

## Exiting the EU - Insights on the UK Government's White Paper

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# DIFFERENTIATED INTEGRATION AND OPTIONS FOR A NEW PARTNERSHIP WITH THE EU

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### *Key points:*

- ❑ Differentiation is a long-standing feature of European integration, but it is organised around several main unions - customs union, single market, common borders, political and monetary union. The UK has already enjoyed a high level of differentiated status before the vote to leave the EU.
- ❑ Exiting the political union, the UK Government aims at negotiating frictionless access to the single market and free trade relations while simultaneously gaining control over immigration.
- ❑ Continued access to tariff-free trade entails the recognition of free movement of people and will come at the expense of financial contributions to the EU budget.

The tale of European Integration can be told as one of organised differentiation where states have taken different decisions regarding the scope of their membership. The UK has been at the forefront of negotiating opt outs from deepening integration, such as the Schengen agreement or the common currency. The UK Government's aims for renegotiating a partnership with the EU are directed at further differentiation in the relationship between the EU and the UK. The paper will look in particular at [sections 5, 8 and 9 of the UK Government's White Paper](#) spelling out key aims for immigration, free trade with European markets and new trade agreements with actors outside the EU. As demonstrated below, the aims formulated for each section conflict with each other and escape the options for differentiation that are currently in place.

## DIFFERENTIATED INTEGRATION AND THE UK

With each step to deepen integration, enthusiasts and sceptics of the EU negotiated agreements over which areas would be decided upon jointly or by EU institutions and which would remain in the responsibility of the states. In cases where resistance from parties

within states or the population were high, exemptions were negotiated to allow for the other states to move ahead. As a consequence, the process of European integration continued by accepting differential validity of formal EU rules across countries, which means not every rule applies everywhere in the same way.

**Constitutional differentiation** [refers to](#) the long-term exemption from rules such as non-participation in the Schengen Agreement or the common currency. Countries such as Ireland, Bulgaria, Romania or the UK are not a part of the Schengen zone, but Ireland uses the Euro as currency, while Denmark, Sweden or Hungary are part of the Schengen area while keeping their own currency. In contrast, **temporary exemptions** were agreed upon in particular during enlargement rounds to allow new member-states to adapt to EU rules and to allow the EU to adapt to an increased number of member-states with varying economies. The [Slovak Republic](#) and the [Czech Republic](#), for example, negotiated a transitional period of several years for the purchase prohibition for land and forestry, for real estate and a temporary preservation of lower value added tax on cigarettes and tobacco products. However, both countries had to agree to a temporary suspension of the principle of free movement for their citizens for several albeit not all EU member-states.

- o The UK together with Denmark account for a substantial share of constitutional differentiation based on treaty revisions.
- o Countries joining the EU during the recent Eastern Enlargement have been subject to temporary exemptions, e.g. from environmental standards or free movement of people.
- o Temporary exemptions are granted to allow for gradual adjustments not for permanent special status.

### **UK's opt-outs and opt-ins**

The UK has kept a distinct path of European integration especially in comparison to the founding members. The UK together with Denmark accounts for a substantial share of constitutional differentiation agreed upon during treaty negotiations. The UK opted out of the currency union, the banking union, the Fiscal Stability Treaty that was agreed upon as response to the Euro-zone crisis. The UK does not participate in the Schengen agreement or the integration of Justice and Home Affairs legislation (JHA) too. Using these opt-outs the UK has protected its sovereignty in core state powers while joining the market integration of the EU. Despite the formal opt-out of JHA, the UK can nevertheless choose to opt-in for individual proposals and has done so, for example, to participate in cross-border cooperation in the fight against terrorism (see the Home Office's [list of opt-ins and opt-outs](#)).

## **UK GOVERNMENT'S AIMS FOR A NEW PARTNERSHIP**

[Three of the key aims of the UK Government](#) are relevant for the new partnership of the UK and the existing membership groupings: Controlling immigration, Ensuring free trade with European markets and Securing new trade agreements with other countries.

1. Leaving the EU, the UK aims to gain **control over immigration** and formulate a new approach to migration ([sect. 5 of the Government's White Paper](#)). That approach favours a strong connection between immigration and labour market demands and includes a commitment to continued student exchange with EU member-states.

2. The UK Government recognises the integrated **trade relationship** with EU member-states and aims to take the status quo of zero tariffs as starting point for a new trade agreement. Leaving the EU, the UK Government [envisions](#) an agreement based on sectoral differences where a no-tariff rule could be applied to products and services that are more heavily traded between the UK and EU members. The Government's White Paper highlights the harmonisation of goods, agriculture, food and fisheries, services, financial services, energy, transport and communications networks as sectors of mutual interest for ensuring frictionless trade.
3. The UK Government emphasises its commitment to the liberalisation of global trade and the new opportunities for enter new free trade agreements independently of the EU. The White Paper [highlights](#) the increase in trade between the UK and key emerging markets in Asia and the Americas that underpin this goal. In order to do so, the UK would have to leave the **Customs Union** on top of exiting the EU. Members of the Customs Union enjoy free trade of goods without custom duties between each other but agree to the same tariffs for external trade with other countries.

## OPTIONS AND LIMITS FOR NEGOTIATING A NEW DIFFERENTIATED DEAL

### *Controlling Immigration*

The four freedoms - free movement of goods, services, capital and people - [form core principles](#) of the Single market and the EU. In order to gain full control over immigration and to regulate who and how many EU citizens can take up residency, employment and can receive benefits and health care in the UK, the UK would have to leave the EU and the Single market. The four freedoms would cease to apply to the UK in that case.

### *Free trade between the UK and the EU*

Free trade with European markets is possible as part of membership of the European Economic Area (EEA). Membership of EEA includes equal rights and obligations to citizens and businesses within the Single market and cooperation in areas such as research and development, environment or consumer protection apart from guaranteeing free trade. Norway and Iceland are enjoying the benefits of [EEA membership](#) in exchange for paying into the EU programmes they are participating in.

The UK could continue having a tariff-free access to the Single market while leaving the EU. Under that scenario, the validity of EU legislation would be reduced; the UK would no longer send representatives to EU institutions and would have to contribute to the EU budget albeit less than it does now. However, membership to the EEA [comes at the expense](#) of respecting the four freedoms, including free movement of people. While the second aim of maintaining free trade is still possible after exiting the EU, it contradicts with the first goal of controlling immigration.

The idea of sector specific tariffs would be an innovative idea going beyond the currently existing models of differentiation. In its [guidelines for the negotiations with the UK](#) from April 2017, the European Council reiterated the wish to have the UK as close partner despite Brexit. However, it also stated that preserving the integrity of the Single Market excluded a sector-by-sector participation and emphasised that a non-member could not enjoy the same rights and benefits as a member-state while avoiding to meet their obligations.

### ***New trade agreements with other countries***

Leaving the the Customs Union, the UK will be able to enter new bilateral or multilateral free trade agreements as envisioned in the White Paper but will also have to negotiate the legal terms of its membership to WTO that are currently connected to the EU.

Remaining a member of European Free Trade Association (EFTA) while leaving the EU offers a step in between: the opportunity to negotiate free trade agreements and external tariffs independently from the EU but dependent on an agreement with other EFTA members (i.e. Switzerland, Norway, Iceland, Liechtenstein). Every new trade agreement would be multilateral as a consequence but the UK would remain sovereign over trade policy as part of EFTA. However, membership to EFTA does not grant access to the Single Market. EFTA members have joined the EEA, except for Switzerland that has signed bilateral agreements respecting the four freedoms in exchange for closing the gap between EFTA and EEA.

### ***Temporary exemptions but no constitutional differentiation***

The three goals of controlling immigration, enjoying frictionless trade with the EU and the opportunity to enter new trade agreements independently are not reconcilable under the current models of constitutional differentiation. The goal of controlling immigration forms the biggest obstacle to maintaining free trade with the EU. The new partnership between the UK and the EU is more likely to include some form of tariffs on trade to establish a distinction between the obligations of the UK after Brexit and those of member-states.


As part of a transitional arrangement, a combination of these goals would nevertheless be negotiable. A temporary exemption from free movement could be granted to the UK while it continues to participate in the Single Market for a transition period. The European Council has signalled its willingness to establish bridges towards the future relationship. Details of the transitional agreement would have to be negotiated but a precedent for access to the Single Market in combination with a temporary exemption from free movement had been set during Eastern enlargement for the new members and could be repeated in a reversed form for the UK during a transitional period.

## ***CONCLUSION***

- ❑ The process of European integration is marked by differentiation to temporarily or permanently accommodate special circumstances and interests of member-states.
- ❑ The current models of constitutional differentiation do not allow for a combination of free trade and control over immigration - two of the main goals outlined in the UK Government's White Paper.
- ❑ While the EU managed to negotiate innovative solutions at critical moments of treaty negotiations, the European Council has made clear that the UK Government's idea of a sector-by-sector access to free trade was not negotiable and that the preservation of the integrity of the union and its member-states has priority over maintaining a close partnership with the UK.

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