long way towards healing divisions.

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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