



RSC 2022/26
Robert Schuman Centre for Advanced Studies
Integrating Diversity in the European Union
(InDivEU)

WORKING PAPER

External Differentiation in the EU

Michael Keating, Christian Frommelt,
Simon Hix and Meltem Müftüler-Baç

European University Institute

Robert Schuman Centre for Advanced Studies
Integrating Diversity in the European Union (InDivEU)

External Differentiation in the EU

Michael Keating, Christian Frommelt,
Simon Hix and Meltem Müftüler-Baç

RSC Working Paper 2022/26

© Michael Keating, Christian Frommelt, Simon Hix and Meltem Müftüler-Baç, 2022

This work is licensed under the [Creative Commons Attribution 4.0 \(CC-BY 4.0\)](#) International license which governs the terms of access and reuse for this work.

If cited or quoted, reference should be made to the full name of the author(s), editor(s), the title, the series and number, the year and the publisher.

Published in April 2022 by the European University Institute.

Badia Fiesolana, via dei Roccettini 9

I – 50014 San Domenico di Fiesole (FI)

Italy

www.eui.eu

Views expressed in this publication reflect the opinion of individual author(s) and not those of the European University Institute.

This publication is available in Open Access in [Cadmus](#), the EUI Research Repository



With the support of the
Erasmus+ Programme
of the European Union

The European Commission supports the EUI through the European Union budget. This publication reflects the views only of the author(s), and the Commission cannot be held responsible for any use which may be made of the information contained therein.

Robert Schuman Centre for Advanced Studies

The Robert Schuman Centre for Advanced Studies, created in 1992 and currently directed by Professor Erik Jones, aims to develop inter-disciplinary and comparative research on the major issues facing the process of European integration, European societies and Europe's place in 21st century global politics.

The Centre is home to a large post-doctoral programme and hosts major research programmes, projects and data sets, in addition to a range of working groups and *ad hoc* initiatives. The research agenda is organised around a set of core themes and is continuously evolving, reflecting the changing agenda of European integration, the expanding membership of the European Union, developments in Europe's neighbourhood and the wider world.

For more information: <http://eui.eu/rscas>

The EUI and the RSC are not responsible for the opinion expressed by the author(s).

Integrating Diversity in the European Union (InDivEU) is a Horizon 2020 funded research project aimed at contributing concretely to the current debate on the 'Future of Europe' by assessing, developing and testing a range of models and scenarios for different levels of integration among EU member states. InDivEU begins from the assumption that managing heterogeneity and deep diversity is a continuous and growing challenge in the evolution of the EU and the dynamic of European integration.

The objective of InDivEU is to maximize the knowledge of Differentiated Integration (DI) on the basis of a theoretically robust conceptual foundations accompanied by an innovative and integrated analytical framework, and to provide Europe's policy makers with a knowledge hub on DI. InDivEU combines rigorous academic research with the capacity to translate research findings into policy design and advice.

InDivEU comprises a consortium of 14 partner institutions coordinated by the Robert Schuman Centre at the European University Institute, where the project is hosted by the European Governance and Politics Programme (EGPP). The scientific coordinators of InDivEU are Brigid Laffan (Robert Schuman Centre) and Frank Schimmelfennig (ETH Zürich).

For more information: <http://indiveu.eui.eu/>

This project received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement number 822304. The content of this document represents only the views of the InDivEU consortium and is its sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

**Integrating
Diversity in the
European Union**

Abstract

External differentiation refers to the various relationships the EU has with neighbouring countries with which it has a formal agreement. There is a general principle that the more access associated countries have to the EU Single Market, the more regulatory alignment they must accept. There is, however, no standard formula for achieving this. The only standardised arrangement is the European Economic Area and even that varies in detail for the individual states. Otherwise the arrangements differ according to concerns about sovereignty, sectoral interests, regulatory styles, power politics and the salience of particular issues and the overall trajectory of associated states towards or away from the EU.

Keywords

Differentiated integration, European Union, external differentiation, sovereignty, market access.

What is External Differentiation?

External differentiation refers to the various relationships the EU has with neighbouring countries with which it has a formal agreement including acceptance of at least some of the EU's institutions, regulations and policies. These constitute what Gstöhl and Phinnemore (2019) call 'privileged partnerships' including binding arrangements, reciprocal rights and obligations, selective adoption of the *acquis communautaire*, policy cooperation and integration; and institutional arrangements. For us, external differentiation is not a legal concept but rather refers to political and economic relationships, in which various legal instruments and formulas may be used, including partnerships and association agreements. These relationships are differentiated in a double sense. They are different from EU membership since they are intended as an alternative, while allowing the EU to limit internal differentiation. Second, the cases of external differentiation differ among themselves. Yet there is a common set of themes underlying both EU membership and external association. In both, there is a trade-off between state sovereignty and unconstrained freedom of action on the one hand, and access to the Single Market and the various club goods offered by the EU on the other. Such trade-offs are made across several dimensions, economic, political, regulatory and institutional, which may or may not be linked.

The strategy of the EU is always to seek formalised relationships corresponding to coherent models and encompassing multiple fields linked together. A core principle of the European project is the inter-connection between fields, with economic integration matched by market-correcting measures aimed at social and territorial cohesion or environmental safeguarding and by political integration and institution-building. In practice, the meaning and implications of these concepts are contested and the outcome of political negotiations tends to be much less tidy and coherent. States have distinct traditions and understandings of sovereignty and of what might threaten it. They face competing pressures from domestic political and economic forces. Issues may be politicised and made into touchstones of sovereignty in ways that do not correspond to their apparent economic or social importance. So we do not aim to produce a taxonomy of external association formulas but rather focus on the underlying economic and political relationships. These are not static but evolve in the course of implementation towards greater or less incorporation into the EU system.

The familiar concept of internal differentiation takes the form of member states opting out from some policies when they are introduced (Schimmelfennig and Winzen 2020; Holzinger and Schimmelfennig 2012). There remains, however, a core set of EU competences and shared decision-making bodies and procedures. External differentiation starts from a different point, that the partner states are not taking on the full rights and responsibilities of member states but selectively opting in. There is an outer circle of countries subject to the EU Neighbourhood policy, aimed at stabilising economic and political relationships. We are interested in a tighter ring of countries, where external differentiation is seen as an alternative to EU membership. Sometimes, this is because states want to be in but do not yet qualify. In other cases, they qualify but have decided not to be members. While falling short of membership, the agreements we are examining go beyond traditional free trade agreements, which themselves have expanded in scope in recent years to include state aid and public procurement and environmental, safety and labour standards questions. Some of these incorporate World Trade Organisation standards and some go a little further, albeit with weak enforcement.

We examine three types of dynamic: that of moving towards EU membership; that of leaving the EU; and that of seeking a stable form of external association. The first is examined through the case of Turkey. The only example of the second is the United Kingdom. The third is examined through the cases of the European Economic Area (EEA) and Switzerland. Of course, the dynamics are more complicated than that simple categorisation might suggest. It does not appear that, in practice, Turkey is going to join the EU any time soon. The outcome of Brexit and the UK's future relationship with the EU are by no means clear as yet. The EEA model is evolving and negotiations to consolidate the relationship with Switzerland have recently broken down. These complications,

however, themselves help us explore the dynamics of external association and the stability or otherwise of the relationships.

While our main unit of analysis is the state, that does not assume that they are unitary actors. In fact, all are divided on the matter of proximity to Europe, by ideology, sector, class or territory.

The EU Position

The EU has a number of consistent concerns, first presented in the Interlaken principles (de Clerq 1987; Frommelt 2020). Relations with third countries should not slow down the process of European integration. They should not compromise the EU's own decision-making autonomy and not share power with non-members; decision-making is already highly complex with 27 member states and the European institutions (Commission, Parliament, Court of Justice) themselves. There should be a balance of benefits and obligations. It can offer partners access to a market of over 400 million consumers but this is always conditional (Fossum et al. 2020). Later, in the context of Brexit, was added the principle of preserving the integrity of the Single Market by excluding sectoral deals. Tariff-free access for industrial goods is relatively unproblematic. Access to the wider Single Market, with free movement of goods, services, capital and people, is more difficult. This goes beyond elimination of tariffs to include reduction in regulatory barriers through regulatory harmonisation or mutual recognition. More generally, the EU also likes to export its institutional norms and principles Gstöhl and Phinnemore (2019; Lavenex and Schimmelfennig 2009).

The size and importance of partner countries is an important consideration for the EU. The UK is too big to be allowed special treatment as this would affect trade and competition within the EU itself and be regarded as a precedent for other states. Norway matters less, Iceland and Liechtenstein matter less still, hence their numerous exceptions within the EEA structures (Frommelt 2016). The UK and Switzerland have large financial sectors, which could pose a competitive challenge if excepted from EU rules; Norway does not. Turkey presents significant issues given its size and geopolitical position and related migration and security issues, which give the EU a strong reason to try and keep it close.

What at first sight might seem clear matters often turn out to be complex and contested. So the integrity of the Internal (Single) Market is a contested idea, subject to interpretation. One element is the need to avoid free-riding by states seeking market access while avoiding responsibilities and costs, allowing them to undercut EU producers. More broadly, EU benefits are treated as a club good, restricted to members even when the marginal cost of extending them is zero, because otherwise there would be little incentive to join and pay the fees. Where it does extend market access to non-members, this is on its own terms and, in principle, its partners do not have a role in making the decisions. The EU prefers broad, comprehensive agreements covering all sectors for its partnerships with third countries or groups of countries. That way, it seeks to avoid 'cherry picking' and can make access in one field conditional on behaviour in others. It also seeks to maintain internal unity by giving a large role to the Commission and discouraging bilateral negotiations with member states. The EU has also been concerned with stability and democratic consolidation on its southern and eastern periphery.

The cases

In the case of Norway, Iceland, Liechtenstein and Switzerland, there was no objection on the EU side to membership on political grounds. Their differentiated agreements came about, rather, because of domestic opposition to membership combined with strong desire on the part of governments for its benefits. The agreements represented a compromise both domestically and with the EU. On 2 May 1992, after 'prolonged and exhaustive' negotiations (Gstöhl 1994: 336), the European Communities

(EC) and its 12 Member states, together with representatives of the seven Member states of the European Free Trade Association (EFTA), signed the Agreement on the European Economic Area (EEA). By removing all barriers to the free movement of goods, services, capital and persons, the EEA's functional scope is similar to the EU's internal market. In addition, it includes horizontal and flanking policies, such as environmental protection, where cooperation is necessary to ensure a level playing field.

Switzerland was a driving force behind the EEA Agreement but, as a result of a popular vote in December 1992, it opted out of the EEA before it entered into force. This decision is mostly explained by the peculiarities of the Swiss political system such as (semi-)direct democracy, neutrality and strong federalism as well as strong concerns about national sovereignty. Today, the Swiss-EU relations are based on a large number of sectoral agreements. While the purpose, as with the EEA, is to gain access to the EU's internal market, they differ in many ways from the EEA Agreement as there is no comprehensive approach and no overarching institutional framework that would allow for the dynamic development and coherent interpretation of legislation (Baur 2020).

The EEA is the clearest example of such a broad agreement covering the four freedoms of the Single Market as well as multiple horizontal and flanking policies (Ghstöl 2015). By the dynamic incorporation of new EU secondary legislation that is EEA relevant into the EEA Agreement, it has been largely possible for the EEA EFTA States to follow the developments in the EU internal market law.

Swiss-EU relations are based on approximately 25 main agreements and 100 side agreements. The individual agreements not only cover different policies, but also follow different institutional principles. Some are linked by a so-called guillotine clause, according to which the corresponding agreements automatically cease to apply as soon as one of the linked agreements is terminated by one of the two contracting parties. This is intended to at least partially curb Switzerland's selective integration limited to individual policy areas. In recent years, the EU has sought to bring the core of the Swiss agreements into a single institutional framework but thus far all attempts failed due to domestic political resistance in Switzerland.

From the EU's perspective, the assessment of its relations with the EFTA States is ambivalent. On the one hand, it has set clear guidelines within the Interlaken Principles, which still form the framework of current relations and future negotiations. On the other hand, despite its superior negotiating power, the EU has repeatedly deviated from these principles, so that relations with the EFTA States are much more differentiated than intended by the EU. This inconsistency might have even strengthened the EFTA States in their efforts towards selective integration. The future EU policy with Switzerland after the failure of the negotiations on an institutional agreement is therefore an important test for the credibility and practicability of the EU's strategy for non-members which would in principle be capable of EU membership, but are currently not interested.

Turkey is located both in the EU's periphery and borderlands, and it complies with the EU *acquis* on multiple different levels without being a member (Karakas, 2013; Müftüler-Baç, 2017, 2018; Ozer, 2020). The two have fostered political economic and military ties in the last 50 years but, since 2016, Turkey's relations with the EU seem to have reached a crossroads that will once and for all determine whether Turkey belongs in the EU or not. Turkey, despite its candidacy status and accession negotiations, never fully adopted the EU's accession criteria. There are deep cleavages and fault lines in Turkey, particularly due to the Turkish modernization process that goes back to the 19th century and political groups in Turkey have different attitudes towards their preferred relations with the EU. The political party in power since 2002, the Justice and Development Party hand came from an Islamist tradition, and began as an opponent to the modernizers and secularists, who wanted to make Turkey more European.

For its part, the EU never fully embraced the idea of Turkey's accession, with strong domestic opposition in several member states. Even those not opposed in principle insisted on strict political conditions, although this did not, in practice, lead to democratic consolidation (Müftüler-Baç, 2019; Müftüler-Baç and Keyman, 2012). At the same time, Turkey uses EU economic and technical rules to distinguish itself from its Eastern and/or Southern neighbours.

In spite of the political difficulties, there is still public support for membership. A 2021 survey by the German Marshall Fund found that around 60% of the Turkish public in general and 70% of the Turkish youth (18-24) support Turkey's accession to the EU.¹ This is mainly based on the expected material benefits.

Turkey was one of the first countries to apply for membership in the European Economic Community in 1959 along with Greece. The European Commission accepted the principle of membership but noted that they were not yet ready to assume the obligations. Instead, it came up with the novel proposition of associate membership in preparation for eventual accession. Turkey signed the Ankara Treaty (Association Agreement) in 1963. In 1987, Turkey applied for full membership but the Commission recommended against accession negotiations and instead proposed a Customs Union for industrial products, signed in 1995. At the Helsinki summit of 1999, the European Council elevated Turkey to a candidate country and it opened accession negotiations in 2005. The accession negotiations and the subsequent Negotiations Framework and the Accession Partnership documents adopted in 2001 and 2008 determine Turkey's harmonization with the EU *acquis*. However, following the Deep and Comprehensive Free Trade Agreements the EU has signed with countries such as Ukraine or Georgia- who are not even official candidates for accession, Turkey's Customs Union agreement remained very limited in its scope (European Commission, 2017). As a result, in 2016 the European Commission recommended its upgrade with new rounds of negotiations with the Turkish government's enthusiastic support. These did not happen, due to political circumstances.

Given the nature of its multiple agreements with the EU, Turkey remains a key partner and is already deeply integrated into multiple EU policies- mostly on technical issues. Its Association Agreement, the candidacy, and its accession negotiations with the Accession Partnership Documents and the Negotiations Framework form the main basis of its integration to the EU.

The United Kingdom long had an ambivalent relationship with the European project and had initially refused to join (Gros-Fitzgibbon 2016). Thereafter, the two main political parties alternated in supporting and opposing it. Its decision to join the EEC can be credited to economic concerns, the failure to establish a viable alternative and acceptance (to a degree) of the UK's loss of status as a world power. After the departure of French President de Gaulle in 1969, it was admitted and joined in 1973. Thereafter, it tended to see the EU as a transactional matter, pressing for trade liberalisation while eschewing the more political and social dimensions and securing opt-outs from the Euro, Schengen and large parts of Justice and Home Affairs. Prime Minister David Cameron's 'renegotiation' was the final attempt to obtain a differentiated status within the EU and sustain the fragile domestic consensus on membership. This failed in the referendum of 2016, after which the choice fell between what we have called external differentiation, or a complete break with Europe.

EU negotiators had intended that Brexit should be accompanied by a partnership agreement and was clear that this should be chosen from the menu of existing agreements, rather than being a bespoke deal (Baur 2019). The UK position following the Leave victory in the 2016 referendum, was profoundly ambivalent (Jones 2020). Prime Minister Theresa May declared that leaving the Single Market and Customs Union were 'red lines' but later proposed a unified customs area and 'common rule book' for regulations. Unable to get agreement in Parliament, she resigned and her successor, Boris Johnson, returned to a hard Brexit, or even a no-deal Brexit if necessary. Even, so, the Political

¹ *Turkish Daily newspaper*, Cumhuriyet, April 29, 2021. <https://www.cumhuriyet.com.tr/haber/avrupa-birligi-ve-turkiye%E2%80%93ab-iliskileri-arastirmasi-sonuclari-aciklandi-1832136>.

Declaration attached to the withdrawal agreement pledged an ‘ambitious, broad, deep and flexible partnership across trade and economic cooperation with a comprehensive and balanced Free Trade Agreement at its core, law enforcement and criminal justice, foreign policy, security and defence and wider areas of cooperation.’ As the UK insisted on sovereignty issues at every turn, however, the outcome was a free trade deal, labelled the Trade and Cooperation Agreement, which fell far short of partnership. Yet, while this was intended to sever institutional ties with the EU, it left in place a highly complex set of relationships, which may come to constrain the UK’s effective autonomy and bring back the same trade-off between independence and access that faces other externally-differentiated partners of the Union. In other words, this was yet another bespoke arrangement.

Sovereignty Issues

National sovereignty has been at the heart of many of the debates about European integration and is invoked to explain the reluctance of non-EU states to join the bloc. In practice, the concept of sovereignty is itself highly complex and contested. On the one hand are those who argue that the supranational scope of EU law undermines national sovereignty. This is often linked with an argument that, because it is the national people or *demos* who are sovereign, supranational authority also undermines democracy. Others argue that, as long as the EU is organized along intergovernmental lines, then democracy can be sustained (Bellamy 2019).

Sovereignty itself is conceived in two distinct ways. The first meaning is as a normative and legal principle designating the ultimate source of legitimate authority, which must always lie in a single place. In this sense, it cannot be compromised by European integration as long as member state consent is needed for integration and these have the right to withdraw. Others would argue that Europe is itself a source of norms, co-existing with those of member states, so that sovereignty is divided, shared or pooled (MacCormick 1999). The second meaning refers to the real capacity to act and realise policy goals. In this sense, entering into international agreements may constrain governments, but it may also enhance their real power.

Recent thinking about sovereignty has sought to reconcile these meanings by arguing that sovereignty is not a thing that a state does or does not have; nor is it a stock of resources, which may be depleted by sharing it, but a relationship both on the normative and the capacity dimension (Loughlin 2003). Looked at this way, the argument about whether states have ‘lost’ sovereignty in acceding to the EU poses the wrong question. They can, depending on the circumstances, gain or lose both normative authority and policy capacity. All this means that the sovereignty issue plays out differently in different contexts. For some, sovereignty is preserved as long as European norms have to be transposed through national legislative procedures to be valid. Others might argue that what matters is the degree of constraint put on states to pass such legislation.

Power asymmetries are important here, as is the degree of dependence of each side on the other. These asymmetries may be related to economic strength, geo-strategic location, population or other factors. Even where formal sovereignty has been preserved, the literature talks about relations being governed by dominance or hegemony (Erikson and Flossum 2015; Fossum et al. 2020).

These factors are conditioned by domestic political considerations. A long-running strand in the literature is that states will be constrained in sharing sovereignty by strong national identities. Yet the literature on nations and nationalism has moved on, to show how these are constructed and reproduced in different ways, using diverse materials and arguments. Nationalism may be about building nations, preserving them, or protecting them from alleged threats. It may be concerned with building a shared national interest or with maintaining sovereignty in its various forms. Nationalist parties may construct Europe as the threatening ‘other’ against which they define themselves. They may equally define Europe as part of ‘us’ against the outsiders. The link between nationalism and sovereignty also varies. Political movements may build their nation within a European frame of

reference, seeing Europe as the saviour of the nation state. In small nations it may be a vital external support system. Public opinion in different states may see the sovereignty-market access trade-off differently, and this may change over time.

There are also sectoral and territorial differences in the appreciation of the economic and political implications of European integration, including the familiar difference between the market and the social visions. For some sections of the left, the EU represents a deepening of globalisation and a ploy to dismantle social protections that were built up within the nation-state. This attitude has been common in both Norway and the United Kingdom. For others, the EU is a way of preserving the European social model by regulating markets. This, in turn, diminishes its appeal in the eyes of the neo-liberal right. More generally, the two Nordic EEA EFTA countries have a regulatory tradition which is consistent with the scope and mode of EU regulation, whereas for the last four decades the UK has been marked by an anti-regulatory political culture and the predominance of market principles. This also applies to Switzerland.

This means that the political sensitivity of association with the EU differs according to time and place. Some states may have succeeded in interpreting association as a technical matters similarly to the way that the EU itself was constructed in various phases. The focus can then be moved to questions of efficiency and the substantive benefits to be derived from access to the EU market and from EU regulations. In this way, significant measures of integration can be depoliticised and separated from sensitive matters of sovereignty and identity. This gives national executives discretion in deciding on measures of integration. In other circumstances, the entire field may be highly contested and sovereignty issues presented as a zero-sum game. This is not because of anything inherent in the concept of sovereignty itself which, as we have noted, can be interpreted in different ways, but because of the way in which it is used in specific contexts. The questions of migration and free movement of people illustrate how salience can change according to time and place. The UK referendum on EU membership occurred at a time of high public concern about, and opposition to, migration, following the migration 'crisis'. By 2020, the issue had fallen well back in public concerns and attitudes to immigration had become more positive. The salience of free movement and migration in Switzerland provoked a referendum in 2014 and a crisis in the relationship with the EU. In 2020, another referendum endorsed free movement.

Gstöhl (2002) describes the EFTA States' approach towards European integration as a combination of economic incentives for, and political impediments to, integration. The political obstacles are closely linked to ideational concepts such as the protection of national identity and sovereignty. All EFTA States are small states that have had to struggle for their independence over many decades and centuries. This may explain that there is a constant fear among the EFTA States of becoming too dependent on the EU as well as of political marginalisation in the case of EU membership.

Such fears of a loss of national sovereignty are also triggered by different material preferences. These include fisheries in Norway and Iceland. In as Switzerland, there is a longer list covering, tax legislation, labour law, social security and migration and financial services, including capital requirements for banks (the 'Swiss finish').

These sovereignty concerns not only prevented EU membership, but also conditioned the new institutional relationship, for example with regard to dynamic alignment and participation in EU agencies.

In both the EEA and Switzerland, in contrast to the United Kingdom, there are constitutional and legal limitations on the sharing of sovereignty. Norway and Iceland cannot delegate decision-making power to supranational bodies of an international organisation in which they are not full members. In Switzerland, the federal constitution poses strict limits on what the central government can do, while direct democracy further constrains governments at all levels.

These sensitive issues of sovereignty in the EFTA States and Switzerland has been contained by strategies of depoliticization of technical issues such as air transport or veterinary matters. On the other hand, it is all the more sensitive when it comes to core-state power or traditionally sensitive issues like migration.

The goal of the modern Turkish Republic, established in 1923 following the collapse of the Ottoman Empire, was to create a sovereign, independent state. The experience of World War I, the subsequent invasion by Allied powers in 1918 and the War of Independence of 1919-1922 left a legacy in Turkey equating European powers with an expansionist aim over the Turkish territory, a perception subsequently turned against the EU. At the same time, the Republic also predicated its foreign policy on acceptance into the European system of states, joining the main Western institutions in the post-World War II order. As in the other cases, the tension is managed by treating the EU only as a technical, economic club and downplaying its political role and legal supremacy. An additional element in the Turkish case is resentment at the EU's diffusion of political rules and regulations about democracy and the rule of law (Müftüler-Baç and Keyman 2012); indeed there has been a significant backsliding in the Turkish political reforms (Müftüler-Baç 2019). The European Commission has noted this multiple times as seen in its declaration on June 26, 2018 'Turkey has been moving further away from the European Union and that accession negotiations have therefore effectively come to a standstill'.²

The changing nature of Turkish commitment to the EU accession process is also seen when one looks at the institutional changes in Turkish politics. First, the Turkish government established a separate ministry for EU affairs in 2011 and then abolished it in 2018 to integrate it back to the Turkish Ministry of Foreign Affairs. The changes in Turkish political system, from a Parliamentary to a Presidential System in 2018, further complicated the Turkish-EU relations with regards to an increased executive control of the Turkish political system (Müftüler-Baç 2019), and reinforced the perception that Turkey is moving away from the EU's political norms. At the same time, Turkish President Erdogan has framed the issue of sovereignty in nationalistic language in line with his party's overall rhetoric and strategy.

The traditional, 'Westminster' view of the United Kingdom constitution is that it is based on the absolute sovereignty of Parliament,³ which dispenses for the need of a codified, written document. Parliamentary sovereignty and supremacy was the common property of the conservative right and of the social democratic left, which came to see it as a prime instrument for social and economic change. It has been used in two ways in relation to Europe. On the one hand, a section of political opinion has consistently argued that membership of the EU is incompatible with the sovereignty principle. On the other hand, it allowed successive UK Governments to argue that, because parliamentary sovereignty was absolute and could not be alienated, it could not, by definition, be imperilled by joining the EU. That this argument is tautological did not undermine its usefulness; Parliament had merely lent authority to Europe and could take it back at any time. It was this kind of reasoning that allowed the government of Margaret Thatcher to sign up to the Single European Act of 1986, accepting qualified majority voting in exchange for wider market access. Separating 'economic' from 'political' matters was the British way of depoliticising potentially difficult issues but it came under increasing strain after the 1980s, when the popular press took to expressing outrage over almost anything the EU did.

The resort to a referendum in 2016 and the result in which a (small) majority of the people voted against the predominant view in Parliament, however, introduced a new element, that of popular

² <https://www.consilium.europa.eu/media/35863/st10555-en18.pdf>

³ Strictly the Monarch-in-Parliament.

sovereignty.⁴ In the aftermath of the Referendum, this was presented by pro-Brexit forces as a binding mandate, allowing of no compromise. Sovereignty was presented as an absolute principle on the normative dimension and in relation to policy autonomy, regularly trumping market access. This precluded any jurisdiction for the Court of Justice of the EU, even indirectly. It also ruled out regulatory harmonisation even in matters in which the UK apparently had no intention of diverging. Our research has shown that British public opinion is divided. While an overall majority is willing to accept limitations on sovereignty in return for access, Leave voters are not (Hix et al. 2020).

Yet, within the United Kingdom, a very different conception of sovereignty was put forward in Scotland, Northern Ireland and Wales (Keating 2021). Here the UK itself was conceived of, not as a sovereign, unitary nation state but as itself a union in which sovereignty had long been contested and shared and in which the partners had never expected to get things all their own way. Indeed, such a post-sovereign (MacCormick 1999; Keating 2001) underpinned the entire constitutional settlement in Northern Ireland. Nationalists in the smaller nations, in response to Brexit, re-emphasised a commitment to Europe as a framework for their own aspirations to greater self-rule. Scottish voters also favoured a less sovereigntist vision of post-Brexit relations in return for market access (Hix et al. 2020).

Market Access, Conditionality and Regulatory Alignment

The core of relationships in all our cases is a free trade agreement in manufactured goods. Beyond this, there is a varied pattern of market access, traded off against regulatory alignment in goods, sometimes in services and sometimes accompanied by flanking measures providing for social or environmental protection. Opposition has arisen either because governments do not like their substance, or because they infringe on national sovereignty, although in practice the distinction is rarely clear cut. The pure sovereignty arguments and the more instrumentalist ones rarely stand on their own and both bear on conceptions of the nation-state, but it will be useful to distinguish them analytically.

The broad scope of the EEA and the basic principles of homogeneity and dynamism provide for a degree of regulatory alignment equivalent to the Single Market but EFTA States' access to the EU internal market are affected by different regulatory preferences among the EEA EFTA States or between them and the EU. Policy areas that are of particular relevance for individual states include financial services for Liechtenstein or energy for Iceland and Norway. The Deposit Guarantee Directive or the Third Postal Directive met both with fierce domestic opposition in Norway. The same applies to the third energy package in Iceland. The incorporation of those EU acts has been seriously delayed but thus far the EEA EFTA States have never completely refused the incorporation of a new EEA-relevant EU act into the EEA Agreement. Permanent exemptions for individual EEA EFTA States are mainly granted to Liechtenstein and Iceland, and mostly with reference to their small size. All opt-outs must be seen in the context of the institutional rules of the EEA which give the EEA EFTA States some leeway.

Difficulties can arise when different EU policies merge into a single legal act. A prime example of this is environmental criminal law. While environmental protection is an undisputed part of the EEA Agreement, criminal law is not. When incorporating such an EU act into the EEA Agreement, the EEA EFTA States declared that the incorporation is without prejudice to the scope of the EEA Agreement. A further difficulty arises when primary law in the EU has expanded substantially over time and is therefore no longer reflected in the EEA Agreement. This applies, for example, with regard to the provisions on EU citizenship, which are not part of the EEA Agreement, but may nevertheless be relevant for the interpretation of the EU Citizenship Directive that has been incorporated into the EEA

⁴ There had been a previous membership referendum in 1975 but this did not raise the issue as the electorate voted the same way as Parliament.

Agreement. Another example is the EU Charter of Fundamental Rights, which is not part of the EEA Agreement. Until now, these differences between EU and EEA law could be circumvented without endangering the homogeneity of EU and EEA law in practice mainly due to pragmatism on the part of the contracting parties and the EEA institutions (Fredriksen and Franklin 2015).

In contrast, relations between Switzerland and the EU are much more patchy, as the bilateral agreements do not cover all four fundamental freedoms and joint legal development is less dynamic (Baur 2020). There is no comprehensive agreement on services. An agreement on free movement of persons does exist, but this it has never been updated to the EU Citizenship Directive. Moreover, Switzerland has unilaterally adopted national measures to implement the Agreement on the Free Movement of Persons - the so-called flanking measures - which most experts believe are not compatible with the Agreement. Due to the lack of an institutional framework, this has not yet been conclusively clarified.

While the EEA EFTA States can be seen as members of the EU Internal Market, such a classification would not be appropriate for Switzerland. The various sectoral agreements merely provide Switzerland with access to the internal market. What the differences are between *membership* and *access* is not always clear, but the distinction could become more important in the future if the EU resorts to more politically motivated compensatory measures against Switzerland. Legal certainty in relations with the EU can therefore become more important.

The Customs Union with Turkey requires alignment of technical regulations on goods. Proposals to extend it to include agriculture, services and public procurement, as well as mechanisms for dispute resolution and protection of Turkish goods from asymmetrical application of FTAs signed by EU with third parties, have been held up by EU conditionality, including concerns from the European Parliament about human rights.

Opposition to the European Union in the United Kingdom has long focused on the threat to parliamentary sovereignty and national democracy. To this were added to mutually incompatible complaints as to its substantive policy orientation. From the era of Margaret Thatcher, Euroscepticism, previously associated with the left, was increasingly associated with a neo-liberal vision of deregulation and rolling back of the state. Yet this was largely abandoned during and after the Brexit referendum as the campaign appealed to working-class voters in post-industrial areas of England and Wales looking for more interventionist policies, protectionism and subsidies. Yet, while abandoning the deregulatory posture, the Leave campaign and subsequent Johnson government was insistent that considerations of sovereignty precluded regulatory alignment; indeed it was prepared to risk leaving with no deal rather than compromise on this.

The outcome was a deal that provided tariff-free access to goods. Domestic politics meant that there was no pressure for protection of agriculture, at least in England, where direct payments to farmers are to be phased out, notwithstanding continuing subsidies in the EU. Tariff-free access protected UK manufacturing trade, such as the auto sector, which had revived within the EU Internal Market, but rules of origin rules raised obstacles since they apply even to countries within which both the UK and the EU have free trade agreements. Services were almost entirely absent from the agreement, even though they accounted for 40 per cent of UK exports to the EU. Financial services, a key sector, will be subject to 'equivalence' decisions taken unilaterally by the EU. Although fisheries accounts for only 0.1 per cent of UK GDP, it became a make-or-break issue because of the symbolic importance of controlling domestic waters and boundaries. The EU argued that access to fishing grounds should be linked to trade in fishery products; the UK exports to the EU most of the fish caught in UK waters and imports from the EU most of the fish consumed domestically. The UK did achieve its aim of negotiating quotas bilaterally with the EU but this in practice meant an adjustment of catches rather than unilateral control.

Determined to avoid free-riding, the EU side insisted that there should be a 'level playing field' on regulation and subsidies. Initially, the fear was that Brexit would inaugurate a 'bonfire of regulations'; in the early negotiations the UK threatened that, if the UK did not come to agreement, it might 'change its economic model' to encourage this. The final agreement was ambiguous. There would be no regression on existing social and environmental standards (this is a standard clause in many modern trade agreements). If one side were to raise its standards, the other can ask for a 'rebalancing' and the agreement can be revised at regular intervals. In the meantime, there is no mutual recognition, as in the Internal Market. There is no common competition policy but both sides agreed to maintain key principles of competition; these largely followed existing EU competition policy.

The end of free movement of labour was another British red line, linked to the importance of border control as a symbol of sovereignty, as well as public concerns at the time. This was achieved although the economic consensus is that free movement is a net benefit to the UK economy.

Separate provisions exist for Northern Ireland which, under a Protocol of the Agreement, is effectively in the Single Market for goods. The UK and EU have never clearly agreed on the degree of regulatory alignment this entails. The Protocol clearly breaches the UK's red lines, including jurisdiction of the Court of Justice of the EU, but then the Good Friday Agreement which it exists to uphold also breaches UK understandings of absolute parliamentary sovereignty. Almost immediately after it came into effect, the UK Government denounced the Protocol and, at the time of writing, is attempting to have it change radically so as to remove any sovereignty-limiting elements.

One of the most difficult issues has been to maintain regulatory alignment over the longer term. While the EEA provides for regular updating EFTA States are often not able to keep pace with the dynamics of EU legislation. As a result, the incorporation of new EU law into the EEA Agreement is often delayed, so that, at least temporarily, different rules exist for EU and EEA/EFTA states. Only the Annexes to the EEA Agreement are dynamic, while the main part of the EEA Agreement has not been updated since it was signed in 1992. Moreover, each of the three EEA/EFTA States has a steadily increasing number of agreements with the EU in order to ensure integration beyond the scope of the EEA Agreement. The role of EU agencies is not reflected in the two-pillar structure of the EEA, as these agencies did not exist at the time of the signing of the EEA Agreement. Furthermore, their competences have grown considerably since their inception. Since the EU agencies are highly specialised institutions, their competences cannot simply be taken over by the EFTA Surveillance Authority either. To ensure the homogeneity of EEA law, the EEA EFTA states may therefore be directly embedded in the EU pillar, while the EFTA institutions play, if at all, only a symbolic role (Frommelt 2020).

Maintaining alignment has been a particular issue with Turkey and the Switzerland, given the weakness of formal provisions. This means that the arrangements are frequently out of date.

The Trade and Cooperation Agreement with the United Kingdom contains no provision for dynamic alignment. Instead, there is a provision for revisiting the Agreement if either side raises regulatory standards while the other does not. The aim is clearly to prevent the UK from gaining market advantage by failing to follow enhanced EU standards. The Scottish Parliament, on the other hand, has passed legislation allowing the Scottish Government to maintain alignment with changing European standards.

Regulatory alignment is not just a consequence of legal treaty obligations. Since the EU market is vastly larger than any of the national markets in question, there will be more pressure for partner countries to adopt EU standards than the other way around. Indeed, many EU regulations have become global standards and influenced WTO rules. This asymmetry means that divergence will frequently have an economic cost, which explains the tendency in some cases to adopt EU norms beyond the strict requirements of partnership agreements. Norway, for example, has adopted some 40 per cent of the regulations on agriculture (Fossum et al, 2020).

Institutionalisation and Enforcement

The EU has been insistent that these partnership provisions must be enforceable, while partner states have insisted that their sovereign rights to legislate and adjudicate must be respected. The outcome has been a series of arrangements that are more or less constraining.

The EEA Agreement aims to achieve market integration without compromising the integrity of EU legal order and autonomy of its decision-making and without a transfer of sovereignty or powers from the EEA EFTA States to the EEA institutions. It achieves this via a two-pillar structure. EU institutions develop law, while EFTA institutions deal with internal EFTA matters and ensure its consistent selection, timely incorporation and correct implementation and interpretation. A Joint Committee formally takes the decisions on incorporating EU laws and directives by mutual agreement of the EU and all the EFTA states. Legally speaking, there is strong pressure to incorporate EU law in a timely manner. Where a new act is rejected by an EEA EFTA state, the Joint Committee must find alternative ways to ensure well-functioning of agreement. If this is not found within six months, application of act in EEA is provisionally suspended. To date, this procedure has only been formally invoked twice, and in both instances the six-month conciliation meant that a suspension was averted (Frommelt 2017: 60-62).

On average, 400 new acts are incorporated into EEA acquis every year. Although the EEA EFTA States have never rejected the incorporation of a new EU act into the EEA Agreement, they have seriously delayed the incorporation of several (Frommelt 2020). As a result, various EU acts are in force in the EU for many years before they become also legally binding in the EEA EFTA States. The adoption of a simplified procedure and, more recently, a fast-track procedure could speed up incorporation of EU law into EEA Agreement - essentially an automatic transfer of EU rules to EFTA states - but only for EU acts with low salience.

To ensure adequate means of judicial of enforcement, the EEA EFTA States have established the EFTA Court and EFTA Surveillance Authority, responsible for ensuring that the EEA EFTA States fulfil their obligations under the EEA Agreement. The surveillance mechanism is very similar to that of the EU but there are also some differences. For example, the members of the ESA College are appointed solely by the EEA EFTA governments and do not have to be approved by a parliament, as in the case of the European Commission. Most College members have close ties to politics in the EEA EFTA States by having served various years as civil servant or diplomat. Some experts see this as threat of the independence of ESA. Neither the EFTA Court nor the ESA's request can impose financial penalties for non-compliance. While judgments and opinions of the EFTA Court are not meant to be binding, they have a 'persuasive authority'; in the vast majority of cases they are complied with, just like rulings of the CJEU. Another issue is the low number of cases at the EFTA Court. This in turn is due not only to the fact that there are only three EEA EFTA states but also to the fact that their courts less frequently seek an opinion from the EFTA Court by comparison with the average EU State.

In the Swiss case, bilateral agreements are managed by Joint Committees which meet once in a year or if required. Some Joint Committees have competence to incorporate new EU legislation into agreements, subject to prior consent by Federal Council. They may also decide on whether to incorporate CJEU case law (Lavenex and Schwok 2015). All Joint Committees make their decisions by consensus. There is no independent surveillance authority. The European Court of Justice and the Swiss Federal Court interpret the agreements independently, although the Swiss Court tends to interpret bilateral norms according to CJEU case law ([Oesch 2018](#)). Association agreements have introduced some CJEU concepts into Swiss jurisprudence and there has been substantial integration into EU law to ensure viability of agreements. Most bilateral agreements (except Schengen and Dublin and air transport, which entail partial integration) are based on principle of mutual equivalence with the 'equivalent' Swiss laws stated in the Annex of agreements. In practice this means that Swiss law is adapted to EU law before a new sectoral agreement enters into force. Beyond this,

Switzerland has a policy of 'autonomous adaptation' whereby it seeks to align Swiss law to EU law to safeguard compatibility of agreements. Empirical studies show that between 30 and 50 per cent of federal acts and ordinances are influenced by EU law ([Oesch 2018](#)). However, this does not necessarily mean that those federal acts are fully compatible with EU law as there is often a Swiss 'finish' in order to ensure the attractiveness of the Swiss business location. Moreover, there is no independent surveillance authority that could control the compatibility of Swiss and EU law.

It is possible to argue that the institutional arrangements and agreements with Turkey are not fully institutionalised compared with the arrangements with the EFTA countries, partly because these agreements- 1963 Association Agreement and the Customs Union Agreement- were both envisaged as potential steps leading to accession. However, the EU's own learning curve over the Turkish association also played an important role in this low level of institutionalization. At the same time, there are multiple institutional mechanisms still in place in the management of Turkish relations with the EU. The 1963 Ankara Treaty set up the main institutional tools- the Association Council, the Association Committee and the Joint Parliamentary Commission- all of which have specific roles to play in the management of the Association. The Association Council and Committee meetings have a regular set-up, that might be affected by the political climate from time to time, but has managed over the last 60 years to meet frequently for the discussion of technical aspects of the association. The Joint Parliamentary Commission composed of Members of the Turkish and the European Parliaments also play a role in highlighting the political aspects and provide a forum for the MEPs to voice their political concerns.

One of the main problems that still impact the technical aspects of Turkish integration to the EU is linked to dispute settlement mechanisms. There is a Customs Union Joint Committee for this purpose, but almost all trade related disputes between the EU and Turkey are handled via WTO mechanisms. The update on the Customs Union agreement has included plans for an institutional set up for a dispute-resolution mechanism, but since negotiations on an updated Customs Union are stalled, there is no progress in that aspect.

Finally in 2015, the EU came up with a new institutional set up for its relations with Turkey, bilateral summit meetings between Turkey and the EU for discussing important matters of mutual concern, such as migration crisis, energy cooperation (Müftüleri-Baç 2017). As foreseen in the 2012 Positive Agenda for Turkey, multiple High Level Dialogues between Turkish and EU ministers were launched to enhance areas of cooperation and discuss benchmarks for the remaining Chapters of accession. However, all these high level meetings and summits were suspended in July 2019, when the European Council adopted a list of sanctions against Turkey due to drilling activities in Eastern Mediterranean and the ongoing disputes over the legal status of maritime rights in the Eastern Mediterranean.

As the scope and ambition of the UK's post-Brexit relationship with the EU narrowed, so the need for an institutional framework diminished, especially in the light of the UK's increased insistence on absolute national control. The agreement is bilateral and overseen by a Partnership Council, which proceeds by agreement and below which are a Trade Partnership Committee and numerous specialised committees (Larik 2020). If no agreement is reached, the matter may be referred to binding third-party arbitration. If the losing side fails to accept the ruling, the other may take remedial action. While great effort was taken by the UK to exclude the Court of Justice of the EU, matters of interpretation of EU may be referred to it by the arbitrator. Against the wishes of the UK Government, there is linkage across fields so that an adverse finding in one sector could lead to retaliatory action in another. There is a heavy reliance of existing WTO rules and mechanisms and a strong emphasis on the exchange of information. The issue of market access versus national autonomy is far from resolved in the agreement. Rather, the agreement provides a framework on which it can be played out on a regular basis. The UK is fully free to depart from EU standards but each such departure can entail a loss of market access.

While the UK has, in the name of national sovereignty, strongly resisted copying EU laws, it continues to press for 'equivalence', that is mutual recognition of standards. This is its favoured approach to gaining access for financial services but is a long and arduous process.

Participation

The loss of autonomy resulting from having to follow EU laws and regulations (whether by treaty obligation or pressure) might be mitigated by having a consultative role in the making of those norms.

Under 'decision shaping', the EEA EFTA States are involved in the creation of new EU legislation from an early stage in at least four different ways (Frommelt 2017):

(1) The EEA EFTA States can second national experts (SNE) to the European Commission or other EU institutions. The aim is to supply the EU institutions with expertise but also to increase and spread knowledge of the EU, the EEA and their member states. In general, there are around 50 national experts of the EEA EFTA States seconded to the EU. Most of them are Norwegians.

(2) The EEA EFTA States can submit comments and written contributions to the relevant services of the European Commission and the EP to express their views on a specific policy. Such comments can address any kind of legislative or strategic documents of the EU but mostly refer to a white paper or to the proposal of a new EU act. On average the EEA EFTA States have submitted 10 comments per year since 2001.

(3) The EEA EFTA States may participate in EU committees and expert groups as well as specified EU bodies such as the board of supervisors of an EU agency, but without the right to vote. This is the only way for the EEA EFTA States to be formally represented in EU policy making. (

(4) Where the EEA EFTA States do not have formal access to EU policy making, they may use other forms of influence such as lobbying.

The EEA EFTA States have access to EU policy making mainly in the preparatory phase of an EEA-relevant EU act. National experts of the EEA EFTA States can participate in expert groups of the European Commission on equal terms with the national experts of the EU Member states but without the right to vote. As soon as an EU act is handed over to the EU legislators, the EEA EFTA States are no longer formally represented in EU policy making. This 'representation gap' can only be compensated by a political dialogue – for instance within the EEA Council or the EEA Joint Committee – or by lobbying. By contrast, the EEA EFTA States are represented throughout the main steps of the policy-making process for delegated EU acts (Article 290 TFEU) or implementing EU acts (Article 291 TFEU) adopted by the European Commission but again without the right to vote. The same applies for decisions taken by EU agencies in which the EEA EFTA States participate.

The lack of access to the EU Council and European Parliament severely limits the EEA EFTA States' influence on new EEA-relevant EU legislation. On the other hand, empirical analyses of the legislative dynamics of the EEA show that less than 10 percent of the EU legislation incorporated into the EEA Agreement was adopted by the EU Council or the EU Council and the European Parliament. In other words, the majority of EU legislation incorporated into the EEA Agreement was adopted by the European Commission and thus prepared by bodies to which the EEA EFTA States had access. Nevertheless, the involvement of EEA EFTA States in EU policy making cannot guarantee the same democratic quality as EU policy making does for the EU member states, nor can it fully legitimise the dynamic incorporation of new EEA-relevant EU legislation into the EEA Agreement.

Turkey participates in the European Environment Agency since 2000, European Centre for Drugs and Drug addiction since 2007, and European Aviation Safety Agency since 2013. This constitutes a unique pattern of integration to the EU rules beyond and/or without accession. Since 2008, negotiations have been underway on exchange of information and personal data between Europol

and Turkey. This is tied to the Agreement on Strategic Cooperation signed in 2004. Turkey has a liaison officer in Europol as part of 2015 EU-Turkey Joint Action. In addition, when the refugee crisis erupted in 2015, Turkey became an essential tool for the EU, agreeing on a Joint Action Plan and joint Turkey-EU statement in 2016. On the other hand, Turkey does not have any participation rights or consultation mechanisms in place for the EU's comitology. It fully participates in the EU programmes such as Erasmus, Horizon programmes, customs and programs for small and medium size enterprises, youth and culture programs. It also seeks to expand its participation in other EU programs such as the Heritage project as a programme country, rather than a partner country.

The United Kingdom did not seek, and was not offered, any participation or consultation in EU policy making or comitology. Nor does it participate in EU agencies. There is provision to participate in EU programmes but this is conditional on allowing access to UK territory for those participating. It has declined to continue with the Erasmus student exchange programme but does participate in EU research programmes, paying for the grants that are awarded to UK researchers.

Conclusions

The EU's neighbouring states have different reasons for not being part of the EU but strong reasons for wanting close trading relations with it. The EU, for its part, seeks institutionalised relationships based on conditionality, certainty and enforcement. Prefers comprehensive deals, with linkage across sectors, to *ad hoc* bargains. The underlying logic is a trade-off; fuller access to the EU Single Market entails the acceptance of more EU rules. Yet this is not a simple or linear process. During the Brexit negotiations, Michel Barnier presented his famous 'ladder' outlining the various relationships possible, with each step towards freer trade and the Single Market accompanied by political requirements and a loss of autonomy but influence within the EU. This is a striking heuristic device and bargaining tool, but the reality is much more complicated. Negotiations are marked by concerns about, and interpretations of, sovereignty; issue-specific concerns (freedom of movement), which shift over time and place; economic interests; and legal and institutional constraints. So each relationship is the result of its own dynamics and power relationships but the economic weight of the EU and the size of its market is a major common factor. This is true of the central core of market access, on which this paper has focused. It is even more true in matters outside the core, like security policy. The Schengen (open borders) and Dublin (asylum) conventions also shows how resort is made to *ad hoc* arrangements. Schengen was originally confined to willing member states and outside the treaties. Later it was incorporated in the treaties but extended to Iceland and Norway (1997), a move triggered by the need to keep the border between Norway and its neighbours open (Baur 2019); later Switzerland (2004) and Liechtenstein (2009) were included. This was done through a series of bilateral deals.

The EEA represents the most formal and institutionalised relationship although in practice there are numerous compromises and exceptions, including arrangements for individual EFTA states and mechanisms outside the formal EEA pillars. The other agreements are all, in defiance of EU aspirations, bilateral and more weakly institutionalised. The Turkish arrangement is an accumulation of agreements over a long period of time. Their underlying logic is that they are part of an accession process but this assumption is increasingly unrealistic. The 2016 veto by Member states of the Customs Union upgrade suggests that the model may have reached its limits. Switzerland has a series of sectoral and other treaties which, for the EU, are the best available equivalent to the EEA, given the refusal of Swiss voters to accept EEA membership. It is permanently vulnerable to the swings of domestic politics determined by strong direct democracy and federalism. Efforts by the EU to consolidate the agreements within a single framework along the lines of the EEA have failed. In the case of UK after Brexit, the EU could have accepted the EEA solution or a customs union, since both had precedents, and explicitly rejected the Swiss model. While either EEA or Customs Union would have had a degree of domestic support and might have commanded a cross-party

parliamentary majority, the UK Government eventually ruled both out. The outcome was an *ad hoc* relationship, which left many key issues in abeyance.

Sovereignty is a common concern of national governments but it plays out in different ways. All the partnerships formally preserve national sovereignty and decision-making, but this can be highly constrained, as in the provisions in Switzerland and the UK for withdrawal of market access if there is a failure to comply. In practice, this means the EU punishing the partner state rather than the other way round, a clear illustration of the power relationship. The EU remains the economic hegemon. It can insist on conditionality for market access; even in its regular trade deals, it can impose matters like the data protection regime. More widely, the 'Brussels effect' refers to the way that EU regulations affect not only the neighbourhood but the world as they become global standards. Non member-states have no role in shaping these, nor in the broader debates about the future scope of European integration.

Smaller states, used to adapting and maximising their autonomy and influence in these conditions, find it less difficult than the United Kingdom, where Brexit is seen as a restoration of great power status (at least in England). The United Kingdom has also expressed an absolutist conception of sovereignty, which a country either has or does not have. In the other cases it is matched by a relational conception and, in practice, a more transactional approach, with fewer points at which sovereignty becomes a touchpoint. In spite of their historic sensitivities about sovereignty, this comes more naturally to small states, which had long had to live with their size being a source both of vulnerability and opportunity (Baldersheim and Keating 2015). The EEA EFTA States have also made the most of the discretion they have within the rules, while sometimes going into further integration where it suits them. Delay in transposing regulations is another tactic, which may give time for domestic preferences to change.

A parallel strategy of depoliticization by turning issues into technical matters. This becomes easier the more stable the institutional arrangement, so that not everything turns into a matter of principle about the *telos*, or long-term relationship with Europe. Depoliticisation, however, belies the nature of the EU, which is intensely political, the linkages of issues and the increasing salience in international trade of social, environmental, democratic and rule-of-law matters. Where there are deep political divisions on the scope of the regulatory state, or the basic condition of liberal democracy, as in the United Kingdom or Turkey, then institutional provisions for joint policy making or coordination are not enough in themselves to secure stability in the relationship with the EU. Depoliticisation is one possible outcome of Brexit, were the relationship to stabilise and the EU to accept the principle of equivalence more widely. The domestic turn away from a radical strategy of deregulation may encourage this, but that it itself still contested domestically. Brexit was supported by a wide coalition of interests and there was never any agreed position on what it would entail.

The EEA has also proved to be the most stable arrangement, although there have been some problems with dynamic alignment and updating. The Swiss arrangement has been prone to crises and partial suspensions in the absence of an overarching framework or updating mechanism and domestic political pressures. The Turkish agreements are also prone to instability as their underlying rationale, Turkish accession, recedes in prospect. Unlike in the other cases (but like in some Member states) there are serious concerns about democracy and freedom, which clash with the current Turkish government's agenda. We simply do not know how the Trade and Cooperation Agreement with the United Kingdom will work out. The original rationale for Brexit was to allow the UK to diverge radically from EU regulations in the direction of deregulation, a pressure that was not present to anything like the same extent in the other cases. That was later abandoned as the Conservative Party expanded its electoral base to include a working-class segment threatened by deregulation but without losing its neo-liberal core. The mechanisms for dealing with divergence include mutual retaliation devices familiar from the World Trade Organisation and the Swiss-EU relationship but they are unclear and untested.

We have sought in this paper to discern some order in a complex set of relationships, which necessarily entails a degree of simplification in order to see the big picture. The table attempts to bring these together to map differentiation by country and by sector. It illustrates our conclusion. The EU does seek to rationalise its relationships with its neighbours to embrace them without losing its own decision-making autonomy and while protecting the benefits of its internal market but the outcome is a widely differing and constantly evolving set of relationships.

References

- Baur, Georges (2019), 'Privileged partnerships. The partner countries' (institutional) perspectives', in Sieglinde Gstöhl and David Phinnemore (eds), *The Proliferation of Privileged Partnerships between the European Union and its Neighbours*, Oxford: Routledge.
- Baur, Georges (2020) 'Switzerland: striking hard bargains with soft edges' in Martin Westlake (ed). *Outside the EU. Options for Britain*, Newcastle: Agenda.
- Bellamy, Richard (2019) *A Republican Europe of Sovereign States. Cosmopolitan Statism, Republican Intergovernmentalism and Democratic Reconnection of the EU*, Cambridge: Cambridge University Press.
- Cihangir-Tetik, Damla and Meltem Müftüleri-Baç (2018) "Turkey's Compliance with the European Union's Development Policy: A Pattern of External Differentiated Integration?" *Journal of European integration*, 40.7: 939-959.
- De Clerq, W. (1987) *EC-EFTA Ministerial Meeting of 20 May 1987, Interlaken*, https://europa.eu/rapid/press-release_SPEECH-87-32_en.htm, (accessed June 2020).
- Eriksen, Erik O. and John Erik Fossum (2015), 'Introduction: Asymmetry and the Problem of Dominance', in Erick O. Eriksen and John Erik Fossum (eds), *The European Union's Non-Members. Independence under hegemony*, London: Routledge.
- European Commission (2017), *Report on the Turkish-EU Bilateral Trade Arrangement*, http://trade.ec.europa.eu/doclib/docs/2017/january/tradoc_155240.pdf
- Fossum, John Erik, Monica Garcia Quesada and Tiziano Zgaga with contributions from Guntram B. Wolff (2020), *The EU's non-members. Key principles, underlying logics and types of affiliation*, Oslo: Arena.
- Fredriksen, Halvard and Christian Franklin, (2015), 'Of Pragmatism and Principles: The EEA Agreement 20 Years On', *Common Market Law Review* 52.3: 629-684.
- Frommelt, C. (2016) 'Liechtenstein's tailor-made arrangements in the EEA: A small state's creative solutions in European integration' in S. Wolf (Ed.), *State size matters. Politik und Recht im Kontext von Kleinstaatlichkeit und Monarchie*, Wiesbaden: Springer VS: PP. 131-162.
- Frommelt, Christian (2017) *In Search of Effective Differentiated Integration: Lessons from the European Economic Area (EEA)*. PhD thesis submitted at ETH Zurich. Available at: <https://www.liechtenstein-institut.li> (Accessed: 20 March 2021).
- Frommelt, C. (2020) *Institutional Challenges for External Differentiated Integration: The Case of the EEA*. Robert Schuman Centre for Advanced Studies Research Paper No. RSCAS, 65. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3712440(Accessed: 4 April 2021)
- Frommelt, Christian (2016). 'Liechtenstein's tailor-made arrangements in the EEA: A small state's creative solutions in European integration', in Sebastian Wolf (ed.), *State size matters. Politik und Recht im Kontext von Kleinstaatlichkeit und Monarchie*, Wiesbaden: Springer.
- Gros-Fitzgibbon, Benjamin (2016), *Continental Drift. Britain and Europe from the End of Empire to the Rise of Euroscepticism*, Cambridge: Cambridge University Press.
- Gstöhl, Sieglinde (1994) 'EFTA and the European Economic Area or the Politics of Frustration. *Cooperation and Conflict*, 29.4): 333-366.

- Gstöhl, Sieglinde (2015) 'Models of external differentiation in the EU's neighbourhood: an expanding economic community?' *Journal of European Public Policy*, 22.6): 854-870. doi: 10.1080/13501763.2015.1020834
- Gstöhl, Sieglinde and David Phinnemore (2019), Introduction: privileged partnerships between the European Union and third states, in Sieglinde Gstöhl and David Phinnemore (eds), *The Proliferation of Privileged Partnerships between the European Union and its Neighbours*, Oxford: Routledge.
- Holzinger, Katherina and Frank Schimmelfennig, (2012), 'Differentiated Integration in the European Union: Many concepts, sparse theory, few data', *Journal of European Public Policy*, 19.2: 292-305.
- Jones, Emily (2020), 'The Negotiations', in Federico Fabbrini (ed.), *The Law and Politics of Brexit. Volume 111. The Withdrawal Agreement*, Oxford: Oxford University Press.
- Karakaş, Cemal (2013), 'EU-Turkey: Integration without Full membership or Membership without Full integration: A Conceptual Framework for Accession Alternatives,' *Journal of Common Market Studies*, 51.6: 1057-73
- Keating, Michael (2001), *Plurinational Democracy. Stateless Nations in a Post-Sovereignty Era*, Oxford: Oxford University Press.
- Keating, Michael (2021), *State and Nation in the United Kingdom: The Fractured Union*, Oxford: Oxford University Press.
- Larik, Joris (2020), 'Decision-Making and Dispute Settlement', in Federico Fabbrini (ed.), *The Law and Politics of Brexit. Volume 111. The Withdrawal Agreement*, Oxford: Oxford University Press.
- Lavenex, Sandra (2011), 'Concentric circles of flexible "European" integration: A typology of EU external governance relations', *Comparative European Politics*, 9.4: 372-393.
- Lavenex, Sandra and Frank Schimmelfennig, (2009), 'EU Rules beyond EU Borders: Theorizing External Governance in European Politics' *Journal of European Public Policy*, 16.6: 91-812. d
- Loughlin, Martin (2003), 'Ten Tenets of Sovereignty', in Neil Walker (ed.), *Sovereignty in Transition*, Oxford: Hart.
- MacCormick, Neil (1999), *Questioning Sovereignty. Law, State and Nation in the European Commonwealth*, Oxford: Oxford University Press.
- Müftüleri-Baç, Meltem (2017) 'Turkey's Future with the European Union: Alternative Modes of Differentiated Integration', *Turkish Studies*, 18.3 416-439.
- Müftüleri-Baç, Meltem and F. Keyman, (2012) 'The Era of Dominant Party Politics', *Journal of Democracy*, 23.1 85-99.
- Müftüleri-Baç Meltem., (2019) 'Backsliding in judicial reforms: Domestic political costs as limits to EU's political conditionality in Turkey', *Journal of Contemporary European Studies*, 27.1 61-76.
- Oesch, Matthias (2018), *Switzerland and the European Union. General Framework. Bilateral Agreements. Autonomous Adaptation*, Zurich/St.Gallen and Baden-Baden: Dike/Nomos.
- Ozer, Yonca (2020) 'External Differentiated Integration between Turkey and the European Union: the Customs Union and its Revision', *Turkish Studies*, 21.3 436-461.
- Schimmelfennig, Frank, and Thomas Winzen, (2020), *Ever Looser Union? Differentiated European Integration*, Oxford: Oxford University Press.

Authors contacts

Michael Keating

University of Aberdeen
King's College,
Aberdeen AB24 3FX,
United Kingdom

Email: m.keating@abdn.ac.uk

Christian Frommelt

Liechtenstein Institute
St. Luziweg 2
LI-9487 Gamprin-Bendern, Liechtenstein

Email: christian.frommelt@liechtenstein-institut.li

Simon Hix

European University Institute
Via Boccaccio 121, Firenze, Italy

Meltem Müftüler-Baç

Sabancı University
Orta Mahalle, Üniversite Cd. No: 27,
34956 Tuzla/İstanbul, Turkey

Email main author: m.keating@abdn.ac.uk