



The Ukraine model for Brexit: Is dissociation just like association?

by Beth Oppenheim
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Some argue that a Ukraine-style association agreement offers the UK a viable model for its future relationship with the EU, combining both 'sovereignty' and close economic ties. But in fact this model would not work for either the EU or most Brexiteers.

The EU has presented the UK with a stark choice between 'Norway' and 'Canada'. That is, between single market membership and a free trade agreement – between close economic ties and 'sovereignty'. Some experts have [pointed to](#) the EU's association agreements as a way of escaping this binary choice. A Ukraine-style association agreement looks at first glance like a possible route for the UK to circumvent unwanted obligations, whilst preserving some of the economic benefits of membership. The provisions on goods and services are theoretically far superior to those offered by the Canada option, but there is no free movement and the involvement of the European Court of Justice (ECJ) is limited, unlike in the Norway option.

But is this too good to be true? Closer analysis shows that despite their generous appearance, the association agreements are firmly slanted in the favour of the EU, and that key obligations are omitted not out of generosity, but for pragmatic reasons that would not apply in the case of the UK.

The EU has signed over 20 'association agreements' to create a framework for co-operation with non-member-states. These take a variety of forms, and aim to promote political association and economic integration. They liberalise trade, but also encompass other issues like security and defence, or energy. Most recently, the EU has concluded association agreements that incorporate 'Deep and Comprehensive Free Trade Agreements' (DCFTAs) with three of the six 'Eastern partners' of the EU – Georgia, Moldova and Ukraine. Ukraine's was the first and is the most advanced, [offering](#) an "unprecedented level of integration", according to the European Commission. These countries are not members of the single market or customs union, but are still granted deep and comprehensive market access and customs co-operation – though only in return for aligning their domestic laws to EU law.

Ukraine, for example, will have to implement [80 to 90 per cent](#) of the *acquis communautaire* (the body of EU law and regulations). The agreements provide an incentive structure for domestic reforms within a binding legal framework. They form a key part of the EU's neighbourhood policy, enabling it to spread its values and regulatory influence.

The Ukraine-EU agreement goes a long way to liberalising trade in goods, eliminating [99.1 per cent](#) of Ukrainian tariffs and 98.1 per cent of EU tariffs. But some remain on agriculture and metal products, where there are quotas that limit the quantity of Ukrainian products that can be exported tariff-free. Non-tariff barriers are also tackled – Ukraine and the EU can freely trade goods (with the exception of some agricultural and metal exports) without additional testing, under a Conformity Assessment Agreement, so long as Ukraine obeys European technical standards. It is no coincidence that agricultural and metal products are the largest export sectors for Ukraine. Through placing restrictions on the strongest Ukrainian exports, the EU ensures that Ukraine cannot gain a competitive advantage from its low labour and materials costs. It is also worth noting that the association countries are not in a customs union with the EU, so border checks are still required.¹ Therefore, a comparable EU-UK association agreement would not solve the Irish border issue.

The association agreements have also attracted interest because of their ambitious services provisions. Trade experts often lament a lack of progress globally on opening up services, which have proved problematic to include in trade agreements. The ability to trade services freely with the EU post-Brexit has become a key concern of the UK, where services output comprises [79 per cent](#) of GDP. The Ukraine deal goes beyond the Moldova and Georgia agreements, in theory offering “internal market treatment” on important services like finance, transport, and postal and electronic communications, once regulation is aligned in these areas.

“Internal market treatment” in financial services would amount to the financial ‘passport’, an arrangement enjoyed by EU member-states and EEA countries like Norway (though freedom of movement is required for these countries, as well as alignment). This, at least theoretically, far surpasses the EU-Canada trade deal, which offers only [superficial](#) liberalisation of services. Financial services accounted for 26 per cent of British services exports to the EU in 2014, worth [£22.7 billion](#), so an arrangement close to the financial passport would be extremely valuable to the UK.

But there are complications on this front. Ukraine does not yet have deep access to most EU service sectors, and many are excluded completely. For instance, the EU and some individual member-states have put in place a total of [46](#) restrictions on Ukraine’s access to financial services markets. Such restrictions are in place because the joint EU-Ukraine Trade Committee has not certified sufficient progress on regulatory alignment. There is also a broad prudential carve-out which means that market access can be unilaterally withdrawn by the EU if it is deemed to threaten the “integrity and stability of a Party’s financial system”. Indeed, Ukraine’s financial sector is fragile – in 2016 its largest bank, PrivatBank, was nationalised when the government found a [\\$5.5 billion](#) hole in its balance sheet. It will [take](#) a “considerable number of years” for Ukraine to achieve full internal market access, according to the Centre for European Policy Studies.

The association countries can participate in numerous EU agencies in a range of policy areas, sometimes on equal terms to member-states, which would be of real help to the UK. Ukraine is able to participate

¹: Andrew Duff [raises](#) the possibility of adding a customs union onto an association agreement. But customs union membership restricts members’ ability to independently negotiate trade deals. Therefore membership is very unpopular with the ‘Global Britain’ Brexiteers, who envisage a freshly unshackled UK striking its own trade agreements all over the world.

in [21](#) programmes. All three Eastern Partnership countries have full access to Horizon 2020, a major EU research programme, and Euratom, the EU's nuclear regulator. Again, participation is contingent upon alignment with EU law in these areas. All three countries can contribute to EU civilian and military crisis management operations, but they have no decision-making role in European foreign, defence or security policy. The Ukraine agreement goes further, setting out a basis for co-operation with the European Defence Agency, enabling Ukraine to enhance its defence technology. All three have an agreement with the EU law enforcement agency Europol to combat cross-border crime and terrorism together. This facilitates the exchange of data in criminal cases, allows for participation in training exercises, and for joint analysis of intelligence reports. This comes in return for aligning their foreign, security and defence policies with those of the EU.

Of course, all the privileges come at a high price for sovereignty. The three countries only have improved access to those sectors where their laws are aligned ('approximated') to European ones. If a dispute arises relating to regulatory approximation or to an interpretation of EU law, the arbitration panel that oversees the agreement must request a ruling from the European Court of Justice, whose verdicts are legally binding (known as a 'preliminary reference'). Other than on such issues, the arbitrators oversee the agreement without any ECJ involvement.

The very premise of the association agreements – regulatory approximation – is completely opposed to the Brexiteers' sovereignty narrative. In his Valentine's Day speech, Boris Johnson once again called for "taking back control of our [Britain's] regulatory framework". But Theresa May appears to be preparing the ground for a concession on the involvement of the Court. The vocabulary of government papers has [shifted](#) towards accepting "indirect jurisdiction". Although the ECJ's role in adjudicating the DCFTAs is indirect, it is nonetheless binding. The "indirect" distinction would be a fig leaf, and one that most Brexiteers could not accept.

Recent papers by the [Institute for Government](#) and the [Institute for Public Policy Research](#) have tried to reshape the Ukraine DCFTA model into an agreement suitable for a diverging country like the UK. They explore an inverted association agreement, where the UK could commit to regulatory alignment with the single market, but with the option to diverge in some areas. Divergence would be punished by a proportionate loss of single market access. Reports of the government's Chequers Brexit 'away day' in February suggest there is a consensus for this model in the cabinet, with one member [claiming](#) that "divergence has won the day". But this is wishful thinking. The European Commission anticipated this proposal and explicitly rejected it the previous day, deeming it incompatible with the European Council guidelines on the Brexit negotiations. Council President Donald Tusk has subsequently [dismissed](#) the model as "cake and eat it" and "cherry-picking".

The EU has no interest in giving any form of the DCFTA to the UK. The three association countries are of strategic importance for the EU, located along the fault line of east and west. The EU views the Ukraine association agreement as a tool for encouraging the country to respect Western liberal values, and to lure it away from corruption and Russian autocracy. It is also a way for the EU to take accession off the table by offering association in place of membership. But the UK is no Ukraine – it already shares and upholds European values. In a European Parliament research paper, the authors [concluded](#): "this agreement cannot serve as a blueprint for a Brexit-agreement. Firstly, the UK economy already matches EU standards. Secondly, contrary to the EU-Ukraine Association Agreement, a UK-EU agreement would rather be aimed at disengagement than at *rapprochement*."

The DCFTAs' exclusion of freedom of movement illustrates why such an agreement would be inappropriate for the UK. The EU does not want high levels of immigration from Ukraine, Georgia, or Moldova, where living standards and wages are lower. The opposite holds for the UK, which is home to [3.7 million](#) EU citizens. The EU-27 have made it a priority to secure citizens' rights and a preferential migration regime for their citizens. Michel Barnier, the EU's chief Brexit negotiator, has [said](#) repeatedly that "free movement of people is one of the four essential freedoms. These four freedoms are indivisible. This is how our single market works." It would run counter to EU interest to allow the UK to 'cherry-pick' privileges without meeting obligations; this could embolden other governments facing eurosceptic, anti-immigration pressures to seek better terms outside the EU. The UK would not be awarded such an opt-out, which was an act of EU pragmatism, not generosity.

It is patently in the mutual interest of the UK and EU to establish a framework for future cooperation after Brexit that acknowledges and builds on decades of economic, defence, security, and cultural ties. So long as May blurs her red lines, there will be an association of sorts.

But it will not look like the Ukraine association. Brexiteers would be humiliated by an agreement so strongly tilted in the EU's favour, and with heavy consequences for their sovereignty narrative. Such an agreement would run counter to EU self-interest, and to many Brexiteers' views of the UK's international standing.

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