

BREXIT AND RELATIONS BETWEEN EUROPEAN DEMOCRACIES THAT ARE AND ARE NOT MEMBERS OF THE EU

Christopher Lord, ARENA Centre for European Studies, The University of Oslo.

1.1. What is it to be a European democracy that is not a member of the European Union? Countries like Norway and Switzerland have long asked that question. Now the UK must develop its own answer. How the UK chooses a future outside the European Union will be of more than interest to itself. The UK, after all, is important to the balances that define contemporary Europe, including those between:

- i) an intergovernmental and supranational political and legal order in Europe;
- ii) Europeanist and Atlanticist international relations;
- iii) integrated and segmented markets;
- iv) 'ins' and 'outs', members and European non-members of the Union.

This report asks what Brexit means for the last of those balances in interaction with the other three.

1.2. How to relate 'ins' and 'outs' is a long-standing problem of European integration. The problem, though, has changed over time. Since only six states participated in the original European Communities the first steps towards European integration were taken by dividing Europe as much as by uniting it. By 2016, however there were few examples of 'voluntary non-membership'; or, in other words, of European countries that satisfied the tests for joining the Union but chose not to do so (Schimmelfennig and Winzen 2020). The main examples were, of course, the European Economic Area (EEA) countries, Norway, Iceland and Liechtenstein; as well as Switzerland, which is a member of the European Free Trade Area (EFTA) but not the EEA. Yet, even those countries, developed affiliations with the EU that enabled them to coordinate, and even participate, in some policies without being a member. The problem of 'ins' and 'outs' seemed largely, if imperfectly, answered.

1.3. Then came Brexit. From the 1990s European integration had become increasingly differentiated. The UK became the main example of internal differentiated integration where a member state does not participate in all Union policies. The EEA became the most ambitious example of external differentiated integration where non-members participate selectively in Union policies, laws or institutions (Schimmelfennig et al 2015). So, maybe withdrawing the UK from the Union would just be a matter of increasing external differentiation and decreasing internal differentiation: of identifying a form of non-membership suited to what was already the most opted out member state? Maybe Brexit could even increase the internal coherence of the EU whilst further developing its external means of accommodating other European democracies that find it hard either to integrate or to abstain fully from Union policies or institutions?

1.4. But to suppose that the UK could slide easily into some existing form of non-membership, or that some new form of non-membership could easily be invented for the UK or that the overall relationship between members and non-members could easily be adjusted to withdrawing the UK from the EU was to misunderstand what might be called **the problem of 'non-membership'**. Membership and non-membership do not shade into one another or meet in the middle in ways that allow easy movement from the one to another.

1.5. It is possible to imagine a non-member that adopts most Union policies and laws through a mix of unilateral approximations and bilateral deals. Citizens living under its policies and laws might experience the EU in much the same way as their counterparts in member states. Yet our imagined country would still be quite different to a member state. Only members associate together on a basis of shared constitutional principles that are both defining of the Union and redefining of its member

state democracies. As a corollary of that, only members can have full decision rights or, indeed, many decision rights at all.

1.6. Whilst, though, membership and non-membership are fundamentally different, they define one another. How a member state behaves – and how far the Union may be prepared to accommodate its difficulties in being a member - may be influenced by how easily that country can leave and with what consequences for the rest of the Union. On the other hand, the relationships the EU can offer to non-members are constrained by what it is to be a member of the Union.

1.7. It might seem obvious that the Union cannot offer non-members the benefits and rights of membership without its costs and obligations. But exactly why that is so, and what follows, are not always fully understood. Consider three things:

First, the constitutional commitments that member democracies reciprocally make to one another; notably to the direct effects and supremacy of EU law.

Second, the values to which members commit through their membership of the Union. Those are values most member democracies hold independently of their membership of the EU. But they also constrain what they can do through the Union.

Third is the role of Union as a provider of club goods or international public goods to its member democracies. Foremost amongst them, the single market and single currency, and cooperation on internal and external security.

Only together do those three factors define what it is to be a member state of the Union; and how member states associate together through the EU. Shared constitutional principles expand the scope of member states to make law together and not merely cooperate together through the Union. That, in turn, expands their ability to provide themselves with agreed club goods. But club goods depend on excluding from benefits those who do not contribute to their costs. Foremost amongst benefits is participation in Union decisions with full decision-rights. Foremost amongst costs are ‘sovereignty costs’ of being out-voted; and of being bound by Union decisions and by the Union’s shared constitutional principles, sometimes at great domestic inconvenience. But only by excluding in that way – so that it is not possible to have benefits without costs or to have cake and eat it - can member states provide themselves with agreed collective goods; and only by insisting that degrees of inclusion are linked to rights and values can the Union also operate as a community of rights and values.

1.8. So, there is a maximum to what the EU can offer non-members and a minimum a member must lose by exiting the Union, most obviously its decision rights. The most the EU can offer a non-member is participation in the preparation or implementation of decisions. Otherwise, only members can have votes or vetoes, if the benefits of membership are to be restricted to those prepared to contribute to the costs of membership. In that sense the EU is a ‘vulnerable hegemon’ (Fossum et al. 2021), constrained to insist on the hegemonic exclusion of outsiders from full decision-rights by its own vulnerability to free-riding.

1.9. Yet, non-members – and especially those that are immediate neighbours –are deeply affected by Union decisions. Given constraints on how far the Union can offer non-members rights and participation even in decisions that deeply affect outsiders, relations between EU ‘ins’ and ‘outs’ are contentious. Are non-members rule-takers? Are they dominated by the Union? Is non-membership even a form of self-harm (Eriksen 2019) by those European democracies that forego opportunities to participate with full decision-rights in the making of EU policy and law that they sooner or later end up adopting? Or, as just noted, is the problem also one of the autonomy of the Union itself and of its member state democracies: of their right to choose a form of association through the EU that is at once constitutional and based on shared values, whilst also safeguarding themselves against free-riders and cherry pickers? Could it even be inherently difficult to arrange relationships between European democracies inside and outside such that all are in full control of their own laws?

1.10. So, relations between members and non-members of the EU are fundamental to how citizens – including citizens of member states - are governed in contemporary Europe. Yet, until now, our

understanding of the problem of non-members that choose to be non-members (as opposed to those that are seeking membership through enlargement of the Union) has been limited to the Swiss and Norwegian cases. Even early studies of Brexit sought to work out what might follow from applying the Norwegian and Swiss models to the UK.

1.11. But the UK now adds a further case of ‘**voluntary non-membership**’. How the UK has discussed, neglected, rejected or selectively borrowed from existing forms of non-membership can tell us rather different things about what it is to be a European country outside the European Union. Although there is much that is idiosyncratic in Brexit, it also expands our understanding of general problems of non-membership. Even the idiosyncrasies can be sources of new insight.

First, Brexit tests how far size matters. Are the possibilities and problems of non-membership really so very different for a far larger European democracy than members of EFTA or the EEA?

Second, Brexit crystallises much of what is involved in being a non-member in a more or less single moment. Other forms of non-membership – notably the Norwegian and Swiss options – have developed incrementally. In contrast, Brexit has required the UK to consider all that is involved in non-membership in a concentrated period of collective decision.

Third, Brexit is unforgivingly contemporary. It tests the choice between membership, non-membership and different forms non-membership at a time of **poly-crisis**. Financial crisis, migration crisis, geopolitical crisis, energy crisis and climate crisis have either contributed to Brexit or added urgency to the question of how well Brexit will support cooperation – within and beyond Europe - in comparison with UK membership of the EU.

Fourth, the focus of the Brexit referendum on ‘regaining control’ has explicitly raised the question of what it is to be a self-governing people (Weale 2017) in a world where democracies must find some way of combining their interconnectedness with their internal autonomy (Pettit 2012)

Fifth, the UK is the only non-member that is also an **ex-member**. It starts off aligned with much EU policy and law. But divergence is the ambition of most concepts of Brexit. If a member state is a state organised for membership of the European Union (Bickerton 2012) many ideas of Brexit imply a ‘Brexit state’ (Lord 2023) which is organised for *not* being a member of the EU; which is justified and distinguished by what it can achieve outside the EU; which reconstructs itself as it leaves the EU. So, Brexit is a ‘falling apart’ form of non-membership. In contrast, existing cases – EFTA and the EEA - have been ‘coming together’ forms of non-membership that have added to overall cooperation between European states and democracies. Falling apart may also make the UK and EU anxious to avoid any form of non-membership that repeats the difficulties of UK membership.

BACKGROUND

2.1. How did we get to Brexit? Why the UK decided to leave the European Union is already a huge field of study that cannot be fully summarised here (though for an excellent overview see Dennison 2023). Yet it is hard to discuss the options that are now available to the UK as a non-member without at least a brief typology of possible explanations for Brexit. Those explanations differ in how far they attribute Brexit to contingent happenings; to deeper problems in British politics, economy and society; to flaws and contradictions in the UK’s membership of the EU; or to a wider crisis in democratic politics (For a fuller account see Fossum and Lord 2023: 4-7). Amongst contingent factors were the migration crisis in the lead up to the referendum, and even the decision of key figures – notably Johnson - to campaign to leave (Cummings 2017). Amongst deeper problems of British politics were the internal divisions and strategic difficulties of the Conservative Party. Had the Conservatives not needed some way of resolving their own internal arguments without being outflanked by the emergence of a challenger party to their right (UKIP), there would probably not have been a referendum in the first place. Amongst wider difficulties in the UK’s economy and society were economic and social inequalities that created a constituency for a leave vote amongst so-called left-behind communities. Amongst flaws and contradictions in the UK’s membership of the EU were long-standing difficulties

in reconciling principles of national parliamentary sovereignty at the core of the UK constitution with the priority of EU laws, not least after the UK itself promoted a single market that hugely expanded shared-law making at the Union level. Amongst wider crises in democratic politics, Brexit and the election of Trump are often bracketed as twin events in a ‘populist upsurge’ (Schonfeld and Winter-Levy 2019) against elites and their claims to represent.

2.2. However, the referendum only decided that the UK should leave the EU. It did not decide how the UK should leave and what, if anything, it should put in place of its membership. Large though the difference is between membership and any non-member, there are many different ways of relating to the EU from the outside (Eriksen and Fossum 2015; Gstöhl 2015). At one end of a range, European democracies can, like the EEA countries, aim at convergence on EU policies and laws, even to the point of developing something of a shared institutional, legal and political order with the Union. At the other end of the range, non-members can have little relationship with the EU beyond common membership of third bodies such as the United Nations and World Trade Organization (WTO).

2.3. Table 1 sets out what were thought to be the options for EU/UK relations after Brexit (Piris 2023). Most are based on existing third-country agreements with the EU: Norway, Switzerland, Canada and Turkey being the most commonly discussed examples. However, there were two further possibilities. First, the UK could leave without a deal. As just seen, it could forego any formalised relationship with the EU beyond that available to any state in the international system, an option the Johnson Government described as ‘Australia’. Second, the UK and EU could aim at a ‘bespoke relationship’ of a kind never attempted before. It could, after all, be a failure of logic or of imagination to suppose that existing solutions exhaust the full range of possible solutions.

Table 1 alternatives to membership/forms of non-membership

Norway	Use of the European Economic Area (EEA) as a single multilateral framework (EU27, Norway, Iceland and Liechtenstein) for making shared laws needed for non-member to participate in the EU’s single market + multiple bilateral cooperations
Switzerland	Multiple bilateral treaties with the EU
Canada	A ‘state of the art’ Free Trade Agreement with the EU.
Turkey	A Customs Union with the EU or, in other words, a common external tariff.
Bespoke	A relationship specific to the UK and unlike any of the above
Australia	No relationship with the EU beyond shared membership of third bodies such as the World Trade Organisation or the United Nations

2.4. But are the options in Table 1 equally available to the UK? Some question whether the Swiss model can survive at all. Apart from the huge administrative burden on the EU of having to consider any implications of new policies and laws for the Union’s 130+ bilateral treaties with Switzerland, the Commission worries about difficulties in keeping Switzerland aligned with the single market without the same commitments and procedures as those used by the EEA to ensure the dynamic up-dating of policies and laws. The Commission would, therefore, prefer to move Switzerland in the direction of a single framework agreement rather than allow the UK to follow the Swiss model of picking and mixing through multiple bilateral treaties (Piris 2023. Dardanelli and Mazzoleni 2021). If, however, some question whether a Swiss-style relationship is likely to be available to the UK at all, others question whether even Norway or Canada could be made to work for the UK. We will come back to that in the conclusion.

2.5. The forms of non-membership in Table 1 are different trading relationships that provide non-members with fundamentally different access to EU markets. The point needs labouring, since it is so often forgotten, that the Canada option of a **Free Trade Agreement (FTA)** is quite different to the Norway option of a **Single Market**. The first only involves the removal of ‘at-border’ restrictions to trade such as tariffs. Only a single market attempts to remove the multiple ‘behind border’ restrictions that form the main obstacles to trade in modern service economies: different regulations,

‘nationalistic’ public procurement, aids and tax breaks to favoured producers. Tackling those and other ‘behind border restrictions’ means that a group of democracies seeking to create a single market must also make a significant commitment to the shared making, administration and interpretation of laws.

2.6. A **Customs Union** adds a further level of market integration to any provided by a free trade agreement or a single market. Its members commit to common rules, permissions, restrictions and tariffs for those trading into their markets from outside the customs union. However, within the customs union, they also remove restrictions between themselves (Viner 2014) through at least an FTA; or, for deeper integration, they can combine a single market with a customs union. Only EU membership does that. There is no existing example of a non-member that is in both a customs union and a single market with the EU. However, that possibility - known as ‘**Norway plus**’ - has been important to Brexit. Only keeping the whole of the UK in both a single market and a customs union with the EU could have avoided a border on the island of Ireland, or a border between Northern Ireland and the rest of the UK.

2.7. However, the forms of non-membership in Table 1 are not just trading relationships. They are also political, and even constitutional, choices with different implications for how non-member states and their citizens are governed; or, more optimistically, for how they govern themselves. Aligning laws in a way needed to sustain a single market is a never-ending, ever changing task. It requires continuous commitment across markets and time. Minimising gaps in the rules (Gstöhl 2023) that regulate and create market does not just require shared making of laws. As seen, it also requires their consistent interpretation and administration. So, non-members seeking to participate in the EU’s single market through the EEA may avoid the constitutional commitments of membership to the supremacy and direct effect of EU laws. But they do have to commit to something of a **shared political, legal and administrative order** with the EU: to significant co-legislation with the EU, to consistent interpretation with the EU of EEA-relevant laws (Frederiksen 2015), all through EEA institutions that are often isomorphic with their EU equivalents (Gstöhl 2023).

2.8. Just how far choices between the trading relationships in table 1 also involve political conflicts and constitutional questions of how non-member democracies should govern themselves is illustrated by the distinction between **soft and hard forms of Brexit**. Since a soft Brexit was defined as remaining in some form of single market or customs union with the EU, a hard Brexit implied that the UK should attempt no more than a free trade area with the Union. For some, it was essential to avoid going further than an FTA if the UK was to maximise its autonomy in bargaining trade agreements with the rest of the world. For others, however, a hard Brexit meant being hard on immigration rather than trade. An FTA was only the upper limit to any trading relationship in so far as the EU made free movement of persons a condition for remaining in its single market. In the EU’s view, the free movement of persons, goods, services and capital are both indivisible and cumulatively defining of a single market. For still others, however, a hard Brexit was more of a constitutional necessity if the UK was to avoid any continued role for the EU’s law and its court that would follow from choosing a single market over an FTA.

2.9. However, Brexit will not just depend on the options in Table 1. The exact nature of Brexit will also depend on the difference between the form of non-membership the UK develops and the form of membership it is giving up. For many the UK was always an ‘awkward’ partner (George 1998). But there is another story to tell. Over the 47 years of its membership (1973-2020) the UK was in many ways a remarkably successful member that did much to shape the Union. For sure, much of that ‘success’ consisted of concentrating on what the UK wanted from membership while securing opt outs from what it did not want, principally the single currency and the Schengen system of border controls. But the UK powerfully supported the single market and, therefore, the development of what, in many ways, became the core of the EU from the 1980s. The UK’s former Permanent Representative to the EU, Sir Ivan Rogers (2017), argues that the UK developed a ‘single-market only’ membership. Even if that puts the point too strongly, the UK had a **single-market focused membership**.

2.10. But what the UK can do now requires understanding of how the single-market also became a core problem –even a contradiction - in its membership of the Union. It was largely through the single

market that the EU and its law became so important to how the UK and its public were governed. Not only, as seen, does a single market require shared law-making. It was precisely its claims to legal supremacy that made the EU uniquely suited to constructing a multi-state internal market. The priority of EU law and the monopoly final interpretation of EU law by its Court facilitated certainty and coherence in the rules needed to create a single market. Yet, by creating a large body of law that the UK could not easily change alone, the single market made it plausible to argue that the UK could only regain full control of its own laws by exiting the Union.

WHAT HAS BEEN DECIDED SO FAR IN BREXIT

3.1. The Brexit referendum decided a lot and very little. There was one huge ‘known’: on 23 June 2016 the British public voted 52 to 48 per cent on a turnout of 72 per cent to leave the EU in answer to the following 13-word question: Should the United Kingdom remain a member of the European Union or leave the Europe Union? But there were unknowns every bit as large: the public had voted for Brexit but not for any one form of Brexit. The full meaning of Brexit would depend on how it was done; on any relationship the UK developed with the EU from the outside; on choices between the many competing versions and ideologies of Brexit; on the domestic changes that accompany it; on any adjustments of the UK’s other external relationships to its withdrawal from the Union; on finding solutions to all the foregoing that could work simultaneously and sustainably across the domestic, European and international levels; on answering the question ‘exit to what?’

3.2. The first decision towards defining a form of non-membership for the UK was taken almost immediately after the referendum by the new May Government (2016-9). It was to **rule out remaining in the EU’s single market through the EEA** or something like it. Before the referendum it had been widely assumed that if the UK had to find an alternative to its membership of the Union it would need at least to consider a relationship similar to that between Norway and the EU (UK Government 2016). So, what had been the main alternative before the referendum disappeared after it. Some would say that is no puzzle at all. A referendum fought on regaining control of UK laws, borders and money seemed to exclude the EEA, with its shared law-making; its co-financing of programmes, and its commitment to free movement. Norway was also associated with the EU’s system of border controls, something the UK had not even attempted as a member. May (UK Government 2017) shared the view that the Norwegian model was not a form of Brexit at all and worried that it could only have been pursued at damage to British politics and democracy. The Norwegian option was vulnerable to interpretation as a trick on the electorate: as a *de facto* way of remaining in the EU, only with a strange form of membership without membership, with many of its obligations and few of its decision rights.

3.3. Yet, technically, it was not the referendum that decided the UK should leave the single market. Rather that decision was only taken when the British Government interpreted the referendum as obliging it not to pursue any further the Norwegian option that allows even a non-member to participate in the single market. Even if that was a substantively correct interpretation, it was not a procedurally uncontested one. Apart from the referendum itself the decision not to participate in the single market as a non-member was probably the single most important decision in defining what Brexit would mean for the UK’s economy, society, international relations, political system and constitutional. Yet it was taken with little public and parliamentary debate. Even senior members of the government felt they had little say. As the Chancellor of the Exchequer (Finance Minister) in the May Government put it, ‘I was completely and utterly horrified by what I felt was almost a coup: a definition of Brexit without any proper Cabinet consultation at all’ (See, UK in a changing Europe, Brexit Witness Archive, Interview with Philip Hammond, 13 and 20 November 2020. Available at [Brexit Witness Archive - Philip Hammond \(ukandeu.ac.uk\)](https://www.brexitwitnessarchive.org.uk/Philip-Hammond). Last retrieved 21 November 2022).

3.4. What made the manner in which it was debated and decided so important was, of course, that Brexit was unavoidably and throughout a matter of interpretation, judgement, struggle and construction. Brexit meant different things to different people, even to those who wanted it, especially to those

who wanted it. The struggle over the meaning of Brexit was often most intense amongst its own supporters. Nor should that be taken as a criticism or even as much as a surprise. It is perhaps of the nature of pluralist democratic politics in complex societies that winning coalitions are likely to be heterogeneous groups of those who want the same thing for different reasons, perhaps even inconsistent coalitions of those who want the same thing for contradictory reasons.

3.5. For sure the idea of ‘taking control’ probably formed the common core of the leave vote. But ‘taking back control’ was understood in different ways, some of them complex and rather mysterious, and not all of them fully to do with the EU itself. For many ‘left-behind’ communities which voted for Brexit, it meant taking back their share of control within the UK’s political and economic system quite as much as taking back control from the EU. Indeed, the genius of the slogan was that it agglomerated more than it specified. It agglomerated those who had some concern of some kind about sovereignty, immigration or money without always specifying exactly what changes to those things would amount to control regained.

3.6. Yet even if ‘taking back control’ was in some way the common core of the leave vote, their contrasting economic and social ideologies meant that leavers won the 2016 referendum as an **inconsistent coalition** and without specification of what Brexit would mean or how it would be done. Many of its donors and policy entrepreneurs saw Brexit as an opportunity to turn the UK into a radically deregulated and globalised economy. Yet, for many of its voters, Brexit was a protest of left-behind communities and threatened identities against Europeanisation, let alone globalisation. The one implied a maximally deregulated and minimal state. The other implied a larger state with responsibility for economic regeneration. State, society and economy would plainly be very different depending on choices between different versions of Brexit.

3.7. Contradictions amongst supporters of Brexit only mirrored wider conflicts in British politics. Social groups, generations and the four nations of the UK all divided on Brexit. It is questionable whether there was ever a stable equilibrium within British politics for any one approach to Brexit, perhaps not even as a result of the seemingly decisive 2019 election. See 7.6.

3.8 Yet even disagreements within the UK were only part of the problem. Selection between the alternatives in Table 1 were not choices the UK could make alone. They also depended on others. Even choices of how *not* to be a member were constrained by the very Union that the UK thought it was leaving, and by others within and beyond Europe. Apart from leaving without a deal, any alternative to the UK’s membership of the EU required the agreement of others who had veto powers, preferences of their own, and difficulties in including the UK in their own relationships with the EU.

3.9. The Norwegian model illustrates. Although often discussed as if the UK could exercise the Norwegian option as of right, admitting the UK to the EEA would require the agreement of all 27 members of the EU and all 4 members of EFTA (Iceland, Liechtenstein, Norway and Switzerland). Worse, far from the EEA model being a solution to Brexit, the UK could **destabilise the EEA**. Especially for Norway, the EEA has evolved since the 1990s as a delicate construct for reconciling key features of its domestic politics and society with obligations needed for a non-member to participate in the EU’s single market. Norway needs domestic compromise for its relationship with the EU and the workings of the EEA require domestic compromise within Norway. The EEA also requires a continuous flow of new agreements. Non-EU members of the EEA then have to respond to each of those proposals as one or risk suspension of parts of the agreement (See esp. Jónsdóttir 2013 a and b). Whilst, though, compromise is needed within and between the non-EU members of the EEA, the UK has a famously adversarial politics and media with strong incentives to pick fights. To the extent that British politics hardly seem compatible with the EEA, the Norwegian option may not even have been an option.

3.10. So, what has the UK agreed so far? The EU and UK have negotiated i) a **withdrawal agreement** (WA) and ii) an agreement on their **future relationship**: the Trade and Cooperation agreement

(TCA). The WA covered questions directly entailed by the UK withdrawal, notably a) citizens' rights; b) the UK's outstanding financial commitments and c) and avoiding a border within the island of Ireland after Brexit. The TCA consists of a free trade area in goods and a wider association agreement that creates a framework for multiple further forms of cooperation, as well as a shared governance structure with a partnership council and a mechanism for resolving disputes. Of the alternatives in Table 1 the TCA is closest to the Canada model, without being identical with it. The next section summarises key institutional features of the TCA. First, though, it is important to mention difficulties with the TCA and WA.

3.11. A difficulty with the **TCA is that it is mainly a free trade agreement in goods**. The UK, however, is overwhelmingly a *service* economy. Jonathan Portes (2022: 3) sums up the TCA as follows: 'The TCA while providing for zero tariffs and quotas on traded goods, contains very few provisions of economic significance relating to the mutual recognition of regulatory standards, regulatory equivalence for services (including financial services) or labour mobility. Compared to membership of the EU (and of its single market and customs union) it therefore implies a major increase in trade costs and trade barriers'

3.12. A difficulty with the WA is that the Johnson Government threatened to reopen the agreement by unilaterally replacing the **protocol** that created a customs boundary between Northern Ireland and the rest of the UK as an alternative to a border on the island of Ireland. That raises the crucial question of how the WA and TCA relate to one another. The TCA is due for review every 5 years and either side can withdraw at 12 months' notice. The EU could plausibly have withdrawn from the TCA had the UK breached the WA. The EU and UK would then have been back with a no-deal Brexit: a UK withdrawal from the EU without any agreement on a continuing relationship. To avoid that, the Sunak Government negotiated the so-called **Windsor accords** in 2023. The accords aim to minimise any procedures that follow from keeping Northern Ireland aligned with selective EU rules. They also introduce a mechanism for Northern Ireland to provide periodic democratic consent to the special arrangements in the protocol.

3.13. In sum, exiting the EU and developing alternative relationships has been a complex multi-level and (Putnam 1988) multi-dimensional game: a game that has had to be won by securing sufficient domestic agreement for a sustainable form of non-membership; by reaching agreement across the member states and institutions of the very Union which the UK thought it was exiting; and by negotiating with others beyond the EU whose markets the UK now wants to access on favourable terms. Although, all those games needed to be won, the requirements of winning any one of them often conflicted with those of winning the others. Moreover, solutions to Brexit have not just had to work across the domestic, European and international levels. They have also had to cohere across the multiple dimensions of Brexit each with its own complex assumptions about economy, society, polity, statehood and the wider world. A core problem has been one of aligning the political economy of the UK's relationship with the EU with assumptions about rules, institutions, sovereignty, autonomy and what it is to be a self-governing people in an interconnected world. To get some insight into whether the deals reached so far are likely to be final, complete or sustainable, the next sections turn to the economics and international relations of Brexit; to its implications for the UK's constitutional order and political system; and to future challenges such as climate change and energy transitions.

INSTITUTIONS: THE GOVERNANCE OF EU/UK RELATIONS AFTER BREXIT

4.1. As said, the TCA now provides the framework for relations between the EU and UK. Much of its content is a free trade agreement and associated policies. But what of its institutional form? How far does that create a new model that can be a source of comparison or even emulation for EEA countries? That question can only be answered with a brief sketch and a few conjectures given the novelty of the institutional arrangements.

4.2. **Single Structure**. By adopting the **TCA**, the UK has chosen to regulate its external affiliation with the EU through i) a Single Treaty, ii) a Single over-arching Institutional Framework and iii) a Single Dispute Mechanism. Those 'singularities' are at least one way in which the **TCA** is closer to

the EEA than to the Swiss model of multiple bilateral agreements. There is also a further commitment to try to keep to a single framework over time. Any further bilateral agreements the EU and UK conclude in the future will be supplementing agreements to the **TCA** unless provided otherwise.

4.3. Mutual Consent. The WA is overseen by a Joint Committee (JC) and the TCA by a Partnership Council (PC). Both are co-chaired by a member of the Commission and a UK Government Minister. The PC will be supported by a system of joint committees: a trade committee, 10 specialised in trade matters and 8 specialised on Energy, Air transport, Aviation safety, Road Transport, Social Security Coordination, Fisheries, Law Enforcement and Judicial Cooperation and Union programmes. At all levels decisions will require the mutual consent of the UK Government and the EU. Here, though, the EEA is a bit different. All three non-EU members of the EEA – Norway, Iceland and Liechtenstein – have to give their consent together if proposals are to be adopted into the EEA. The UK does not face that constraint since it is the only non-EU member of the TCA.

4.4. Dynamic elements. Since the **TCA** is mainly a commitment to create a free trade area by removing tariffs at boundaries, it can achieve much of what it needs to do through a largely static treaty. Now that the EU and UK have decided by treaty to remove tariffs at boundaries they don't need to decide much more together. All they need is a body (the Partnership Council) to oversee that each separately implements the agreement not to employ tariffs, together with a mechanism to resolve disputes. In complete contrast, a single market - and, therefore, the EEA - seeks to remove barriers to trade behind boundaries. That really does require a dynamic treaty: a continuous commitment to go on adding to what was decided in the initial treaty by continuing to make further law together and to interpret and administer that law together. All that said, some clauses of the **TCA** allow the scope of the cooperation to be expanded from 'within the agreement'. Nor is the TCA entirely without dynamic elements, including commitments to convergence over time in rules on state aid. In other areas – environment and labour rights – there are also commitments to non-regression over time.

4.5. Participation in EU programmes and agencies. An important question is how far can 'ins' and 'outs' co-operate at the administrative level in spite of constitutional differences between membership and non-membership of the Union? How far can cooperation be secured in practice through the participation of non-members in EU programmes and agencies. The TCA lays down principles for the UK's participation in EU programmes and anticipates cooperation with 7 EU agencies: Energy Regulation (ACER); Aviation (EASA); Cybersecurity (ENISA); Security and Justice (EU-LISA); Criminal Justice Cooperation (Eurojust), Policing (Europol); and Intellectual Property (EUIPO) (Kaeding: 2023). Note, though, by comparison, Norway participates in 11 EU policy programmes and 31 of the EU's 48 agencies. The level and nature of UK participation also seems to be under the control of the EU. For example, the UK can benefit from the exchange information but it has no right to data or to interrogate EU data-bases at will in matters crucial to policing and control of migration (Comte 2021; Comte & Lavanex 2022). Another example is cyber-security where provision for data exchange is 'voluntary and reciprocal' (TCA: 384) and can, therefore, be refused. Any closer cooperation is also likely to be limited by the EU's constitutional principles. For example, better access to Europol data would require the Commission to give the UK a data adequacy certificate whose operation would then be under the jurisdiction of the EU's Court (Comte 2021). Even without being under CJEU jurisdiction the UK would be under the shadow of that jurisdiction in its use of data in vital policing matters.

4.6. Dispute Settlement. The **TCA**, and decisions under it, are legally binding on the EU and UK under public international law. Disputes on how the EU or UK should interpret or apply their obligations can, if not resolved by the parties themselves, be referred by one of the parties to arbitration by an independent tribunal. If either side fails to comply with an arbitration, the other can suspend parts of the agreement with some scope for cross-retaliation. For example, tariffs can be imposed in response to other breaches. The EEA also provides for arbitration. 'The arbitration award' is then 'binding on the parties to the dispute'. In the absence of an agreement or referral to an arbitration either side can, after six months, take 'safeguard' or 'rebalancing' measures or it can suspend that part of the agreement that relates to the dispute (ibid). An obvious difference, though, is that the EEA allows for a role for the CJEU. the parties to the dispute 'may agree to request the Court of Justice of the European

Communities to give a ruling on the interpretation of the relevant rules (EEA Article 111). Arbitration cannot involve questions of interpretation that need a ruling from the CJEU.

4.7. **Review and Exit.** As seen, the **TCA** is due for review every 5 years and either party can terminate the agreement with 12 months' notice. There is also a fast-track termination procedure that allows either party to terminate in 30 days if the other is in breach of 'shared principles'. Those include democracy, human rights, the rule of law, and the fight against climate change. Either side could terminate if the other does not keep to the international treaty on climate change set out in the Paris Accords and, conceivably, either could terminate if the other withdrew from the European Charter on Human Rights (EHCR). The EEA also allows any contracting party to withdraw at 12 months' notice. But there is no fast-track withdrawal procedure and there is no requirement to renew the agreement every 5 years. Norway, unlike the UK, is not faced by a need to renew its relationship with the EU twice every decade by a procedure – which on the EU side – will require a proposal by the Commission, the agreement of 55 per cent of EU members representing 65 per cent of the EU's population and the agreement of the European Parliament. Problems of multiple veto players within the EU's institutions on the UK's relationship with the Union, cliff edges and no deal Brexits will not be altogether removed by the TCA

4.8. **Democratic Consent and Control.** The TCA is an agreement between two parties – the EU and UK – with their own autonomous systems of law. No EU law now applies as such to most of the UK. The exception is, of course, Northern Ireland. As the House of Lords (2023) notes 'EU law measures continue to apply to Northern Ireland are listed in annexes to the protocol. This includes over 300 pieces of EU legislation, covering rights of individuals (annex 1), single market regulations and customs (annex 2), VAT and excise duties (annex 3), whole electricity markets (annex 4), and state aid (annex 5). If the EU amends or replaces any of these measures ... the changes apply to Northern Ireland automatically'. As the House of Lords continues within the first 18 months alone of the agreement the 'EU informed the UK of over 4000 measures' it had adopted under the 300+ laws listed in the protocol. That is quite a body that citizens of Northern Ireland need some way of controlling as equals and on a continuing basis.

The WA anticipated the problem by creating a '**consent mechanism**' that would allow the Northern Ireland Assembly to vote every four years to disapply parts of the protocol. But that right does not i) cover all laws under the protocol, nor ii) powers of the joint committee to introduce measures outside the protocol. It is also iii) only an opportunity once every 4 years to iv) disapply whole parts of the protocol and not individual pieces of legislation. Given those difficulties, the Windsor Accords agreed a so-called '**Stormont brake**' that would allow at least 30 members of the Northern Ireland Assembly from at least 2 parties to object to specific EU amending measures which would have a 'significant impact specific to everyday life of communities in Northern Ireland'. There is much uncertainty about how the procedure would work. But, plainly, the consent mechanism and the brake depend on restoring the whole political process in Northern Ireland where the legislative assembly has only recently reassembled after suspension since January 2017. Disapplying some parts of the protocol would also amount to Northern Ireland imposing on itself a border with the rest of Ireland.

THE ECONOMICS OF BREXIT

5.1. The form of Brexit adopted so far a) withdraws the UK from the EU's single market and b) from its customs Union. On the other hand, the TCA c) creates a free trade agreement in goods between the EU and the UK. Brexit also d) makes it possible for the UK to conclude free trade agreements of its own with any other part of the world. The overall impact on UK **trade** will mainly depend on whether any positive effects of c + d are greater than any negative effects of a + b.

5.2. Overall consequences for **GNP** will then depend on adding some further factors to the trade effects: notably, any saving on the UK's contribution to the EU's budget less any increased 'costs of government' such as customs checks and duplication of work that was previously pooled, for example, in EU agencies. Also important will be the UK's own policy responses. Those can either compound or mitigate the effects of Brexit. How open the UK is to migration (See 4.7), how effectively it

ties up trade deals with the rest of the world (See 4.9) and how well it compares with the EU as a high-quality regulator whose rules ‘create value’ (4.10) are amongst unknowns that will be important to the eventual impact of Brexit

5.3. The British Government last published **estimates** of the economic effects of Brexit in 2018 (UK Government 2018a). The eventual cost was expected to be between 2 and 7 per cent of lost economic growth, depending on the form of Brexit chosen from those in Table 1 . However, it is a large problem of Brexit that no agreed basis emerged for understanding its economic effects. All estimates remain contested. All that can be done is to set out what are considered to be the key factors on both sides of the argument.

5.4. Withdrawing from the EU’s single market and customs union changes **costs of trading**. The TCA is limited in how far it can offset those costs, since, as seen, it is mainly a free trade agreement in goods. Yet the UK is mainly a services-based economy. Nor does the TCA even fully avoid new costs and frictions to trade in goods, as there will have to be customs checks, Those checks could only have been avoided by staying in a customs union with the EU, which would have constrained UK trade agreements with the rest of the world. So far, Brexit seems to have reduced the UK’s trade intensity - or, in other words, the proportion of its GNP that is internationally traded (OBR 2022: 63) – by about 15 per cent. Also concerning is that a devaluation of around 20 per cent immediately after the 2016 referendum produced little improvement in UK exports. That may suggest a reluctance to invest in the systems, infrastructures, relationships and expertise needed for exporting. Adam Posen (2022), of the Peterson School of International Economics, has described Brexit as the UK declaring ‘a trade war on itself’

5.5. It might, however, be objected that a focus on increased costs of the UK’s existing trade fails to grasp how the world economy is changing in ways that favour global trade beyond the European region. For sure, the share of exports and imports to and from the EU and the EEA had already been declining as a share of the UK’s total trade for some years before the referendum in 2016. Yet the EU/EEA remained by far the UK’s largest trade partner. The declining share of EU/EEA trade in the total also had more to do with the rise of China and India in the global economy than with any difficulties in the UK trading with the EU and EEA. Meanwhile, the main theory of trade – **the gravity theory** - continues to find evidence that countries are most likely to trade with their neighbours; with large markets (like the EU/EEA); and with those with similar levels of GNP, and, therefore, similar patterns of supply and demand. The argument that the UK needs to leave the EU to trade more globally may even get things the wrong way round. Building up comparative advantage within a single European market may be important to the UK’s ability to develop more global markets.

5.6. Trade flows may also under-state economic interdependence within the European area. It is one thing to trade huge quantities of *finished* goods and services. Interdependence is quite different where **supply chains** and processes of producing key goods and services are themselves integrated across borders. Processes of production are often physically distributed across European states. In evidence on Brexit to the House of Commons Trade Committee Mike Thompson, Chief Executive of the UK Pharmaceuticals association, explained just how far several medicines cross borders multiple times before they are either produced or sold in the UK.

‘There are 45 million packs of medicines that leave the UK every month and go to Europe, and there are 37 million packs of medicines that leave the continent and come to the UK... The production process has a number of steps; typically it can be up to eight different steps before you get to a final medicine. The way we have developed our supply chain is that those are often done in different manufacturing plants, because it is not sensible to build the same process in different countries... As you make a medicine these things get moved around, and they can go across borders multiple times’ (Mike Thompson, Evidence to the Business, Energy and Industrial Strategy Committee of the House of

Commons 5 December 2017. Available at [Oral evidence - Leaving the EU: implications for the pharmaceuticals industry - 5 Dec 2017 \(parliament.uk\)](#). Last accessed 9 August 2022).

5.7. Brexit can also be expected to affect inputs of capital and labour to the British economy. **Foreign Direct Investment** (FDI) into the UK has dropped sharply since the referendum. That is an important threat to the UK's growth model since it is the first time since the 1970s that the UK has not 'lead comparable economies' as a favoured destination for FDI (Posen 2022). Evidence that members of the EU's single market are more likely to attract FDI than members of free trade areas (Bruno et al 2021) would also suggest that any form of Brexit, except for the Norwegian model, would permanently lower FDI to the UK.

5.8. Effects on labour inputs through **migration** have been more complex. So far Brexit seems to have been neutral in its effects on the UK's ability to use migration to source skills and fill gaps in its labour markets. The UK has replaced free movement from the EU with the same rules for migrants from EU and non-EU countries. A rise in the latter has thus offset falls in migration from the EU. Public opinion seems supportive of equality between EU and non-EU migration and an emphasis on skills in migration. However, the argument that the UK could compensate for membership of the EU by working at the frontier of what can be achieved as an open and deregulated economy, arguably, implies that no opportunity for competitiveness through economic liberalisation should be missed, and certainly not in markets as crucial as labour markets. If competitiveness is the priority, the UK would need to be open to 'all comers' as the market dictates. Gaps in labour markets would need to be filled wherever they arise, and not just in high-skilled migration. Low-skilled migration can also be critical to competing at the top of global value chains. Failures to fill any gaps can ramify through an economy, breaking supply chains and undermining attempts to compete through 'just-in-time production'. If those were the economics of Brexit it was unclear whether they were compatible with the politics of Brexit and especially those who voted for it on the understanding it would reduce migration. One study found that the rate of immigration 'at the local level' was a 'key predictor of the vote for Brexit' (Goodwin and Milazzo 2017).

5.9. So-called dynamic effects are also important. In addition to any direct costs of withdrawing from the EU's single market and customs union and to any changes to factor inputs from investment and migration, Brexit may change the effectiveness with which the UK economy combines labour and capital into long-run improvements in **productivity and competitiveness**. Higher trade barriers and lower investment can depress long-run growth in productivity; or, in other words, output per hour worked. Causes include reduced 'technology transfer and innovation' (OBR 2018: 7) and some loss of specialisation within an international division of labour. As Adam Posen and Lucas Rengifo-Keller (2022: 28), put it: When 'trade and openness shrink' there is less 'competition in an economy' internally... Therefore you get less innovation and less turnover and dynamism in your corporate sector, in your investments, and your labour force... To the degree that you end up with less competition, that negatively affects productivity growth in the long run'. Three important points need noting. First, since it is output and value *per person and per hour* worked, productivity determines any growth in living standards *per head* and any improvement in trade-offs between work and leisure. Second, in modern economies it is often the quality of the capital and technology with which people work that is the main determinant of their productivity. In so far as it is their own labour that is important, it is their skills and human capital that is crucial. Third, even before Brexit there were signs of 'secular decline' in productivity growth in advanced economies.

5.10. A further question is the impact of Brexit on UK's **Public Finances**. Leaving the EU removes the UK's net contribution to the EU's budget. In 2016-2017 that was about £8.8 billion (OBR 2018: 9). But mainstream economic forecasts predicted that saving would be more than cancelled out by loss of GNP growth.

5.11. Given the foregoing concerns about market access, trade costs, supply chains, investment and productivity, and public finances, any economic case for Brexit needed to claim powerful countervailing benefits. Credible economic justifications for Brexit could not ignore the difference between a single market and a free trade area. But they could question whether single markets are always better and deeper forms of economic integration than free trade agreements, especially a single market in the form taken by the EU and the EEA. Hence, various claims that the rules and institutions on which the EU's single market was based - and still more the institutions and laws by which the EU's single market is extended to non-members such as Norway - are slow, hard to change, meddling, soaked in a bureaucratic culture of rule worship, and prone to dysfunctional compromises as a cost of agreeing anything under EU and EEA decision-rules. Joining the EEA would, in the view of critics, only continue the UK's exposure to one-size-fit-all solutions that were insensitive to the particular features and unusual strengths of the British economy. For economic advocates of Brexit, free trade agreements with all parts of the world - with Europe itself and with rising markets - could plausibly beat continued participation in the EU's single market. Whilst the EU struggled to decide much at all in, what critics view, as its scarcely workable institutions, the UK could move quickly to sew up new agreements throughout the international trading system. For some of its advocates, Brexit was happening at a uniquely favourable moment of technological transformation that was abolishing geography by making it as easy for two people behind computer screens on either side of the world to trade with one as two people in the same room. But, if Europeanisation was the past and globalisation the future, why exit the EU just to remain in a *European* economic area?

5.12. But what of the claim - see 5.7 - that Brexit would allow the UK to further deregulate its own economy whilst concluding global trade agreements? One difficulty was that, even as a member of the EU, the UK was already one of the most deregulated economies in the world. So, there might be little further to be gained from deregulation (OBR 2018: 85). Another difficulty was that even where rules were sub-optimal for the UK it could still be better off following standards that are common to the whole of the European market. Theresa May's Chief of Staff, Gavin Barwell (2021), observed that, for some Brexiters, choosing to follow European standards would at least be a choice and, therefore, sovereignty. But, he continued, unilaterally approximating to EU rules, would still be rule-taking.

5.13. Perhaps, though, a key unknown that could end up being more important than all the foregoing is who gets to make the rules in a world of technological transformation. The vulnerability of the UK to standard setting by others now that it is outside the EU has been illustrated by the recent creation of an EU:US Trade and Technology Council with an elaborate structure of working groups aimed at continuous cooperation in setting the standards for new technologies - notably in artificial intelligence - and for the use of data 'without which modern business' and modern government 'cannot function' (Quoted from report in Politico 5 March 2023). Given what is at stake the UK has pressed to turn the TTC into a trilateral cooperation between itself the EU, the US and itself. It would also make sense for the UK to work with Japan, South Korea, Canada, Norway and Switzerland to press for a widening of discussions within the TTC to all developed democracies (ibid). But note two things. First, Norway illustrates the further possibility of accessing TTC discussions through the EEA, an option the UK has ruled out. Second, even with the full inclusion of the UK in all discussions on new technologies, the US and EU/EEA will still be far larger standard setters than the UK.

FOREIGN POLICY: BREXIT IN THE WORLD

6.1. How the UK chooses between forms of non-membership will interact with what kind of an international actor it becomes after Brexit. Does Brexit mean a global Britain or a little England that retreats from global responsibility by assuming the outside world is best left to look after itself? Does Brexit undo decades of coming to terms with the world as it is: of substituting realism for delusions of power (Frankel 1975); of accepting that it is mainly within its own European neighbourhood that the UK needs to be able to solve problems and build relationships? Are some ways of doing international

relations – some friendships, some conflicts, some priorities, some rules of international behaviour, some ways of designing and empowering international organisations, some ways of taking decisions internationally – more compatible than others with the ambitions and assumptions of Brexit?

6.2. Historically, even the UK's ability to ignore Europe has depended on the stability of Europe. Hence UK Governments have been eager to stress, since Brexit, that they remain 'unequivocally committed to the security of Europe' (UK Government 2018b); and that they are 'leaving the European Union, not Europe'. But continued engagement can take different forms. On both economics and security, a relationship similar to that between Norway and the EU would involve the least realignment of the UK away from European region. The UK would remain closely integrated to the European economy through the single market. That would also limit the risks of it becoming dangerously importunate of others for trade deals. 'Norway plus' – or also remaining in a customs union with the EU – would even exclude separate UK trade deals altogether. However, as seen, UK Governments decided to leave the single market. A customs union was part of May's unsuccessful deal but only as a temporary backstop to avoid a border on the island of Ireland.

6.3. Given that they agreed on leaving the single market, the May (2016-2019) and Johnson (2019-2022) governments differed most in the security relationships they sought with the EU after Brexit. The May Government proposed a **security treaty** beyond any 'existing' relationship the EU had with 'a third country' (UK Government 2018b). On internal security May wanted equivalents to the European Arrest Warrant and European Investigation orders as well as data exchange on suspected criminals. On external security, May proposed collaboration in developing defence capabilities and technologies. The UK should be 'open to a relationship' with the European Defence Fund and European Defence Agency and to participation in EU security missions and operations even to the point of 'deploying its significant security capabilities and resources within and indeed through EU mechanisms' (ibid)

6.4. May's proposal for a security treaty followed a tradition in the UK's European policy of seeking to offset reservations about supranational integration with intergovernmental forms of cooperation (Hill 1981). As Barwell (2021: 270) put it, 'we could not enjoy the same access to the single market after we had left but there was no reason why we should not enjoy security cooperation (which) might smooth the inevitable tension in the trading relationship'. Intergovernmental security cooperation was also one form of collaboration that was not constitutionally excluded by expectations that the UK should take back full control from EU laws and institutions. As May noted (UK Government 2018b), security cooperation had a distinctively intergovernmental status in the EU Treaties.

6.5. Here the May Government was attempting something similar to what might be termed the 'Norwegian model beyond the EEA'. Norway also uses intergovernmental and bilateral cooperations to align, where it can, with the EU on internal and external security (Fossum and Graver 2018; Norwegian Ministry of Foreign Affairs 2018). Still, it matters that Norway is also in the single market. It, therefore, participates, albeit in very different ways, in both the security and market architectures of the EU with all that implies for co-ordinating – or at least avoiding contradictions – in Norway's contribution to the two.

6.6. But intergovernmental and 'case-by-case' cooperations between EU 'ins' and 'outs' provided at least some recognition of the collective goods characteristics of European security; or, in other words, ways in which European security can only be provided together or not at all. Even if the UK often prioritised defence cooperation through NATO and with the US, the sheer cost of maintaining a range of defence capabilities meant it was questionable whether the UK could afford not to be a part of EU initiatives aimed at spreading fixed costs in developing defence technologies and ensuring their interoperability between likely allies. Not being altogether left out became all the more important as European Union Security Cooperation accelerated, not uncoincidentally, after the Brexit referendum with, for example, the formation of a **Permanent Structured Defence Cooperation (PESCO)** by 25 Member States

6.7. Yet May's initiative was full of unresolved tensions and unanswered questions in how the UK should cooperate with the EU in security matters after Brexit. One concern was that the UK might

constrain, more than promote, security collaboration through the EU. Would EU members then have an incentive to cooperate first between themselves before cooperating with the UK? Maybe there was a hint of that in EU's own draft for the Foreign Policy, Security and Defence section of a Treaty with the UK which envisaged that the UK should be 'entitled to take part in the EU's crisis management operations, in security missions, and in EDA and PESCO projects "*at the invitation of the Union*" (European Commission 2020). Another difficulty was May's assumption that intergovernmental co-operation would always be sufficient in security matters. The crucial problem of **data exchange** illustrates. Could EU member states commit to using EU law to regulate an exchange of data between themselves that would then be available to a non-member outside EU law and the adjudication of the CJEU (Barnier 2021)?

6.8. However, the Johnson Government dropped May's plans for an EU/UK security Treaty. Instead, it published a security review that took Brexit to be an opportunity to develop a more global role focussed on 'dynamic' regions such as the Gulf, Africa and the Indo-Pacific (UK Government 2021). The Review claimed that the international order was 'moving in the direction of **multipolarity**' in ways that 'increased the geopolitical importance of middle powers' like the UK. Yet, that was in a context of 'more competition to shape the international order', notably between democratic and authoritarian systems (ibid 26-28) The review, however, was criticised for failing, to the point of incoherence, to prioritise what could be done within the UK's resources. The Chair of the House of Lords International Relations and Defence Committee (Anelay 2021) noted that it made much of a '**tilt to the Indo Pacific**' only to identify not China but Russia as 'the most acute direct threat to the UK'. (Chatham House blog). The defence analyst Paul Cornish (2022: 6) added that a tilt to the Pacific would leave the UK 'committed to not one but two strategically risky regions of the world with an army reducing to 72 500 the UK is militarily under equipped to manage either let alone both'. The UK needs precisely the opposite, 'a tilt to Europe'.

6.9. The UK also needs to resolve a deeper question. How far do the UK's reasons for leaving the European Union to regain control now rule out forms of international cooperation that involve some pooling of sovereignty? The difficulty here is that highly interconnected democracies may need to pool some of their sovereignty to manage externalities - or cross-border problems - if they are to deliver their own most basic obligations to their own publics to secure rights, justice, welfare, identities and standards of democracy itself (Lord 2021). Closely **interconnected democracies** may struggle to provide their own publics with rights against polluters, monopolists, tax-evaders, or terrorists, if the sources of those problems are located in other states. If, it is an ideal of democracy that citizens should be able 'define the terms of their living together as equals', democracies may need means of managing inter-state externalities if their citizens are to have much chance of influencing choices in matters as vital to the 'terms of their living together' as protection against pandemics; as providing security without arms racing; as providing financial systems without systemic risks; or fighting climate change (Bohman 2007). Can a Brexit based on strong conceptions and expectations of regaining sovereignty accept forms of sovereignty pooling needed to manage transnational problems on which even the obligations of British governments to their own public depend?

6.10. Borders will also be crucial to how the UK relates to the outside world now that it is no longer a member of the European Union. The UK inescapably shares a continent with the EU. That is not just a statement of the obvious. Sharing a continent has new meaning and new perils, given changing forms of interdependence and of 'bordering' European democracies. With physical contiguity come shared boundaries, and with shared borders comes a paradox. Borders demarcate states. Yet modern borders are often sources of state transformation for those sharing them. New threats and interdependencies may require shared management of borders in ways that reach deep into the states and societies on either side of those borders. As Frank Schimmelfennig puts it (2021), 'boundaries are relational; they not only separate but also relate territories to one another'. For example, data sharing means that the information a state has about its citizens is no longer just the affair of single democracies.

6.11. Brexit presents the UK with two unresolved border problems: the one to do with trade, the other migration. The trade difficulty is that even a free trade area does not create frictionless trade unless it is accompanied by a customs union that minimises border checks. Yet, as Katie Hayward has put it,

the TCA includes ‘strikingly few friction reducing measures for the movement of goods’. So, under the illusion that a free trade agreement without a customs agreement - let alone a single market to deal with non-tariff barriers - is sufficient, Brexit has created a relatively hard economic border that adds costs to trade. As for the migration problem, the UK, as Emanuele Comte puts it, has lost ‘a stable framework for cooperation’ which it especially needs for information and influence over Mediterranean routes used by migrants wanting to reach the UK. But even cooperation with EU-based frameworks would require reciprocal obligations that would be hard to square with those who voted for Brexit expecting it to restore *unilateral* controls of the UK borders.

CLIMATE CHANGE AND ENERGY TRANSITIONS

7.1. On questions of climate change and energy transition, Brexit has raised concerns that the UK might ‘undercut’ the EU’s climate legislation: that it might seek competitive advantage through lower standards or poorer enforcement; and that it might also cooperate less on climate and energy. All that might then constrain the EU in its own policies.

7.2. One question is just how far has the UK withdrawn from energy and climate cooperation. At least at first sight, climate and energy look to have had their own hard Brexit. As Merethe Leiren and Fay Farstad (2023) have put it, the UK has decided to ‘extricate (itself) from the **single energy market, the EU’s Emissions Trading Scheme and the EU’s Environment Agency**, despite these being open to non-EU members. These structures and institutions are key policy tools for the green energy transition’. One concern is that using agreed pricing for energy traded over interconnectors to incentivise decarbonisation will not work quite so well given the UK’s absence from the single energy market. As Blondeel et al (2022: 11) note, another difficulty is that the UK now has ‘its own Emissions Trading System which, unlike other countries like Switzerland, it does not link to the EU ETS’. Hence prices of the two do not fully converge in ways that would optimise incentives to avoid emissions.

7.3. Even if willingness to cooperate is unaffected, cooperation may be costlier, harder and more uncertain now that the UK is not part of the same governance structures at the EU27. Although far from being climate change sceptics, some supporters of Brexit believe that the EU has been profoundly misguided in its approach to climate change. In their view cooperation is optimal where states restrict themselves to agreed outcomes while leaving the choice of means to each government. That would imply the challenge of climate change would be better met by the UK going its own way rather than cooperating in any detail or in any depth with the EU. Against that view, the UK may achieve less on climate and energy by not legislating with the Union and not using shared institutions to develop trust, expertise and enforce commitments. All that may also adversely affect **wider international agreements**. For sure climate and energy require solutions that go well beyond the European Union. But European democracies may best enter into wider commitments by using institutions, norms and laws at the European level to co-ordinate, monitor and enforcement their contributions to international agreements (Lord 2022).

7.4. The TCA attempts to address some of the foregoing concerns through a formal commitment to non-regression in climate change standards. High gains from energy cooperation may also provide leverage for climate cooperation. Even assuming that it is voluntary, open and global a **climate club** of all countries in the world with the most ambitious standards could be important to continued convergence between the UK and EEA given that members of the club would be able to use WTO rules to demand a ‘border adjustment mechanism’ as compensation on imports from countries that do not agree higher standards (See esp. German Government 2022).

7.5. The foregoing are also questions for other European non-members of the EU. As Merethe Leiren and Fay Farstad also note, Norway has responded to climate challenge through the EEA and ‘ever closer cooperation with the EU’. It is, therefore, structurally a part of the EU’s system of policy, law and institutions on climate. In contrast, the UK’s climate and energy policy are governed by the broad

principle of Brexit that the UK cooperates with others as an independent third state with scope for arbitration – as in the TCA – but not for commitment to shared laws. Problems and possibilities that may follow are illustrated by the key challenge of **North Sea co-operation**. The UK withdrew from the North Seas Energies Cooperation Group – which is a cooperation of 8 EU countries, the European Commission and Norway – as a consequence of Brexit, though the UK and EU are discussing a memorandum of understanding (Blondeel 2022: 18). On the one hand, the EU’s Green Energy Transition risks falling short of targets without North Sea cooperation with the UK. On the other hand, shared interest in a North Sea Energy Hub seems likely to overcome frictions in cooperation.

DEMOCRACY, CONSTITUTION AND POLITICAL SYSTEM

8.1. Even now Brexit may be closer to its start than its final form. That is not least because Brexit is more than a process of leaving the EU. The UK’s internal constitution, political system, law, economy and society will all need to be adjusted, to a withdrawal from the European Union which can itself take many different forms. Since membership of the Union transformed the UK as an economy, state and society between 1973 and 2020 a key question is whether withdrawing from the EU will *retransform* the UK (Bogdanor 2018).

8.2. Precisely because it started off from such a strong conception of parliamentary sovereignty, the UK went further than most in using membership to transform its own internal political order. The UK used EU membership to develop **rights** that had previously been hard to guarantee in a system of parliamentary sovereignty and to entrench a new territorial settlement through **devolution** of powers to Northern Ireland, Scotland and Wales. A political system that had already qualified parliamentary sovereignty in relation to the EU could more credibly commit to not using parliamentary sovereignty to alter rights or devolutions of power to Northern Ireland, Scotland and Wales at the whim of changing majorities in the Westminster Parliament (ibid).

8.3. Of the alternatives to EU membership in table 1, the EEA, or something like it, would not only be the least likely to change the UK as an economy and an international actor. That option would probably be the least likely to depart from the partially Europeanised constitution that the UK developed as a member state. EEA law gives individuals standing. They can use EEA law against their own governments. Norway’s participation in the EU’s single market is through its commitment to the EU four freedoms and principles of non-discrimination, or, in other words, precisely the European law which British Courts used before 2016 to develop rights law. If the willingness of the UK Parliament to limit its sovereignty in favour of the EU helped reassure devolved governments within the UK that Westminster accepted **limits to parliamentary absolutism**, might not willingness to limit sovereignty in favour of the EEA offer similar reassurance? In contrast, leaving the single market by leaving the EEA poses its own difficulties for the UK’s devolution settlement. The reversion of internal market powers to Westminster means that Scotland and Northern Ireland are now at the mercy of largely English majorities on questions of market regulation.

8.4. If, however, choices between membership, non-membership and alternative forms of the latter are profound constitutional choices they are also choices that the UK will now need to make within a system of deeply divided politics. The UK is now divided along multiple cleavages. It has two distinct left-right cleavages: one preoccupied with markets, the other with immigration and identity (Sobolewska and Ford 2020). On top of that it has cleavages between its whole and its parts. Two of the four nations of the UK voted to leave. Two voted to remain. Scotland especially has shown some interest in the Norwegian model. But it has been largely ignored in the Brexit process. Both Brexit itself – and how it should be done – are contentious along all the multiple cleavages of the UK’s new politics: on questions of economics, identity and territory. Brexit is a struggle over the very nature of UK’s economy, society, politics and its constitution. It is perhaps even a struggle over the survival of the UK itself. All that has made it **hard to identify a stable equilibrium within British politics for any one version of Brexit**; and, therefore, for any form of non-membership in Table 1.

8.5. Yet, for all that, an agreed democratic process should, in principle, be able to settle even the most acute, complex and multi-dimensional of disagreements. In an ideal world there would be a

Condorcet winner - one option that can beat all others in pair wise choices – and there would be ways of searching for that option. It is a weakness of Brexit that people and parliament did not have more opportunities to debate and choose all the options in relationship to one another: between remaining in the EU and all the multiple different ways of relating to the EU from the outside. Instead, the divisions of Brexit have only been made worse by the UK's conflictual political system. At 35-40 per cent – or a mere plurality and not even a majority of the vote - a party can win an overall majority of representatives; and, therefore, undivided control of parliament and government. Much beneath 25 per cent, a party can risk annihilation (unless its support is regionally concentrated). The result is an extraordinarily competitive system with strong incentives to politicise and to seek controversy; but also to decide without much compromise where a majority of the House of Commons based on a plurality of a mere 40 per cent (or sometimes even less) can be organised for that. So Brexit has not just strained the ability of the British political system to reach compromise. The political system has itself further discouraged compromise by enabling, through the 2019 election, a form of Brexit that was at best supported by a plurality, not a majority. This is an important difference from Norway, which, it is often claimed, has developed a form of non-membership that is a second-best for many –even if it is only ideal for a few.

8.6. Perhaps, there are signs of change. **Support for Brexit was always generational.** Those over 65 voted two-thirds to one-third to leave. Younger voters voted two-thirds to one-third to remain. Since 2016 public opinion has moved against Brexit, even more so than before amongst those under 65. Meanwhile, other crises have also partially effaced the tribal divisions created by the referendum (Nicolaidis 2019). Harder forms of Brexit also depend on the internal politics of the Conservative party. The former head of the pro-Brexit group in the parliamentary Conservative Party has described his party as the 'Brexit party'. That could be dangerous for the Conservative Party and for Brexit.

CONCLUSION AND SCENARIOS

9.1. Brexit entails large changes to the UK's economy, society, international relations, political system, state and constitution. But is the form of Brexit adopted so far likely to be final or even sustainable? Here it is useful to return to the options in table 1. Were those options equally available to the UK? Did British Governments really have a choice over multiple possible Brexits? Leaving without a deal was appealing to many Brexiters but it would almost certainly have been blocked in the House of Commons. A bespoke deal was tightly constrained by the EU's reluctance to offer benefits of membership to those unwilling to pay the costs. The Swiss model may not really be so different from the Norwegian model. In practice, Switzerland also adopts much EU policy and law.

9.2. Others might go further. Maybe the Canada model -which is closest to Brexit as delivered so far through the TCA - will not work because the UK needs a single market, and not just a free trade area, with the EU. Maybe Norway cannot work since it involves less control of laws, borders and money than the form of EU membership rejected in the 2016 referendum. Might all the following claims turn out to be correct: the UK cannot manage without a relationship with the EU; the UK cannot prefer the Canadian to the Norwegian option if Brexit is to be economically sustainable; the UK cannot prefer the Norwegian to the Canadian option if Brexit is to satisfy what most of those who voted to leave meant by regaining control. The one option is able to deliver Brexit in the constitutional, institutional and legal form important to many of its supporters. The other option is able to offer continued participation in the EU's single market. Neither can do both. Could Brexit, therefore, be a problem without a solution?

9.3. If correct that would suggest that Brexit has not contributed to the long-standing problem of how to relate EU 'ins' and 'outs'. It has not transformed the balance between European democracies that are and are not in the EU to the overall benefit of non-members. Nor might that be surprising. It may be structurally difficult to organise relations between members and non-members in ways that give all full control of their own laws. The choice of EU democracies to make policy and law together – in matters as crucial as the creation of a single-market - may make it hard for non-member democracies to avoid following EU rules. But, in acting together, EU democracies may only be exercising their

freedom to associate together as they please. The autonomy of ‘ins’ and ‘outs’ may sometimes just be difficult to combine.

9.4. But if that is a predicament that is now shared by the UK, it requires more work on scenarios for member/non-member relations after Brexit. As a rough sketch they might be:

- i) Brexit becomes as global as some of its supporters want it to be, and the UK ‘leaves Europe’ as well as the European Union;
- ii) Some progress is made towards new forms of member/non-member relations based on mutual sensitivity to the democratic autonomy of ‘ins’ and ‘outs’;
- iii) The UK tries to deal with its absence from the single market by moving in the direction of the Norwegian model, without actually adopting it. If not joining the EEA, then at least achieving some dynamic convergence with EU policy and law by unilaterally following it.
- iv) The UK seeks EEA membership after all. Whether the UK can manage without the Norwegian model is perhaps the largest unanswered question of Brexit. The UK might, however, destabilise the EEA.
- v) The UK seeks to rejoin the EU. If the UK ever gets as far as requesting EEA membership it may conclude that the balance of rights and obligations offered by EU membership is actually better than that offered by EEA membership. But, of course, the choice is not the UK’s alone. It would need to be accepted back into the EEA or EU.

REFERENCES

- Anelay, Lady. (2021) ‘The UK’s defence review overpromises and underdelivers’, Chatham House blog 2 April 2021, Available at [The UK's Integrated Review overpromises and under-delivers | Chatham House – International Affairs Think Tank](#). Accessed 18 November 2022.
- Barnier, M. (2021) *La Grande Illusion, Journal Secret de Brexit*, Paris: Gallimard.
- Barwell, G. (2021) *Chief of Staff, An Insider’s Account of Downing Street’s most Turbulent Years*, London: Atlantic Books.
- Bickerton, C. (2012) *European Integration. From Nation States to Member States*, Oxford: Oxford University Press.
- Blondeel, M., Bradshaw, M., Froggat, A. and Kuzemo, C. (2022) *After Brexit: Scenarios for Clean and Secure Energy in a New World*, London: UK Energy Research Centre/Chatham House.
- Bohman, J. (2007) *Democracy across Borders from Demos to Demoi*, Cambridge MA: MIT Press.
- Bogdanor, V. (2019) *Beyond Brexit. Towards a British Constitution*, London: Tauris.
- Bruno, R., Campos, N. and S. Estrin. (2021) ‘The Effects on Foreign Direct Investment of Membership of the European Union’, *Journal of Common Market Studies*, 59(4): 802-821.
- Comte, E. (2021) ‘The UK has not taken back control of immigration’, CIBOB Opinion, available at [CIBOB - Post-Brexit UK has not ‘taken back’ control of immigration](#). Last accessed 30 May 2023.
- Comte, E. and Lavanex, S. (2022) ‘Differentiation and De-differentiation in EU Border Controls, Asylum and Police Cooperation’, *The International Spectator* 57(1): 124-141.
- Cornish, P. (2022) *The Russian-Ukrainian war and the UK Integrated Review*, London; Cityforum. Available at [Russo-Ukrainian-War-and-the-UK-Integrated-Review.pdf \(cityforum.co.uk\)](#). Accessed 2 November 2022.

- Cummings, D. (2017) 'On the Referendum, Branching Histories of the 2016 Referendum and 'the frogs before the storm', available at [On the referendum #21: Branching histories of the 2016 referendum and 'the frogs before the storm' – Dominic Cummings's Blog](#). Last accessed 7 March 2022.
- Dardanelli, P. and Mazzoleni, O. (2021) (eds) *Switzerland-EU relations. Lessons for the UK After Brexit ?* Abingdon : Routledge.
- Dennison, J. (2023) 'Why did the UK Leave the EU? The State of the Science of Explaining Brexit' in J.E.Fossum and C. Lord (eds) *A Handbook on Brexit*, Cheltenham: Edward Elgar, pp. 26-41.
- De Rynck, S. (2023) *Inside the Deal. How the EU got Brexit done*, Newcastle, Agenda.
- Eriksen, E.-O. (2019) *Contesting Political Differentiation. European Division and the Problem of Dominance*. London: Palgrave Macmillan.
- Eriksen, E.-O. and Fossum, J.-E. (2015) *The European Union's Non-Members. Independence under Hegemony*, London Routledge.
- European Commission (2020) *EU proposal for draft Treaty with the UK, Defence and Foreign Policy Part of Text*, 18 March 2020, Brussels, European Commission.
- Fossum, J.-E. and Graver, H.-P. (2018) *Squaring the Circle on Brexit. Could the Norway Model Work?* Bristol: Policy Press.
- Fossum, J.E. and Lord, C. (2023) 'Introduction', J.E. Fossum and C. Lord (eds), *Handbook on the European Union and Brexit*, Cheltenham: Edward Elgar. 1-24.
- Frankel, J. (1975) *British Foreign Policy 1945-1973*, Oxford: Oxford University Press.
- Fredriksen, H.,H. (2015), "The EEA and the Case Law of the CJEU. Incorporation without Participation" in E.-O. Eriksen and J.-E. Fossum (eds.), *The European Union's Non-Members. Independence under Hegemony*. London Routledge, pp. 102-118.
- George, S. (1998) *An Awkward Partner: Britain in the European Community*, Oxford: Oxford University Press.
- German Government (2022) *The German Government wants to establish an international climate club*, Berlin: German Finance Ministry, available at [www: Federal Ministry of Finance - The German government wants to establish an international climate club \(bundesfinanzministerium.de\)](http://www.federal-ministry-of-finance.de) Last accessed 20 November 2022.
- Goodwin, M. and Milazzo, C. (2017) 'Taking back Control? Investigating the Role of Immigration in the 2016 vote for Brexit', *The British Journal of Politics and International Relations* 19(3): 450-464.
- Gstöhl, S. (2015) 'Models of external differentiation in the EU's neighbourhood: an expanding economic community?', *Journal of European Public Policy* 22(6): 854-870.
- Gstöhl, S. (2023) 'The Patterns of Affiliations between the EU and its Neighbours. Normative, Market and Governance Power Europe' in J.E.Fossum and C. Lord (eds) *A Handbook on Brexit*, Cheltenham: Edward Elgar.
- Hill, C. (1983) 'Britain, A Convenient Schizophrenia' in C. Hill and W. Wallace (eds), *National Foreign Policies and European Political Co-operation*, London: Allen & Unwin. 19-33.
- House of Lords Library. (2023) *Windsor Framework (Democratic Scrutiny) Regulations and the Stormont Brake*, London: House of Lords. Available at [Windsor Framework \(Democratic Scrutiny\) Regulations 2023 and the Stormont brake - House of Lords Library \(parliament.uk\)](#). Last accessed 22 June 2023.

- Kaeding, M. (2023) 'EU Agencies and Brexit: assessing the implications of Brexit for EU agencies in J.E.Fossum and C. Lord (eds) *Handbook on Brexit and the European Union*, Cheltenham: Edward Elgar. 216-231;
- Nicolaïdis, K. (2019) *Exodus, Reckoning, Sacrifice. Three Meanings of Brexit*, London: Unbound.
- Norwegian Ministry of Foreign Affairs (2018) Norway in Europe, the Norwegian Government's Strategy for Cooperation with the European Union 2018-2021, Oslo: Norwegian Ministry of Foreign Affairs.
- Norwegian Government (2022) 'Participation in EU Agencies and Programmes' available at [Participation in EU agencies and programmes - regjeringen.no](https://www.regjeringen.no). Last accessed 30 May 2023.
- Jónsdóttir, J. (2013a) 'Written evidence from Jóhanna Jónsdóttir, Policy Officer, European Free Trade Association Secretariat. London: House of Commons.
- Jónsdóttir, J. (2013b) *Europeanisation and the European Economic Area. Iceland's Participating in the EU's Policy Process*, London: Routledge/UACES.
- Lord, C. (2021a) 'Democracy at the European Level? Folly or Necessity? More work for a Directly Elected European Parliament', *European Law Journal*, published on line doi.org/10.1111/eulj.12402.
- Lord, C. (2021b) 'Autonomy or Domination? Two Faces of Differentiated Integration', *Swiss Political Science Review*, 27(3): 546-562. 1424 7755
- Mortero-Martínez, C., Nechev, Z and I. Damjanovski. (2021) Europol and Differentiated Integration, EU Idea Policy Paper 13, Available at [Europol and Differentiated Integration \(euidea.eu\)](https://euidea.eu). Last accessed 30 May 2023.
- Office for Budgetary Responsibility (OBR) (2018) *Brexit and the OBR's Forecasts*, London: OBR.
- Office for Budgetary Responsibility (OBR) (2022) *Economic and Fiscal Outlook*, London: OBR.
- Pettit, P. (2012). *On the People's Terms. A Republican Theory of Democracy*. Cambridge: Cambridge University Press.
- Piris, J.-C. (2023) 'Brexit, the Cold Waters between Canada and Norway' in J.E.Fossum and C. Lord (eds) *Handbook on Brexit and the European Union*, Cheltenham: Edward Elgar: 121-161.
- Portes, J. (2022) 'Introduction' in J. Portes (ed.) *The Economics of Brexit, What have we Learned?*, London: CEPR/UK in a Changing Europe, pp. 1-8.
- Posen, A (2022) available at [The UK and the global economy after Brexit | PIIE](https://www.piie.com/publications/working-papers/2022/02/the-uk-and-the-global-economy-after-brexit)
- Posen, A and Rengifo-Keller, L. (2022) 'Brexit in a Changing Global Economy' in J. Portes ed. *The Economics of Brexit. What have we learned?* London: Centre for Economic Policy Reform, pp. 19-33.
- Putnam, R. (1988) 'Diplomacy and Domestic Politics. The Logic of Two-Level Games', *International Organization* 42 (3): 427-460.
- Rogers, I. (2017) 'The Inside Story of how David Cameron drove Britain to Brexit', Prospect Magazine. Available at <https://www.prospectmagazine.co.uk/politics/the-inside-story-of-how-david-cameron-drove-britain-to-brexit>
- Schimmelfennig, F., Leuffen, D. and Rittberger, B. (2015) 'The European Union as a system of differentiated integration: interdependence, politicization and differentiation', *Journal of European Public Policy*, 22 (6): 764-82.

- Schimmelfennig, F and T. Winzen (2020). *Ever Looser Union? Differentiated European Integration*, Oxford: Oxford University Press.
- Schonfeld, B. and Winter-Levy, S. (2019) 'Policy or Partnership in the United Kingdom? Quasi-Experimental Evidence from Brexit', *Journal of Politics* 83 (4): 1450-1461.
- Sobolewska, M. and Ford, R. (2020) *Brexit Land: Identity, Diversity and the Reshaping of British Politics*, Cambridge: Cambridge University Press.
- UK Government (2016) *Alternatives to Membership. Possible Models for the United Kingdom Outside the European Union*, London, UK Government.
- UK Government (2017) *Prime Minister's Florence Speech: a new era of cooperation and partnership between the EU and the UK*, London: UK Government.
- UK Government (2018a) *EU Exit. Long-term Economic Analysis*, London: UK Government.
- UK Government (2018b) 'The Prime Minister's Speech at the Munich Security Conference', 17 February 2018, available at [PM speech at Munich Security Conference: 17 February 2018 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/speeches/pm-speech-at-munich-security-conference-17-february-2018). Last accessed 10 October 2022.
- UK Government. (2021) 'Global Britain in a Competitive Age, The Integrated Review of Security, Defence, Development and Foreign Policy', London: UK Government.
- Viner, J. and edited by P. Coslington (2014) *The Customs Union Issue*, Oxford: Oxford University Press.
- Weale, A. (2017) 'The Democratic Duty to Oppose Brexit', *Political Quarterly* 88 (2): 170-181.