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EU matters



BREXIT: THE WAY FORWARD- OR BACKWARDS?

A Norwegian perspective

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BREXIT: THE WAY FORWARD- OR BACKWARDS?

A Norwegian perspective

The British people have spoken: the UK will leave the European Union. But, as they say, first things first...

The UK needs to decide on the way forward – and then try to convince the remaining 27 EU Member States to agree. Prime Minister Cameron has told the House of Commons that he will try to achieve an agreement with the EU on what model of association or cooperation the UK will have with the EU in the future. Then, London may activate Article 50 of the Lisbon Treaty and start negotiations.

The most important thing for Scandinavian and British industry to be aware of is that all EU laws and regulations will remain in place until the Brexit negotiations are concluded and a new agreement is in place. This may take as long as two years – if not longer – and will probably start in the fall of 2016. The UK will remain a full EU Member at least until the end of December 2018, providing economic actors with a some predictability in the short term.

In the longer term, everything will depend on what kind of agreement the UK and the EU reach. Under any circumstances, the new EU-UK deal will have major implications for the competitiveness of Scandinavian business and industry, and market access to the UK. The result will have profound consequences for economic interests, which makes it vital for both Norwegian diplomacy and industry to increase their presence in London and Brussels.

To complicate matters further, it is possible that Scotland will hold yet another referendum on independence from the UK, in order to continue as an EU Member State when the rest of the UK leaves – that is, if the other EU states agree.

This report will analyse the British EU exit at three levels: first, it will describe the situation that occurs once London decides to activate Article 50 of the Lisbon Treaty. More specifically, it will look at the legal rights to which British authorities and economic agents are still entitled until a new agreement is in place.

Secondly, the report will provide a general overview of four different models for potential future UK-EU relations. The first model is described as The Colonial Model due to the ironic fate of the world's greatest colonial power becoming subject to EU legal acts of the Single Market without a say – much the same way as Britain used to dictate laws in their colonial territories around the world. This part includes the route for negotiating UK entry into EFTA and the EEA Agreement. Next, The 'Swiss Cheese' Model refers to the bilateral route with sectorial agreements, although limited in scope and with its major institutional unresolved challenges. Thirdly, The Trade Model looks at the Comprehensive Economic and Trade agreement (CETA) between the EU and Canada; what it covers and what it lacks. Finally, The Minimal Model looks at Turkey's relationship with the EU as part of the Customs Union, applying EU terms of trade to third countries.

The third and final part of this report takes a closer look at eight sectors, explaining the main consequences for each potential EU-UK model:

1. Energy, environment and climate change
2. Banking and finance
3. Food, agriculture and seafood
4. Transport
5. Health, labour and work permits
6. Regulatory development and mutual recognition
7. Trade
8. State aid and competition policy

PART 1: WHAT WILL HAPPEN UNTIL THE UK AND THE EU AGREE ON A NEW MODEL FOR COOPERATION?

The situation for British authorities


According to Article 50 of the Lisbon Treaty, the UK will maintain all obligations and rights as a Member State until it reaches an agreement on secession. If an agreement is not in place by the end of a two-year negotiation period, all rights and obligations will cease. The negotiation period may be extended if both parties agree to it. It is important to emphasize that the negotiations on secession will also provide an answer to what the form and structure of the UK's future relations with the EU will be like. In practice, this means that the UK will negotiate both an agreement on secession and a new cooperation agreement/treaty simultaneously.

EU Member States have already announced the chief negotiator to lead the talks: Didier Seeuws (Belgian), previously head of EU President Herman van Rompuy's cabinet.

All current EU laws and regulations, along with all the UK's rights and obligations, will remain for both British and other EU/EEA actors and institutions until a new agreement/treaty is in place. This holds true for all future EU legislation that will be adopted until the time of Brexit. Should the UK and the other 27 EU Member States manage to reach an agreement within the two-year deadline, the new agreement will at earliest become effective by mid-2019. This is due to ratification processes in all EU Member States, a process that will take at least six months. For all models other than the EEA, a two-year negotiation process will most likely prove to be too short.

On Saturday June 25th, the British European Commissioner Jonathan Hill decided to leave his position. David Cameron first expressed unwillingness to name Hill's successor, but later changed his view. Moreover, some British Members of Parliament (MEPs) announced their resignations, like Tory member Ian Duncan, although his colleagues later refused Duncan's resignation. British citizens with fixed contract with EU institutions will most likely be able to keep their jobs, but will probably be degraded over time and deprived of future leadership positions. The fate of British EU functionaries will ultimately depend on the new London government's willingness to continue allocating funding their salaries and pensions. Two EU agencies, for medicines and finance, will have to relocate from London to other cities within the EU. The UK Europol Liaison Bureau in London may also disappear.

Participation in the EU Council of Ministers might be a different matter. Article 50 clearly expresses that the leaving Member State shall not to participate in neither the European Council nor the Council of Ministers when these institutions discuss matters regarding the leaving state's interests. If this only regards negotiations about the secession, or whether it also applies to negotiations on new acquis, is unclear. In practice, British authorities will probably be legally eligible to attend meetings, but will be unable to continue their active contributions to Council negotiations. Participants from other Member States say UK delegates have already become silent during Council deliberations, even on legal dossiers where important UK interests are at stake.



The experience from the Norwegian “no”-vote in 1994 was that the Norwegian Delegation to the EU stopped receiving invitations to Council meetings the day after the referendum. However, Norway went from being a candidate member to a non-member, while the UK is going from being full member to a non-member.

British influence in the EU has been severely reduced overnight.

This represents a great challenge ahead for the UK government, its business community and civil society. It is a situation that Norway has been struggling with ever since 1994. Accompanied by small countries like Iceland and Liechtenstein with narrow economic interests, Norway is pretty much on its own. If Norway manages to lure the UK back into EFTA, it may gain an important ally when dealing with the EU: The EEA institutions like the EEA Council and EEA Joint Committee can become more relevant for both EFTA and EU states to attend, something that EU governments hardly have done since the EEA Agreement entered into force. However, the EEA model represents pretty much exactly what the British “leave” campaign shunned the most: free movement of workers, economic contribution and succumbing to laws made in Brussels.

The situation for British economic actors

EU laws are an integrated part of British law, and it will be impossible to disintegrate them overnight. As stated above, for companies based in EU and EFTA countries who trade in and with the UK, EU laws will remain in force until the UK officially leaves the EU.

One element of uncertainty is whether the European Commission will allocate resources to address cases raised against or on behalf the UK, i.e. where EU law has been breached. This will depend on what kind of model the UK wishes to pursue and if the remaining 27 countries agree. It may therefore be difficult for companies and consumers to obtain support for their complaints against violations of the EU acquis or treaties, until there is clarity on the future relationship between UK and the EU.

Another element of uncertainty is how British courts will relate to EU law. According to the EU Treaty, UK courts are obliged to refer cases to the EU Court of Justice. It is unclear how UK courts will act according to this obligation, and how the Court of Justice will treat cases brought before it from the UK. This may create uncertainties for foreign investors who intend to establish themselves in the UK. Chinese authorities have already announced that they will “wait and see” before making any decisions on investments in the UK. A clear signal from the UK Government of a preference for an agreement based on the EEA model, is the only way to avoid legal uncertainty about UK and other EU member States adherence to EU principles of non-discrimination of UK economic interests in the rest of EU and EU economic interests in the UK.

PART 2: FOUR MODELS OF UK-EU RELATIONS

The first and most important question to answer before negotiations under Article 50 may be initiated, is what kind of agreement that shall govern UK-EU relations. Existing considerations point to four plausible alternatives: i) **The Colonial Model** (based on the EEA Agreement, often referred to as The Norwegian Model), ii) **The Swiss Cheese Model** (based on the existing bilateral agreements between EU and Switzerland), iii) **The Trade Model** (based on the EU – Canada agreement), and iv) **The Minimal Model** (based on the EU-Turkey customs union). Each model represents different levels of proximity and integration for UK’s connection to the Single Market. Part three of this report looks at how the models play out for eight different sectors.

It is important to note that all remaining EU Member States must agree on the negotiating mandate, which will then be negotiated by the Commission on behalf of the Member States.

Below is a schematic model drawn up by the UK Government illustrating UK relations with the EU on key issues. It includes the total seven models that have been discussed prior to the referendum. The chart does not mention the practical consequences for key economic sectors in each category.

Summary Table – Models of relationship to the European Union

		Access to the Single Market in goods and services									
		Votes on EU law	Tariff-free trade	Customs Union and external trade	Level playing field for business	'Ever closer union'	Justice and Home Affairs (JHA)	Free Movement of People	Schengen border-free area	Contribution to EU financing	Eurozone membership
UK membership of the EU		Full	Full	Full	Full	Full	Partial	Partial (a)	Full	Partial (b)	Full
Standard EU membership		Full	Full	Full	Full	Full	Full	Full	Full	Full	Full
Norway (non-EU EEA)		None	Partial	None	Partial	None	Partial	None	Partial	None	None
Bilateral Agreements	Switzerland	None	Partial	None	Partial	None	Partial	None	Partial	None	None
	Canada	None	Partial	None	Partial	None	Partial	None	Partial	None	None
	Turkey	None	Partial	None	Partial	None	Partial	None	Partial	None	None
WTO membership		None	Partial (c)	None	Partial (d)	None	Partial	None	Partial	None	None

Legend	
Full	Green
Partial / voluntary / special arrangement	Yellow
None	Red

Source: gov.uk , Alternatives to Membership (2016, p. 14)



1. The Colonial Model: The irony of fate


The core of the European Economic Area (EEA) Agreement is that all participating countries, the EU and EFTA States except Switzerland, adhere to the same laws and regulations in the exact same way and at the same time. This is called the “homogeneity principle”. It implies that all EU acquis covered by the Agreement shall be implemented and enforced in national legal frameworks in all countries. The EEA Agreement covers the Internal Market with the exception of the Common Agricultural and Fisheries policies (CAP and CFP). But all acquis related to veterinary and food safety legislation is part of the agreement. The bearing principle of the EEA is that all national authorities treat economic actors as their own, i.e. without discriminating between their own national and other EU/EFTA national’s actors. The EU acquis in the EEA covers free movement of goods, services, capital and persons. The freedom of establishment of companies also falls under these “four freedoms”. In practice, this means that all Member States must respect each other’s standards, product testing and certifications. The EEA automatically incorporates new rulings from the Court of Justice of the European Union into the agreement. However, it is problematic that the EFTA countries are barred from participating in the decision-making organs of the EU, like the Council and the European Parliament.

In addition, flanking and horizontal policy areas like environment, education, research, consumer politics and culture are also part of the EEA Agreement.

Another important pillar of the EEA is the application of common state aid and competition rules. Companies and economic operators in EEA States are subject to exact same competition and state aid rules as in any EU country. Proper adoption and adherence to these rules by national and local governments are monitored by the EFTA Surveillance Authority, ESA. In case of discordance, disputes are settled by the EFTA Court. With common competition and state aid rules, anti-dumping measures under the WTO cannot be applied, eliminating potential disturbance of cross border trade within the whole EEA.

If opting for the EEA Agreement, UK government representatives would be excluded from attending and participating in EU decision making bodies. No UK citizens could work in the EU institutions, except as seconded national experts paid for by the UK government. Norway currently has 39 national experts in the Commission. One civil servant was lent to the European Parliament staff, but disagreement on where his successor should be placed has not been resolved. EFTA states must negotiate participation in EU Agencies, where they usually are granted observer status. In some cases, such as for the agency on gender equality, agreement has not been reached. EFTA States cannot vote and, in practice, not take part in any discussions on work programmes and budgets.

The Economist and other leading media on Brexit have voiced their preference for the EEA model because it provides predictability for market actors and certainty for investors. It can also increase the possibility for London to remain the financial centre of Europe.



Others, including Commission President Jean-Claude Juncker, have said that the EEA model is too good for the UK. The EEA model emerged at the end of the Cold War and was meant for countries that could not, for defence and security reasons, become an EU member. It can also be seen as too generous, in light of how far EU leaders went to satisfy British demands when Cameron wanted to renegotiate terms of British EU membership prior to the referendum. A tactical move by Norway could be to invite the UK into EFTA. At the same time, it should be noted that the EEA model is exactly what the British «leave» voters do not want because it implies free movement of people and a relatively high economic contribution to economic and social cohesion in Europe.

How could the UK become member of the EEA Agreement?

If Britain should wish to join the EEA, the UK first has to be accepted into the European Free Trade Association, EFTA. This would require an application to the EFTA Council who has to accept the application unanimously. The UK has to submit to the EFTA Convention, which, like the EU Treaty also implies free movement of goods, services, capital and people across the borders between the EFTA member states. In short, all EFTA countries have agreed to provide each other similar terms of trade as the three EFTA states part of the EEA enjoy with the EU.


After joining EFTA, the UK may apply to the EEA Council to be part of the EEA agreement. The EEA Council consists of all EU and EFTA Members (except Switzerland). They must also ratify the UK accession to the EEA.

Before such entering the EEA all EU regulations in the agreement must be transposed into British law. This is because all EU regulations have direct effect in EU member states. This is not the case for EFTA states, where all laws and EU regulations are implemented into the EEA and transposed separately. As an EU Member State, all EU directives have already been integrated and transposed into British law.

The UK will also have to negotiate participation in the EU programmes, such as Horizon 2020, Creative Europe, Justice, Cosme, Erasmus and a range of others. Key to these negotiations is the size of financial contributions and the timing. The amount is usually set according to the size of the country's GDP.

The EEA Agreement has its own, separate bilateral agreements between the EU and each EFTA member state on fish and agriculture. While the EFTA members traditionally have been particularly defensive on these areas, the British have an opposite point of view. An advantage of the EEA model is that the EFTA States may negotiate separate treaties on agriculture and fish that will guarantee continued market access for processed fish products. This will be important for the Norwegian seafood industry, which has substantial investment interests in Scotland.

Once member of EFTA, the UK would have to apply to be part of the EFTA trade agreements with third countries, i.e. those outside the EU.



It took Norway approximately two years to negotiate the EEA agreement. It could take an even shorter amount of time for the UK to change sides from the EU to EFTA. The greatest challenge will be the other EU member states' willingness, as well as the issue of market access on agriculture and fish. It will also take considerable time for all the 27 EU member states to ratify British participation in the EEA in their respective national legislative assemblies.

Quick accession to EFTA may give the UK a better possibility to follow and accustom itself to the EEA processes while waiting for its application to the EEA to be approved. Today, Swiss authorities participate in the internal meetings of EFTA to keep up to date on the developments on new EU acquis that eventually find its way into the bilateral agreements and to national laws. UK's participation in the internal EFTA Committee structures will undoubtedly be useful for all parties involved whenever doubt arises on how to interpret EU regulations, a situation that is known to happen with some frequency. After the Lisbon Treaty entered into force and the EU abolished the three pillar structure, there is an increasing doubt as to the exact acquis that belongs to the EEA. Normally, the Commission notes all legislative proposals it considers part of the EEA with "text with EEA relevance." However, according to the EEA Agreement, the final conclusion is left to the EEA Joint Committee.

Backlog:

A recurring structural problem of the functioning of the EEA is the backlog of EU acquis that is awaiting integration into the EEA Agreement and EFTA States national legislation. It used to be due to time consuming translation of EEA decisions into Icelandic and Norwegian. More recently it is basically because the EEA apparatus is not capable of processing the large amount of new and revised EU legislation. The late Icelandic diplomat and EEA connoisseur, Gratar Mår Sigurdsson, used to say that the "EEA is a monster." The reason being that the administrative procedures are so cumbersome that one could easily lose sight of single acquis, both by accident and deliberately. Iceland and Norway have on several occasions deliberately, and successfully so, attempted to hide specific legislative acts they did not wish to take over, from the attention of the European Commission. The problem of backlog was pointed out in the conclusions of the last EEA Council meeting on 25 May 2016¹: *The EEA Council called for continued work in order to significantly and durably reduce the current backlog and thereby ensure legal certainty and homogeneity in the EEA. It urged all parties to engage constructively to find solutions to pending difficult issues.*

¹ <http://www.consilium.europa.eu/en/press/press-releases/2016/05/25-conclusions-eea-council/>



2. The Swiss Cheese Model: Bilateral imperfection


Switzerland rejected EEA membership in a referendum in 1992. Since then, Switzerland has negotiated over one hundred and twenty bilateral agreements with the EU, covering a range of sectors. In practice, the Swiss agreements cover much of the same as the EEA agreement, but the system is costly, complicated and extremely cumbersome. Switzerland does not have the same ability to keep itself informed on the decision-making processes in the way that Norway does under the EEA. Swiss authorities are unable to participate in expert committees in the Commission, even in areas that affect them directly.

Switzerland has only partial access to the EU internal market, but it has previously accepted the principle of free movement of people giving Swiss citizens the right to work and study in EU and other EFTA states. Switzerland is also part of the Schengen Agreement, allowing free movement in the other Schengen countries (EU, except Ireland and UK, but including Iceland, Liechtenstein and Norway).

Switzerland has limited access to trade in services within the EU. Some insurance services and public sector procurements are covered by Switzerland's agreements with the EU, but access is limited for professional services, including accounting, revision and legal services. Professionals within these sectors may offer their services within the EU for a maximum of 90 days per year, which limits Swiss companies and economic actors' ability to export these kinds of services. Limitations to access to trade in services makes The Swiss Model particularly unsuitable for the UK. Services account for nearly 80 % of the British economy, and inadequate market access in services will clearly hurt the financial sector.

The Swiss Model could also lead to more unpredictability for trade, e.g. in relation to accusation of dumping (illegal state aid). Such disturbing elements may again lead to instability that will affect investments negatively, and consequently employment and value creation could suffer. This fact was pointed out in the Norwegian government commissioned report Outside-Inside from 2012 (14.8.2).

The Swiss Model is considerably more static than the EEA model. The lack of requirement for 'homogeneity' between Swiss and EU laws and regulations also breeds uncertainty. The EU may in fact block Switzerland from accessing parts of the internal market, in particular in those areas where the Swiss and EU regulations are not the same. Currently, there are several unresolved issues relating to the Swiss Model. The main challenges relate to migration, a subject that is politically sensitive in Switzerland, where nearly 16 % of the population originates from other EU countries – a higher percentage than in the UK. In 2014, Switzerland held a referendum on introducing quotas on immigrants from EU countries. The EU made it clear that such measures would violate the bilateral agreements between the EU and Switzerland, which contain clauses on free movement of people. The EU responded by limiting Swiss access to its programmes on education and research, including Horizon 2020, as well as putting negotiations on further access to the internal market on hold. Should Switzerland pursue introduction of migration quotas, the EU may revoke the privileged access the Swiss currently enjoy to the internal market.



Switzerland stands outside the custom union and may negotiate its own trade agreements with third countries. In total, Switzerland has signed 29 such agreements, covering 41 countries. Most trade agreements are negotiated in parallel with Iceland, Liechtenstein and Norway. Trade agreements with other countries is probably the main reason Switzerland is still a member of EFTA.

Negotiations between Switzerland and the EU has been on hold over the past ten years, due to EU's request that Switzerland introduces some form of automatic incorporation process for new EU *acquis*. Today, largely thanks to Norwegian and Icelandic goodwill, Swiss government officials can attend meetings as observers when the other EFTA States discuss integration of new EU laws. In some cases, the Commission allows Switzerland to join in on meetings when they brief the other EFTA countries on the contents in new directives.


The EU requires Switzerland to abide by a supranational surveillance authority to which the Swiss opposes strongly. Finally, but all the more important, Switzerland must accept the rulings of the EU court, or alternatively associate with the EFTA court. Up to today, a joint EU Swiss committee is the only forum for resolving disputes, deciding on new relevant *acquis* and negotiating new bilateral agreements, a set up far from satisfactory to the EU.

3. The Trade Model: EU-Canada Agreement

The EU and Canada spent seven years negotiating the free trade agreement CETA (the Comprehensive Economic and Trade Agreement). Negotiations concluded in 2014, but the agreement is still on hold in the EP and in the member states' national assemblies, where it awaits approval before coming into effect. The agreement is a bloc of 1598 pages, the most comprehensive free trade agreement the EU has ever negotiated.

CETA builds on legal principles stemming from the WTO, and is yet an example of the new generation of big, regional agreements similar to the TTIP and TPP. The agreement requires both parties to phase out import duties on all industrial, as well as on most agricultural products. Other restrictive measures, like quota restrictions and subsidies are also addressed in CETA.

As so many other big FTAs that have been signed in recent years, CETA is built on the general structure of the 1994 FTA between the US, Canada and Mexico (NAFTA). However, the areas that CETA covers are much wider. Aside from the usual chapters covering goods, services and investments, there are entire chapters dealing with cooperation on rules development and process, sustainable development, environment and workplace regulations, and regulations on e-trade. The EU and Canada have agreed to set up a Regulatory Cooperation Forum to exchange experiences and relevant information and to identify areas where regulators can cooperate further.



Maritime service are also included in the agreement, as well as extensive paragraphs that simplifies temporary movement of people and businesses within the agreement territories. Canada currently has in place a point-based system for work migrants, something that has intrigued the British “leave”-camp. This innovative element within bilateral labour law could therefore potentially set an important precedent for an eventual agreement between the EU and the UK that builds on the CETA structure.

Rules on state aid and competition have also been negotiated. Cooperation between EU and Canadian official bodies for standardization will be strengthened. This cooperation implies, among other things, that a common official conformity assessment of standards on certain goods will be approved by both parties. This eliminates the need to test products in both Canada and the EU, reducing administrative costs for companies.

Still, the Trade Model will lead to reduced UK access to the internal market of the EU compared to the EEA model. CETA does not provide zero tariffs for all Canadian industrial products, and does not cover a range of important service sectors, like audio-visual services. Canada must in addition accept EU regulations when exporting to the EU, and there are quota restrictions on certain agricultural goods.

One of the CETA requirements that may be problematic to many companies are the “Rules of Origin”. Canadian companies must prove that a sufficient amount of the product is, in fact, made in Canada, in order to obtain more advantageous custom rates. As of today, British companies are not bound by such requirements when exporting to the EU.

4. The Minimal Model: Turkey-EU Customs Union

Turkey is part of the EU custom union and has had (official) membership negotiations since 2005. The EU is Turkey’s largest trading partner. Turkey exports mainly machinery, transport equipment and manufactured goods to the EU. By comparison, Turkey is the sixth largest trading partner of the EU.

The customs union covers goods on the internal market, but not services, agriculture or public procurement. The Commission announced only last year its readiness to modernize the current custom union to include all of the above. A roadmap for the modernization of the EU-Turkey custom union was published last autumn, and further negotiations are scheduled for the last quarter of 2016. Under the current agreement, Turkey does not contribute to the EU budget. It will be extremely difficult for the UK to settle for the Turkish Model. The Turkish economy is a lot less dependent on exporting services than the British one (approximately 80 %). With the Turkish Model, the UK would be forced to grant full access to goods from all countries the EU currently has a trade agreement with, without the the same access in return (unless there is another, separate trade agreement in place). The UK would also loose decision-making powers on external tariffs, which would create large inconveniencies for the UK economy and limit market access for British companies.

PART 3. CONSEQUENCES FOR SPECIFIC SECTORS

1. Energy, Environment and Climate Change

The UK has always been leading the way when it comes to climate policy: in 2008, it became the first country to set long-term, binding goals of cutting emissions by 80 % within 2050. After David Cameron's resignation, it should not be taken for granted that the "leave"-side of British politicians will follow the same path. Former Secretary General for the UN Climate Convention, Christina Figueres, has stated that a Brexit would imply a recalibration of the Paris agreement. If the UK ends up with a bilateral agreement with the EU they will no longer be bound by supranational sanctioning measures, and may withdraw from the agreement just like Russia, Japan and Canada did with their Kyoto commitments. Shadow Secretary of State for Energy, Barry Gardiner, has stated that it will be more difficult for the UK to take the lead with international climate policy alone, as they only account for two percent of total global emissions. British secession will most probably lead to a re-evaluation of EU reduction goals on emissions.


Energy security was an important part of the Brexit discussions. With national oil and gas production in decline, Secretary of State for Energy, Amber Rudd has predicted that the threat of a more dominant Russia will increase. In that case a united Europe, with its 500 million citizens, will be a more powerful opponent in the face of Russian transgression.

An independent report by National Grid claims Brexit will cost the UK 500 million pounds a year for at least a decade, starting from 2020, because of uncertainties in energy and climate investments. It is likely that the average British household will have increased expenses on energy. Michael Gove, on the other hand, has claimed Brexit will allow reductions on VAT on gas, as the cost of gas amounts to approximately 10 % of weekly expenses for British families.

The UK has usually voted along the same lines as Central and Eastern European countries in favour of a flexible system in order to reach the 2030 emission goals. Meanwhile, Germany, Denmark and Sweden have wanted to hold "slow" countries accountable for falling behind on reaching these goals.

Investors like predictability, and to know what will happen in politics in the long term. Brexit means that companies planning on expansion towards renewable energy sources or drilling for shale gas will most likely put off their plans until the UK-EU relation are stabilised.

The colonial model: All EU regulations on energy, climate and environmental policy are an integrated part of the EEA agreement. Norway has obtained some minor technical exemptions in the petroleum sector, but there is still strong disagreement on whether the Offshore Safety Directive should be included in the agreement. The EU has previously put pressure on Norway to implement the directive on gas markets and on worker's rights on platforms located on the continental shelf.



Norway participates in the EU 2020 goals on renewable energy and energy efficiency. The water framework directive is also a central part of the EEA agreements within the environmental sector. In addition, the Industrial Emission Directive limits emissions from energy and industrial production.

Norwegian industry has made considerable financial investments in renewable energy projects in the UK. Statoil and Statkraft's offshore wind projects are among those that benefit from generous British economic incentive schemes. Moreover, the energy interconnector – sub sea cable, built by Statnett and National Grid, between Norway and the UK, will deliver clean electricity to 750 000 British households. The project has received 31 million Euros in EU funding for Technical Design Studies under the Connecting Europe Facility. If EU funding schemes face uncertainty in the case of Brexit, or UK obligations to provide incentive schemes to other EEA electricity providers, this may have consequences for British energy consumers.

The EU directive on gas markets has up until now provided equal competition terms on the British and the Norwegian continental shelf. It is crucial for Norwegian and others petroleum industries, as well as suppliers of goods and services to the offshore sector, that the UK continues to guarantee market access and equal treatment to suppliers from other EU and EFTA states.

The Swiss cheese model: Switzerland has yet to negotiate an agreement on energy with the EU. As part of Kyoto and Paris agreements on reducing GHG emissions, Switzerland has been able to join the EU Emissions Trading System (EU ETS). But further energy negotiations are on hold due to disagreements over EU migrant workers. The lack of agreement blocks developing cross border interconnectors between Switzerland and neighbouring EU countries of southern Germany and northern Italy. Like Germany, Switzerland decided to get out of nuclear energy after the Fukushima accidents. Allowing for cross border flow of electricity will be crucial for stabilising Switzerland's and its neighbours' electricity market.

The trade model: Canada will have access to providing services in mining and some services related to the environment and energy sectors. However, for critical or sensitive sectors, the EU or its member states may introduce discriminatory measures or quantitative restrictions. In case of a Canadian Model, the UK will no longer have to treat European suppliers to the offshore sector equal to British suppliers. Nor will they be bound by EU restrictions on air pollution having grave consequences for acid rain in countries like Norway.

A Canada solution may lead to higher prices on electricity as it can limit the access to European energy markets.

The minimal model: Turkey is fully sovereign to engage and negotiate climate agreements under the United Nations. Agreements on energy cooperation, such as gas pipelines through Turkish territory, is done on a bilateral basis between Ankara and Brussels.



2. Banking and finance sector

The EU has a fully integrated financial market based on «mutual recognition» which allow financial institutions established in one Member State to operate in any other on exact same conditions without further authorisation requirements. This mechanism is referred to as Single Passport system.

British participation in the Single Passport system requires an agreement with the EU that guarantees implementation and impartial surveillance of relevant legislation. If the UK fails to obtain such an agreement its banks and financial institutions will not be able to take part in the Single Passport System. UK banks and financial institutions will become less attractive and competitive, leading to City of London losing its position as the financial centre of Europe.

The colonial model: The EEA agreement incorporates all relevant financial legislation from the EU and is part of the Single Passport system. Compliance with EU legislation is guaranteed through supranational surveillance. Should the UK choose an EEA Model, the financial sector would be able to continue its operations under equal conditions within the EU. The EEA agreement is so far the only agreement that guarantees unlimited access for financial services within the EU, although subject to handing over sovereignty to EU financial surveillance agencies.

The Swiss cheese model: Despite being a financial hub, Swiss financial institutions do not have unlimited access to the Single Market. In fact, one of the main advantages of City is that financial institutions established in the UK have access to the entire Single Market through harmonised legislation. Another advantage is that the legislation is available in English. With a Swiss agreement that neither harmonises legislation, nor provides full access to the Single Market, these advantages disappear, making UK banks and financial services less competitive.

The trade model: Under CETA, the EU and Canada have agreed to liberalise trade in financial services so that European and Canadian financial institutions will be able to follow their clients and offer their services in both markets. However, the agreement still contains clauses that allow both parties the right to enforce their own solvency regulations, and there are differences in financial regulations in the two markets making compliance complicated.

The minimal model: As part of the EU customs union, Turkey does not set or control its own tariffs. With a Turkish model, the UK would have to agree to duty free market access for all EU trading partners without being able to expect the same treatment in return. In addition, the custom union does not extend to trade of services, which is currently the most important economic sector in the UK. Despite participating in the custom union, Turkey is required to negotiate their own trade agreements with third countries.



3. Food, agriculture and seafood

Market access for agriculture and fish will be one of the most extensive and demanding areas of negotiation between the UK and the EU. British secession from the internal market means that the UK will need to develop its own legislation for food safety and veterinary services. Well above 60 % of British fish export ends up in the EU, and the same applies to more than 70 % of UK agricultural products. The UK, and especially Scotland, has a large fish farming industry that may face anti-dumping measures from the EU. The fish farming industry in Norway has previously been targeted by such measures initiated by competitors in Scotland.

The colonial model: The EEA agreement does not extend to a common fish and agricultural policy. Norway, Iceland and Liechtenstein do not have free market access for fish and other seafood products, and trade is subject to import quotas and custom barriers. Trade with fish and agricultural products is covered by bilateral trade agreements between the EU, Norway and Iceland respectively. As for agriculture, distinct protocols exist for both unprocessed and processed agricultural products. Renegotiation occurs regularly, usually every 3 to 5 years.

Iceland has a more beneficial agreement for fish export than Norway. Icelandic economic actors have the right to invest in the EU fish processing industry (but not vice-versa). This has made Iceland one of the biggest market actors within English fishing industry to date. Norwegian fishing interests are in the process of buying into the British market as well. Should the UK become a part of the EEA, market access for seafood would have to be negotiated separately.

The EU is by far the largest market for Norwegian seafood export. Norwegian companies have several processing plants across Europe and an extensive distribution network. Although the Common Fishery Policy is not part of the EEA, all EU regulations regarding food safety (sanitary, phytosanitary and veterinary acquis) apply to Iceland and Norway.

The Swiss cheese model: Switzerland has their own trade agreement for agricultural products wherein the country adopts a protective trade policy similar to that of Norway and Iceland. Switzerland has negotiated an agreement of equal market access for milk products, while maintaining a relatively high level of subsidies to domestic producers.

The trade model: The EU-Canada agreement will remove import duties on most agricultural products. But some sensitive areas will continue to be protected. There are for example quotas on Canadian shrimp and frozen cod export. For export above the quota, a duty of 20 % is added for shrimp, and 7,5 % for cod. EU import duties on fish products are set to be phased out during the next seven years. The Canada model could possibly lead to custom barriers on seafood.

Canadian beef and pork will be covered by similar quota restrictions. Canada will be allowed to export a quota of 50 000 tons of beef to the EU, above which a duty is introduced. The EU does not allow import of meat from hormonally treated animals. More than 90 % of UK export of cattle and



lamb, worth more than 80 billion pounds, ends up in the EU. With a similar agreement as Canada, meat export above the quota from the UK would be subject to a 12 % duty.

Both the Swiss and Canadian model would lead to an increase in agricultural trade between the UK and Norway.

The minimal model: The Turkish agreement with the EU provides full access for trade with fish products, but puts duties and quotas on agricultural products.

4. Transport sectors

The colonial model: Over the next years, the EU will invest heavily in major transport projects all over Europe. EEA-members do not have access to these funds. Should the UK become an EEA member, they will normally not be able to apply for funding from the European Fund for Strategic Investment (EFSI), nor from funding streams under the European Transport Networks.

Sea, air, road and rail transport are all included in the EEA agreement, and all relevant EU-legislation in transport is adopted. Transport providers are subject to EU state aid and competition rules. Through the EFTA Surveillance Authority, the European Aviation Safety Agency (EASA) may fine Norwegian airlines that violate air safety regulations.

The Swiss cheese model: The EU countries and Switzerland negotiated equal access for air transport in 2002. Swiss airlines fly under the same competition rules as their EU counterparts, and do not face discrimination in departure and arrival times between companies from other EU members. Swiss aviation authorities and airlines are obliged to respect decisions by the European Commission and the Court of Justice. European airlines have taken over much of the air traffic from hubs like Geneva and Basel, as Swiss companies have given up maintaining their market share there. With the large demand for goods transportation through the Alps, it was of particular importance to negotiate an agreement on road and rail transport in 1992, and again in 2002. While EU companies still need to pay Swiss tax on heavy vehicles, the Swiss have been forced to increase the weight limit on trucks from 28 to 40 tons.

The trade model: CETA opens up the maritime sector by removing cabotage rules, allowing European vessels to operate between Canadian ports. The aviation agreement between Canada and the EU has eliminated all restrictions on prices and number of flights per week. The UK will need to decide how open they want to be to EU companies. In Canada, the limit for foreign ownership in aviation companies is 25 %, much lower than the EU limit of 49 %.



5. Health, labour and work permits

As long as the UK is a member of the EU, they remain bound by free movement of people, in accordance with EU law. It is unclear how this may change after negotiations; however, it has so far been signalled that workers from EU countries that already work and reside in the UK will be allowed to stay.

At the same time, the leave campaign has signalled that those seeking work from EU countries could face rejection if, and when, the UK leaves the EU. Several suggestions on how to resolve the issue of work and residence permits have been proposed, among them the “points based” system currently in place in Australia. Such a system implies that high-skilled foreign workers may obtain permits more easily than low-skilled foreign workers.

The EU has been very clear on the matter, stating that if the UK wants full access to the internal market they will have to accept free movement of people across the EU and EEA.


The colonial model: In addition to the right to work in any EU/EEA member state, other important social security rights pertaining to the EU/EEA area include equal treatment, export of benefits, and aggregation of social security/accrual period to obtain rights through the various member states’ social security systems. A person working in more than one country during her career will not lose her accrued rights.

Access to health services according to the rules of the country of origin is also an important part of the coordination of social security rights. The EU directive on patient rights gives EU citizens the ability to have expenses related to hospitalization and medical treatment covered in all EU/EEA countries. Wherever there is a waiting list, patients have the right to receive treatment in other countries where there is better capacity, and still have their expenses covered.

Unemployed workers may keep their unemployment benefits while applying for work in another EU/EEA country for a period of up to three months. The worker may further remain in another country for an additional period of three months as long as she is not a burden to the host country. Family members of an EEA citizen working in another EEA country, regardless of their nationality, has the right to a residence permit for the purpose of family reunification, including the right to work or study, as well as social security rights.

The EEA model also incorporates all EU workers’ rights legislation including equal pay, non-discrimination based on gender, race and sexual orientation, working time limits as well as legislation on safety at the work place.

The Swiss cheese model: Migration has been an important issue in Switzerland as well as in the UK. Following the Swiss introduction of quotas for residence and work permits to EU citizens, the EU has suspended all negotiations on further access to the internal market. The EU has also cut



off Switzerland from receiving funding through the EU-programme for education and research, Horizon 2020. The UK may risk similar reaction from the EU should it insist on quotas for residence and work permits.

The trade model: The CETA agreement does not include free movement of workers. Despite arrangements for temporary movement of people, this model does not grant right to permanent residence or work permits. EU countries have criticized the Canadian government for wanting to maintain VISA restrictions on Eastern European countries like Romania and Bulgaria. As a response, several Central and Eastern Europe countries say they will refuse to ratify the agreement.

6. Regulatory cooperation and mutual recognition

One of the main challenges of the internal market is to eliminate technical barriers to trade. Experience shows that regulatory requirements on health, environment and security may prove to be hidden trade barriers. Cooperation on developing common standards, mutual recognition of tests and certifications is both demanding and time consuming. It requires cooperation and structure for close, continuous and frequent meeting activity in a broad spectre of products and services.

The colonial model: Within the EEA, product requirement and standards are harmonized by including health, environment, and/or security requirements in directives that are adopted into national legislation. The directives often point to harmonised standards. If products are produced in accordance with common standards, the requirements are satisfied. CE marking is the most common way of demonstrating compliance. By affixing the CE marking to a product, a manufacturer declares that the product meets all the legal requirements, and can be circulated freely throughout the EU and EFTA countries.

EFTA States (except for Switzerland) are invited to participate in the expert committees of the Commission when new legislation is drafted. In this way, Norwegian authorities and industry can keep informed about new legislation that will be incorporated into the EEA agreement.

The Swiss cheese model: Switzerland does not participate in the legislative processes in the Commission. Switzerland only participates in the working groups of EFTA where they are informed about new initiatives by its EFTA partners and in some instances from the Commission.

The trade model: Cooperation between the standardization bodies of the EU and Canada will strengthen with CETA. This cooperation implies, among other things, that both parties will approve a common, official conformity assessment of the security standards of a product. This eliminates the need for double testing of products, and therefore reduces administration costs for companies on both sides of the Atlantic. Still, some product categories, like medical equipment are not included. By leaving the EU, the UK will lose their abilities to influence changes in product standards and technical specifications, and British companies will lose some of their advantages to competitors from EU countries.



The minimal model: Turkish exporters must adhere to EU product standards. Turkish products and services need to be certified in an EU country.

7. Trade agreements

The UK will have to withdraw from all trade agreements that they are part of through the EU. This includes trade agreements currently under negotiation, like the TTIP.

Until new trade agreements are in place, the WTO-framework will be the basis of trade relations between the UK and the rest of the world beyond the Commonwealth. Under a WTO framework custom duties and quotas will be introduced on certain product categories.

The colonial model: The EFTA states currently have twenty seven trade agreements covering in total thirty eight countries. If the UK should join EFTA, they will have to negotiate participation to those agreements. It will also be possible for the UK to negotiate bilateral agreements under the EEA model.

The Swiss cheese model: Switzerland is a member of EFTA. As such, the UK would be able to negotiate own bilateral free trade agreements (FTAs) with potential trading partners, as well as partaking in EFTA's FTAs. Switzerland has several individual FTAs, including one with China. The trade model: Canada has its own free trade agreement with the EU. Should the UK choose such a model they would have to negotiate separate FTAs with all potential markets. In the meantime, the WTO-framework will regulate trade. This makes trade vulnerable from restrictive trade measures. As of today, the EU is involved in 44 extensive anti-dumping cases internationally, the majority of which with India and China.

8. State aid and competition policy

State aid

As long as the UK is still a member of the EU they are compelled to notify the Commission of all state aid to companies that exceeds the “de minimis threshold” (200 000 euro over a three year period). The Commission has to investigate all cases of illegal state aid. State aid is prohibited in the EU, unless approved by the Commission in certain sectors, such as research and development, environment policy and regional development.



Competition

Under EU competition rules there is a general prohibition of price-fixing and market-sharing arrangements, abuse of market power and system of control of big mergers and acquisitions. The Commission currently has several «high profile» competition cases against the UK (e.g. Sky UK vs. six American film studios regarding geo-blocking of content). There is great uncertainty regarding how such cases will be treated in the future, and it is hard to predict any outcomes with certainty.

The colonial model: The EEA agreement has an identical approach to state aid and competition rules as the EU. The EFTA Surveillance Authority enforces rules concerning state aid, public contracts, price fixing and abuse of dominant market power.

The Swiss cheese model: This area is one of the great, unresolved issues between Switzerland and the EU. Switzerland does not want to accept any supranational surveillance authority or court. The EU cannot accept Swiss authorities to be responsible for monitoring or overseeing correct implementation of competition regulation within their own borders. However, Switzerland has accepted the Commission and the Court of Justice's authority in state aid and competition rules for aviation – which was required to access to the EU market for air transport.

The trade model: There is nothing equivalent to the European strict state aid and competition protection rules in CETA. Under current WTO-framework there is agreement on limiting the use of state aid. A state may introduce countermeasures wherever they think public financing has a negative effect on competition. The WTO system is particularly cumbersome and does not have a supranational sanctioning structure in place. It is therefore difficult to compare it to the common state aid rules in the EU where the Commission oversees enforcement.

The minimal model: Competition policy is governed by the Customs Union agreement with the EU. Turkey has aligned most of its legislation with EU antitrust law. Turkey is obliged to establish a State aid monitoring authority and to align and ensure full transparency of its existing and new State aid schemes. However, it has so far failed to do this.

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