



A LITTLE GUIDE TO THE UK-EU NEGOTIATIONS

Analysing alternatives to membership

INTRODUCTION

In June 2016 a majority (51.9%) of British voters elected to leave the European Union, yet 96% of the UK cultural sector indicated its desire to remain¹. In this little guide, Culture Action Europe (CAE) considers possible models for the kind of relationship that the UK may develop with the EU within the framework of the UK vote to leave. This critical relationship remains a blank canvas. Recent political declarations suggest the preferable options from the EU and UK side but they are far from representing a negotiation position.

In this little guide, CAE first considers the benefits the UK has gained from EU membership, before moving on to analyse several scenarios and their potential impact on the UK cultural scene.

¹ Creative Industries Federation. Brexit Report. October 2016

² DCMS, January 2016, Creative Industries Economic Estimates.

UK in the EU

Background:

The European project was one of very few experiments in history that did not result from the victory of one culture over another. As an entity built on mutual respect and fundamental values that are at the very basis of Western democracy, it successfully managed to establish an enduring period of peace following a dark period in which national narratives played an undisputable role.

Since it joined the EU, the UK has been a constituent part of the European cultural landscape. By leaving the EU, the UK will remove one of its cultural pillars, silence an outspoken defendant of diversity and set apart one of its most creative members. The loss would certainly be mutual, as British citizens would face the danger of cultural isolation following the reintroduction of territorial and political barriers. The reintroduction of tariffs, the restriction of freedom of movement, lack of access to welfare, and cross border co-operation would all impact negatively on British artists and cultural workers.

The UK and its cultural sector benefits from many policies that are set at the EU level from environmental protection to gender equality, from the right to work to consumer protection and more.

More specifically for the UK cultural sectors, the EU has brought several major benefits:

Benefits of EU membership to UK culture:

Single market

The opportunity to trade freely across the EU is probably the EU's main accomplishment since it was created, and is considered one of its pillars. For the cultural sector, the Single Market has meant opportunities to sell cultural goods across the continental bloc without having to worry about tariffs, which has enlarged the scope of potential revenue for the sector.

In 2014, the UK creative industries were worth £84.1bn and grew by 8.9%². Such impressive figures have been helped enormously by the UK's access to the single market, with Europe the largest export market for British cultural products. According to the Arts Council, Europe accounts for 57.3% of the total exports of services by the UK creative industries. The sub-sector "music, performing and visual arts" exports grew from £286 million to £644 million in the period 2009 – 2014, from which 56% (£362 million) was exported to Europe³.

Free Movement

This cornerstone of the European Union provides for people's ability to travel freely across EU territory, with no visa requirements. It encourages free exchange of ideas, talent and creativity. These elements are essential for both the UK and EU cultural sectors to flourish by strengthening the diversity of the arts. UK artists have benefitted from the ability to move freely across the continent as well as touring their work across the EU. Similarly, audiences in the UK have been able to discover European arts and artists on a regular and easily accessible basis. Such cultural exchange enabled by free movement has opened the way for true intercultural links across the Channel.

A recent survey by the Arts Council England found that 70.8% of respondents felt that reduced freedom of movements of goods, services and people would impact negatively on their future touring work within the EU, 75.3% believed it would hinder bringing European artists and organisations into the UK and 64.7% thought employing staff from EU would become more difficult.

Funding

The UK cultural sector has widely benefitted from EU funding over the years. Under the framework of the European Commission's Creative Europe Programme, the culture sub-programme in 2015 supported 145 projects, 54 of which involved UK organisations. Overall, during its first two years (2014 – 2015), Creative Europe has supported 230 UK cultural and creative organisations and audio-visual companies⁴. The Arts Council

² DCMS, January 2016, Creative Industries Economic Estimates.

³ Arts Council England. The arts and culture sector and exit from the European Union. 2016

⁴ Creative Europe Desk UK, Update on Creative Europe and the outcome of the EU referendum. 30 June 2016.

reports show that the overall amount in grants received by UK organisations through the Culture sub-programme in 2014-2015 totalled €11.3 million, of which €9.9 million on cooperation projects, €1.3 million on European platforms and €165,000 on literary translation

In addition, the European Structural and Investment Funds initially planned to invest around £8.66bn across the UK in the 2014-2020 period offering significant support to the sector's infrastructure. European Regional Development Funds have contributed to various cultural regeneration projects in recent years, and a number of cultural organisations receive investment through EU funding programmes such as Horizon 2020, Interreg and Erasmus – which also gives students the opportunity to study anywhere in Europe.

Specific EU Cultural programmes and policies

The EU has been at the forefront of promoting the cultural and creative sectors and their contribution to the sustainable development of cities. Programmes include the European Capitals of Culture, which promotes and funds two cities every year in order to highlight their cultural richness. The UK is designated to hold the European Capital of Culture in 2023. Three cities are preparing bids, Leeds, Dundee and Milton Keynes. The ECOC selection will take place in 2017 and 2018, when the UK will still be a full EU member, however EU funding for ECOC in 2023 is not guaranteed (£1.5 m). DCMS must trigger the ECOC competition by December 2016. Yet, uncertainty regarding the future relationship that the UK wants to build with the EU seems to be halting the process⁶. The European Commission also recently proposed the creation of a European Year for Cultural Heritage in 2018, which is another initiative to highlight the importance of culture in our societies.

⁵ Arts Council England. The arts and culture sector and exit from the European Union. 2016

⁶ Steve Green. Chair of the European Capitals of Culture Selection Panel. 20 September 2016. Time for DCMS to start the competition for European Capital of Culture in 2023

Intellectual property Rights

There are multiple legislative pieces that define copyright rules at EU level, among them copyright in the information society, orphan Works and Rental and Lending Rights and

term of protection. As a benefit stemming from EU law, the Arts Council cites⁷ the 2006 Artist's Resale Right (ARR) entitling creators to royalties when their work is sold in arts markets or auction houses.

As part of a global strategy on a Digital market Strategy, the EU is currently working on a review of copyright rules, and intellectual property rights. The decisions that are taken as regards to these fundamental issues for the cultural and creative sectors will undoubtedly have an effect on the bloc's neighbours and trading partners. So far, the UK has had the chance to shape those rules, as a member of the European Union and thus co-legislator. Such influence applies both to EU legislation and other multi-lateral and bi-lateral treaties.

Trade and cultural exception

Being part of the EU and its single market has given the UK the opportunity to be part of a large bloc when negotiating trade agreements. Whereas this argument is controversial - since Brexit campaigners argued that leaving the EU would give the UK a chance to negotiate its own terms – for culture it has meant more protection from aggressive trade partnerships, like the one being negotiated with the United States (see our [little TTIP guide](#)) for more information). In fact, EU countries, led by France, have been outspoken defenders of the Cultural Exception principle, which was first included in the General Agreement on Tariffs and Trade (GATT) negotiations in 1993. The idea is that culture should be treated differently from other commercial products, and that cultural goods and services such as audio-visual services should be left out of all international treaties and agreements.

⁷ Arts Council England. The arts and culture sector and exit from the European Union. 2016

Alternatives to Full EU Membership

The referendum outcome does not mean the UK is certain to leave the European Union, however this option must be regarded as the most likely scenario. As a first step, the UK will notify the European Council of the UK's intention to withdraw from the EU by triggering article 50. The UK's High Court has ruled that this process requires the support of the UK Parliament. The ruling could affect the calendar set by the UK government, aiming at notifying article 50 in March 2017, although the UK's Prime Minister has stated that this timeframe remains in place.

It must be highlighted that the negotiations following Article 50 will be focused on reaching an agreement on the UK's legal separation from the union. These talks will be centred on four key areas. First, the amount the UK will contribute to EU program payments and other liabilities as for example, EU staff pension. Second, the status and rights of UK and EU citizens. Third, they will determine the administrative disengagement such as the relocation of EU agencies in the UK. Fourth, arrangements regarding 'special situations', like Northern Ireland and Gibraltar, must be agreed. Officially, only when this phase is concluded, the future trading relationship between the EU and the UK can be discussed. However, in practice, it is likely that the latter is advanced in parallel.

Since the referendum vote, political declarations hint towards what has been termed 'hard brexit'. The UK appears to have prioritised ending free movement of European labour over access to the single market. European members are united in defending the four basic freedoms underpinning the European Single Market; namely, freedom of movement of workers, services, capital and goods. Hence, a 'hard brexit' option is currently regarded as the most likely outcome. Nevertheless, since June 2016, a wide range of alternative scenarios have been put forward. Despite the current political rhetoric, all models are still on the table. We summarise below the implications of the main models being discussed. These models should be taken as a broad guidance, as it is likely that the final agreement will take its own unique form.

In a document prepared by the UK government before the referendum was held, several scenarios for the UK relationship with EU were put forward. These cover all

possibilities, from a simple trade partnership without any political commitment to a more integrated solution on the Norwegian model⁸. CAE has complemented this initial document with the latest alternative proposals that could offer broader chances for an agreement.

EU POLICIES AND PROCESSES	No Brexit	Soft Brexit		Hard Brexit		
	Full EU membership	EFTA EEA	EFTA Switzerland	CU - Turkey	Comprehensive FTA (Canada)	WTO
Single Market (SM) access	Yes	Yes	Partial	No	No	No
Free labour mobility	Yes	Yes	Yes	No	No	No
Part of SM rules	Yes	Yes	Partial	No	No	No
Say in SM rulemaking	Yes	No	No	No	No	No
Bound by ECJ SM decisions	Yes	Yes	Partial	No	No	No
Duty-free access in goods	Yes	Yes	Yes	Yes	Yes	No
Market access for services	Yes	Yes	Partial	No	Partial	No
Part of EU commercial policy	Yes	No	No	Yes	No	No
Contribution to the EU budget	Yes	Yes	Yes	No	No	No

Adapted from Bruegel (2016)

World Trade Organisation (WTO) model

This scenario would see the UK government negotiate a trade agreement with the EU based on standards set under the World Trade Organisation. The new relationship would not have to include any form of political commitment on either side.

For this the country would have to reach trade agreements with other international partners, as it would no longer be part of EU trade partnerships. For the cultural sector, a relationship based on this trade agreement would expose the UK to the same trade tariffs on exported goods as the other 161 WTO members. The place for culture in here would be at risk from those who have not signed up to the UN Convention on the Protection and Promotion of the Diversity of Cultural Expressions, most notably the United States who do not subscribe to the concept of cultural exception in trade negotiations.

⁸ UK Government paper, « Alternatives to membership: possible models for the United Kingdom outside the European Union », March 2016

A WTO trade agreement means that the UK would not be required to financially contribute to the EU budget. In return, UK organisations, including in the cultural sector, would lose EU funding. Between 2010 and 2015, spending by local government on arts and cultural development and support has been reduced by 16.6 per cent⁹ (tending to hit regions outside London the hardest). In the UK and throughout Europe -- where a similar pattern can be observed -- EU funding has succeeded in partly filling the gap, and thereby has become economically vital for the sector.

The UK will probably receive EU funds until the end of the current Multi-Annual Funding Framework, which runs until 2020. But a deal that would not ensure a continuation of EU funding to UK cultural organisations and projects beyond 2020 would likely result in a significant drop in cultural production in the country. The decrease in UK cultural content would probably be made even sharper by the lack of cultural exchange with the rest of Europe, considering that the UK citizens and artists would no longer be able to move freely across the EU.

A “comprehensive” trade agreement

A second option is negotiating a “comprehensive” trade agreement, like the one recently signed between the EU and Canada – a partnership also known as CETA – or the better known TTIP, with the United States. Canada and the EU signed CETA on the 30th of October. However, it still needs to be backed by the European Parliament and its permanent entry into force would only come after ratification by national and regional parliaments.

This kind of partnership would offer the advantage of potentially eliminating tariffs, based on regulatory agreements. That also means that the UK would probably be subject to new EU policies that add standards on any area, although with no power to influence the production of new legislative criteria in Brussels.

Theoretically, this model also carries risks that are similar to the WTO trade agreement scenario, including exposure of the UK cultural sector in trade negotiations with third countries, end of access to EU funding and the need to obtain visas to travel across the EU.

⁹ Adrian Hardy. Funding arts and culture in times of austerity. Arts Council England and New Local Government Network. April 2016

Custom Union - The Turkish model

The customs union agreement between the EU and Turkey allows tariff free trade in goods. As part of the custom union Turkey has its external tariffs set by the EU and import conditions bound to the EU's free trade agreements¹⁰. Additionally, Turkey is expected to converge with EU norms, standards and legislation in the commercial domain, including intellectual property law. This grants Turkey access to the single market for industrial goods, yet it does not include services or agricultural products (bilateral concessions apply).

Turkey's contributions to the EU budget granted participation to the Creative Europe programme. Since 2015 Turkish cultural operators were able to apply to the culture sub-strand, the transversal strand (excluding the Cultural and Creative Sectors Guarantee Facility) and, partially, to the MEDIA programme. The contributions required to access Creative Europe amounted to EUR 1 650 000 in 2015 and EUR 2 million for each subsequent year, with an additional EUR 740 000 for access to the MEDIA Sub-programme in the areas of training, trade events and markets, festivals and audience development¹¹. However, in September 2016 Turkey announced to the Commission that they would withdraw from the programme in 2017. Hence, the Turkish model does not necessarily offer a safeguard to cultural actors from political risks.

The Swiss model

The Swiss example of bilateral agreements is among the soft brexit options, yet less soft than the Norwegian model. While theoretically, this could give the UK an opportunity to negotiate partnerships with the EU both on trade and political aspects, the period of bargaining that choosing this alternative model would open could be extremely risky. It is likely that Westminster and Brussels would trade concessions during this process, which could include free movement in exchange for access to the single market, or contribution to the EU budget for access to EU funding.

10 Michael Emerson. Which model for Brexit? CEPS. October 2016

11 EC, Entry into force of the Agreement establishing Turkey's participation in the Creative Europe programme. January 2015

Crossing red-lines on both sides will be required, and there is a high risk that the contribution to EU budget that would be required for accessing EU funding wouldn't be a priority for the UK. Eventually, if the UK opts for this model, it would also be subject to many EU laws.

Concretely, the kind of relationship Switzerland maintains with the EU has had several other downturns for the Swiss cultural sector. The first one concerns access to EU funding (including Creative Europe, Erasmus or Horizon 2020), which has been suspended since the Swiss voted in 2014 to limit immigration through quotas - as it had been prior to the bilateral treaties between Switzerland and the European Union. As a result, the cultural sector has been reluctant to develop cross border projects. So far, the sector has been able to rely on the country's wealth (public and private donations, local governments and Pro Helvetia).

The issue of funding is crucial, and what the series of events that followed the Swiss referendum on immigration shows is most importantly that this alternative model to membership is constantly subject to political risk. In fact, the risk of seeing political commitments shift on the UK side, particularly concerning freedom of movement, could easily trigger a suspension of funding on the EU side. A similar deal for the UK thus carries the same risk of insecurity for artists, both in terms of funding and in their ability to move freely in the EU.

The Norwegian model: European Free Trade Association - European Economic Area (EFTA EEA)

A partnership like the one Norway (along with Iceland and Liechtenstein) has with the EU offers better perspectives, as it is based on an established framework - the European Economic Area - and reduces risks for the cultural sector.

As part of the EEA and following the Norwegian model, the UK would gain access to the EU single market, would have to pay budget contributions and accept free movement rules. It would also access EU funds, including Creative Europe. The UK would still be able to negotiate some opt-outs, as Norway did on fisheries and farming policy. For the cultural sector, such a model thus seems to mitigate the effect of leaving the European Union, by assuring continuity with currently existing policies.

However, such a deal seems to include many red lines for the UK government, including on free-movement, and the fact that the UK would still be exposed to rulings by the European Court of Justice, even in its trade relationships with other countries. Westminster will also be subject to rules adopted in Brussels, while having no impact on the legislative work.

Additionally, by joining the EEA, the UK would lose access to all of the EU's trade agreements with 53 other markets around the world. Negotiating all those would take years, and carry the same risks of exposure for the cultural sector as in the WTO or "comprehensive" trade agreements models.

The State of Negotiations

The British government and European Union have now selected negotiating teams, and PM Theresa May has committed to triggering article 50 in March 2017.

Negotiation lines have not yet been revealed, and there is no reliable indication as to which model the UK will seek. Recent developments hint that the UK would seek a tariff-free deal for selected sectors with highly integrated supply chains across Europe¹². However, this is far from a clear negotiating position. Moreover, European members might not look favourably at granting selective advantage to UK sectors that could undermine the competitiveness of their industries. Positions vary within the government, and after an initial phase of grand political declarations, diplomatic manoeuvres will likely take place to soften initial hard stances.

The EU has shown a united position regarding the protection of the four fundamental freedoms, which if maintained, will force negotiations towards the 'hard options' or 'no brexit'. Yet again, negotiations conducted in good faith will necessarily require adjustments from both sides.

¹² Patrick Wintour. Greg Clark's big reveal on 'demeanour' of Brexit negotiations strategy. The Guardian. October, 2016.

The negotiations will be at the centre of preoccupations on both sides of the Channel in the coming months, and each party needs to adopt a clear line before the article 50 is triggered.

Culture Action Europe

PM Theresa May has committed to taking the UK out of the EU. The alternative models recounted in this guide are likely to serve as a basis for the UK to negotiate a new partnership with the EU, and thus it is unlikely that the government will implement any of them in their entirety. CAE wishes to take a pragmatic stand and call for a constructive dialogue between Brussels and Westminster; one that facilitates the continuity of the shared cultural space that lies in the foundations of the European project.

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