



# THE CASE FOR THE (INTERIM) EEA OPTION

A collaborative effort

BRIEFING PAPER

*Joining the European Economic Area (EEA) is one option for the UK outside the EU. There are pros and cons to this version of Leave, on which people will have different views. What is undoubtedly true is that, whatever its pros or cons, it is a version of Leave. It is an alternative to the EU. It is not a version of Remaining within the EU. EEA members like Norway are not members of the EU.*

*The points favouring the EEA position in the short/medium term are as follows.*

1. Participation in the EEA outside the EU would be a compromise position for the short/medium term. It would not be a long term proposition. It would protect single market access during that period while negotiations continue to get a comprehensive long-term trade-focused deal with the EU. A time limit for reviewing this EEA position would be scheduled upfront along with an agreement to review the whole EEA settlement for all EFTA members. Additionally the UK would have the flexibility to end EEA participation at any time if it believed that it was no longer in the UK's interests.
2. A longer term bespoke deal cannot be concluded within 2 years and may even take a decade. This EEA step is the sensible alternative to a longer period of EU membership for the UK while a bespoke deal was being worked out. It takes advantage of a long-established mechanism that has already been agreed and operated for over 20 years by the EU, so it would be difficult for the EU to object to the UK's opting for it and so could be agreed very quickly, satisfying demands both domestically and from the EU for a swift UK exit. As soon as it was in the EEA the UK would be able to implement its own trade deals with third countries, which it could not do while still in the EU.
3. This EEA compromise solution is in the interests of those UK businesses that have strong links with the EU internal market, preserving existing trade relationships while giving them time to develop a strategy to do more trade with non-EU countries. It would protect the economy and continuity of trade after exit, and would reduce any perceived investment risk in the run up to exit. The political debate about Brexit is currently focused on how to square the circle of maximising market access without maintaining free movement in its current form. This will be politically challenging, and it will take time to explore and develop the trade-offs, perhaps applying across the wider European Union and EEA. EEA membership with some free movement safeguards is a useful first step.

4. The EEA solution comes with an in-built safeguard relating to the internal market freedoms (Article 112) providing the power to curb excessive migration volumes that are having a social, financial or environmental impact. The safeguard could be immediately applied, for instance requiring job offers before employment for jobs paying less than a certain rate of pay, or restricting rights to work in certain areas of the UK. This ensures that the UK would have greater control over the migration flows of EU citizens than as an EU member – a concern for many of those who voted Leave.
5. Taking points 3 and 4 together, EEA membership in the short/medium term would thus guarantee single market participation with a possible limit on free movement of persons, providing an exit settlement that a large proportion of Leavers and Remainers can unite around - healing political wounds.
6. Stepping out to an EEA position would create a market-based relationship with the EU that polls have consistently shown most people in the UK want. The EEA is unmistakably a trade arrangement, not a commitment to ‘ever closer union’ with policies like the single currency and an extensive institutional framework. The body of EEA law only relates to market-specific matters. Any UK participation in other policies (such as police cooperation) would be based on separate treaties.
7. Stepping out to the EEA would constitute a de-risked exit settlement that could address the concerns of Scots, Northern Irish and Gibraltarians, as well as those parts of England that voted to Remain, at least over the short/medium term.
8. This EEA position would mean that many policy areas become fully subject to UK law: e.g. Common Agricultural Policy, Common Fisheries Policy, Common Foreign Policy, Law & Order, VAT. So, for example, in agriculture, the UK would be entirely free to devise its own programme of support for farmers outside the constraints of the CAP, which would no longer apply to the UK. UK support measures might, for example, be more directed than the CAP at improving environmental standards and at assisting farmers in real economic difficulty. And in VAT, the UK would be entirely free to remove VAT on items such as heating fuel and women’s sanitary products, though this is unadvisable for economic reasons, and also rationalise bizarre differences of treatment, generating work for no-one but lawyers, frozen into the EU VAT Directive (e.g. the different treatment of books/e-books and biscuits/cakes).
9. EEA membership would give the UK further time to negotiate new trade deals with other countries, either individually or as part of EFTA. There are also 25 EFTA free trade agreements with 36 countries that the UK might immediately seek participation in. Separately, the UK can

expect continuity of existing EU-third country deals at the point of exit, under “the general presumption of continuity” in international law.

10. The EEA position (like other means of exiting the EU) would allow the UK to retake its seat and re-find its voice on global bodies where it is currently often bound by the EU’s common position.
11. The UK would be consulted on draft EU measures and could reject any EU measures that come from the EU within the scope of the EEA. This would effectively amount to a veto over EU laws applying to the UK, which the UK does not have as an EU member, because most of those laws are subject to qualified majority voting.
12. The EEA includes a number of EU rules on environment and workers’ rights necessary for a market – so will appeal to those who wish to balance market access with social and environmental concerns.
13. Unlike decisions from the European Court of Justice, EFTA Court preliminary rulings following requests from national courts are not binding. UK influence on the EFTA court would be greater than on the ECJ, because the UK judge would be one of four (rather than one of 28) and would sit on all of that Court’s judgments (rather than just a small proportion of ECJ judgments). Almost any arrangement between the UK and the EU will involve setting up some form of independent arbitration mechanism: but the EFTA Court has the advantage of already being established, with settled procedures: and its membership is drawn entirely from liberal-minded, non-EU States, with high quality judiciary (Liechtenstein has appointed judges from Switzerland).
14. Maintaining EEA membership at the point of exit means maintaining frameworks critical to some sectors like the financial sector (‘passporting’), telecoms and medicines regulation. It also maintains the status quo for now in areas important to UK service providers operating on the continent, such as mutual recognition of professional qualifications. It also maintains the competition regime, which the UK has been comfortable with and was adopted voluntarily into UK law to deal with competition issues not affecting inter-State trade. EEA members are also able to challenge in the ECJ developments in matters that could affect them that do not suit their interests.
15. A step out to an EEA position would provide for a quicker departure from the EU than a bespoke deal. This will satisfy those in the UK and the EU who would like to see a relatively quick departure with minimal risk to either side.
16. Interim EEA membership entails financial contributions to regional development in EU states – but the amounts are negotiable and linked to national GDP, so the UK can expect these contributions to be less than its current net contributions to the EU budget. Importantly, these contributions are not channelled via Brussels and the UK therefore has greater say over how they are used.

17. Arguably the UK does not need to agree with the EU to retain its existing EEA membership. This point might be disputed (and might therefore have to be settled in court), but in any event EEA membership (conditional on membership of EFTA as a pre-requisite), if agreed, offers legal and economic certainty as a long-standing pre-existing framework which the UK could easily slot into.
18. While the UK's use of the single market safeguard clause and non-application of new EU laws might face proportionate sanctions from the EU or be subject to arbitration, the UK could offer significant concessions in parallel negotiations with the EU as a trade-off for the EU's acceptance of its use of these EEA rules. These would only last as long as the UK remained signatory to the EEA agreement.
19. EEA membership has no effect on the UK's position outside the Schengen zone (the two are separate).
20. The UK is not expected to stay in this interim EEA compromise position long enough for Turkey's potential accession to become an issue. In the unlikely event that Turkey did accede to EU membership during that time, the UK could simply veto Turkey joining the EEA, which we would have the power to do as an EEA signatory.
21. Continued participation in the EEA over the short/medium term qualifies the UK to maintain involvement in pan-European programmes such as the Erasmus scheme that we currently contribute to and benefit from. This would enable the younger generation to continue their right to study in EU and EEA countries, thus helping to heal the generational divide in the immediate aftermath of exiting EU membership, while enabling the country as a whole to continue to benefit from cooperation in areas such as science and technology until a longer term settlement is agreed.

*This work is the product of input provided by Roland Smith, Sam Bowman, Prof Steven Peers, George Peretz QC, Prof Simon Hix, Ben Kelly and Dr Kristian Niemietz.*