

Brexit and EEA

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Europe currently

Europe's Ties That Bind

The U.K.'s plan to leave the European Union has focused attention on long-standing pacts that govern trade, immigration and the common currency

European Union

28-nation single market of free trade and shared regulation; includes "free movement" of goods, services, capital and people

Euro Zone

19 countries using the euro currency

European Economic Area

provides access to single market in exchange for payments; has "emergency brake" on free movement of people

European Free Trade Association

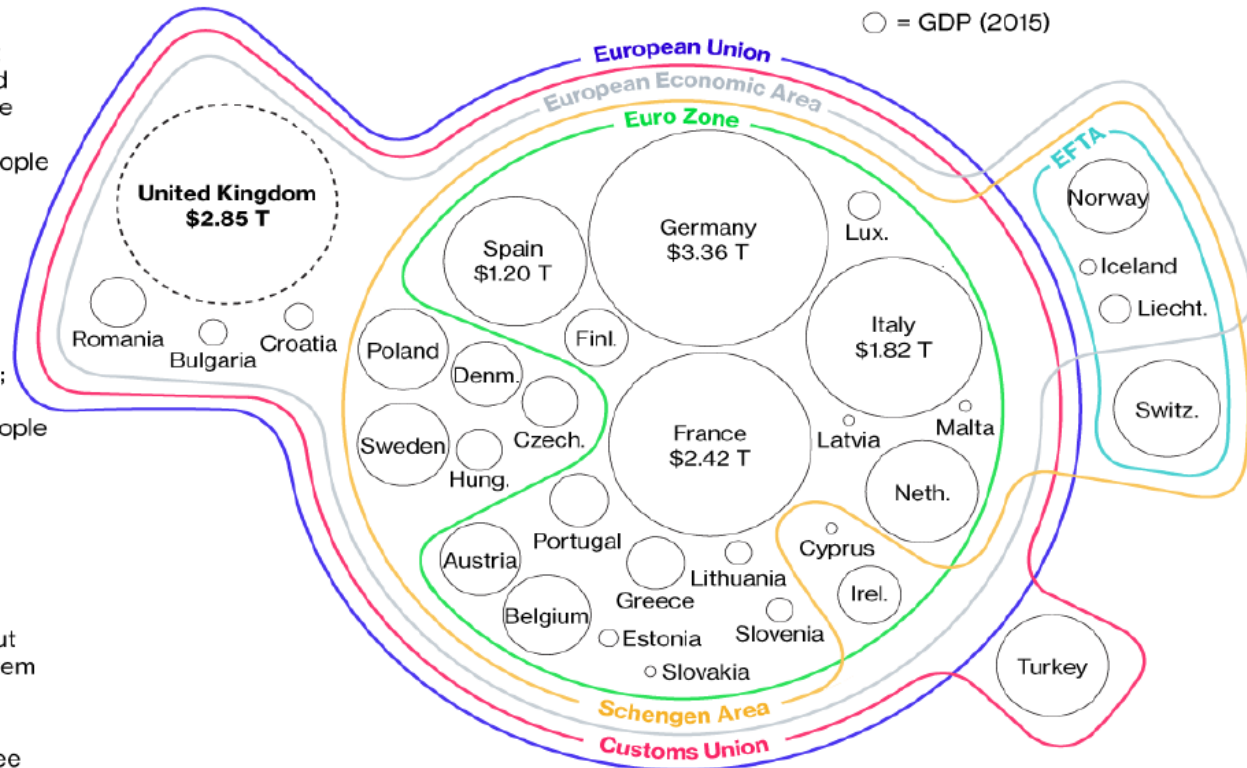
Free-trade zone and network of agreements with other countries

Customs Union

Circulates goods without duties, has uniform system for handling imports

Schengen Area

26-country passport-free travel zone



Sources: EU, ETRA, IMF

Bloomberg Graphics

The EEA: a “workable framework” for the UK post Brexit

- No “ever closer Union”
- No judicial oversight by the CJEU
- Benefits of the EFTA Court
- No customs union: the UK could enter its own FTAs
- The UK would gain access to the Single Market
- No Monetary Union or Common Foreign and Security Policy
- The four fundamental freedoms
- How to address free movement of persons?
- Co-determination rights – a new right of co-decision?

What effect will the UK's withdrawal from the EU have on its membership of the EEA?

Article 50 TEU:

1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.
2. A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.
3. The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.

What effect will the UK's withdrawal from the EU have on its membership of the EEA?

Article 127 EEA:

Each Contracting Party may withdraw from this Agreement provided it gives at least twelve months' notice in writing to the other Contracting Parties.

Immediately after the notification of the intended withdrawal, the other Contracting Parties shall convene a diplomatic conference in order to envisage the necessary modifications to bring to the Agreement.

What effect will the UK's withdrawal from the EU have on its membership of the EEA?

Article 2 EEA:

The term “Contracting Parties” means, concerning the Community and the EC Member States, the Community and the EC Member States, or the Community, or the EC Member States ...

What effect will the UK's withdrawal from the EU have on its membership of the EEA?

Article 126 EEA:

1. The Agreement shall apply to the territories to which the Treaty establishing the European Economic Community is applied and under the conditions laid down in that Treaty, and to the territories of Iceland, the Principality of Liechtenstein and the Kingdom of Norway ...

Yalland and others v Secretary of State for Exiting the EU [2017] EWHC 630

The Applicants sought the following declarations from the Court:

1. It would be unlawful for the Defendant or the Prime Minister to leave the EEA and thereby remove or frustrate the rights and obligations conferred under the EEA Act 1993 without prior parliamentary authorisation in the form of an Act of Parliament and by serving a withdrawal notice under Article 127 of the EEA Agreement.
2. Absent such lawful Article 127 notification, the United Kingdom remains bound as a Contracting Party to the EEA Agreement and must adhere to and abstain from undermining its objectives, including the promotion of the single market.

The UK Government's position on the EEA post Brexit

Letter from S/S's solicitors of 20 December 2016:

The UK's membership of the EEA and the various legal and policy issues surrounding that membership remain under active consideration by the Government as part of the broader issues surrounding Brexit. The Government has not, therefore, taken a final position

S/S's Summary Grounds of 12 January 2017:

No decision has been taken either to serve or not to serve a notice under Article 127 of the Agreement.

The UK Government's position on the EEA post Brexit

Letter from S/S's solicitors of 31 January 2017:

The Prime Minister has made clear in her statements ... that it is not intended that the UK remain part of the single market, which is defined to cover both the Member States of the EU and the Member States of [EFTA] ...

S/S's Skeleton Argument of 2 February 2017:

No decision has been taken as to whether, and when, a notice will be served under Article 127 of the EEA Agreement. ... Article 127 is not the only means by which the parties could give effect formally to the termination of the United Kingdom's status as a party to the EEA Agreement

The UK Government's position on the EEA post Brexit

Article 50 withdrawal letter of 29 March 2017:

I hereby notify the European Council in accordance with Article 50(2) of the Treaty on European Union of the United Kingdom's intention to withdraw from the European Union. In addition, in accordance with the same Article 50(2) as applied by Article 106a of the Treaty Establishing the European Atomic Energy Community, I hereby notify the European Council of the United Kingdom's intention to withdraw from the European Atomic Energy Community. References in this letter to the European Union should therefore be taken to include a reference to the European Atomic Energy Community.

The Great Repeal Bill White Paper

Legislating for the United Kingdom's withdrawal from the European Union, 29 March 2017

- Repeal the European Communities Act 1972
- Convert EU law as it stands at the time of exit into UK law (*"EU-derived law"*) including Regulations, Treaty rights, but not the EU Charter of Fundamental Freedoms
- Create powers to make secondary legislation to adjust EU laws that would no longer operate appropriately after exit; *"there is a balance that is to be struck between the importance of scrutiny and the speed of this process"*
- UK courts will be required to treat CJEU case law that predates exit as being equivalent to Supreme Court judgments
- As regards CJEU case law after exit: *"the Bill will not require the domestic courts to consider the CJEU's jurisprudence"* but *"for as long as EU-derived law remains on the UK statute book, it is essential that there is common understanding of what that law means"*.

The impact of the recent general election

Two articles in the Financial Times, 11 June 2017:

“How UK poll could push Brussels to change tactics”

“Do not exaggerate the effect the election will have on Brexit”

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