



- Basics
- Who?
- When?
- How?
- Challenges



## Definitions

<b>MS</b>	Member state of the European Union
<b>Notification</b>	Notification to the European Council of intention to withdraw from the EU
<b>Exit Agreement</b>	Agreement setting out the arrangements for the withdrawal from the EU
<b>EU Commission</b>	Executive body of the EU responsible for proposing legislation, implementing decisions and upholding the EU treaties
<b>EU Council</b>	Institution of the EU that comprises the heads of state or government of the member states, along with President of the European Council and the President of the European Commission (Council of Ministers)
<b>EU Parliament</b>	Parliamentary institution of the EU; directly elected
<b>EU Treaty</b>	Treaty on European Union & Treaty on the Functioning of the European Union

## Definitions

### Hague Convention

14th Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (concluded on 15 November 1965)

### EFTA

European Free Trade Association: Liechtenstein, Norway, Iceland, Switzerland

### EEA

European Economic Area: Liechtenstein, Norway, Iceland

### EEA Joint Committee

institution of the EEA, composed of representatives Iceland, Liechtenstein, Norway, the European Commission and the EU Member States

### VAT

Value Added Tax

### Service Regulation

Regulation on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000)

### EU

European Union

### Brexit Referendum

Referendum held on 23 June 2016 regarding remaining EU member

### ECJ

European Court of Justice

## Rights and Obligations Created by Membership of EU („Rights“)

- Upon accession to EU: In general: *acquis communautaire*
- After accession: Treaty, regulation, directive, decision, ECJ
- Exceptions  
Opt out: EURO, Banking Union, EU budget rebate, Schengen, no commitment to “ever closer Union”, further measures under Economic & Monetary Union voluntary for UK

## EU law levels

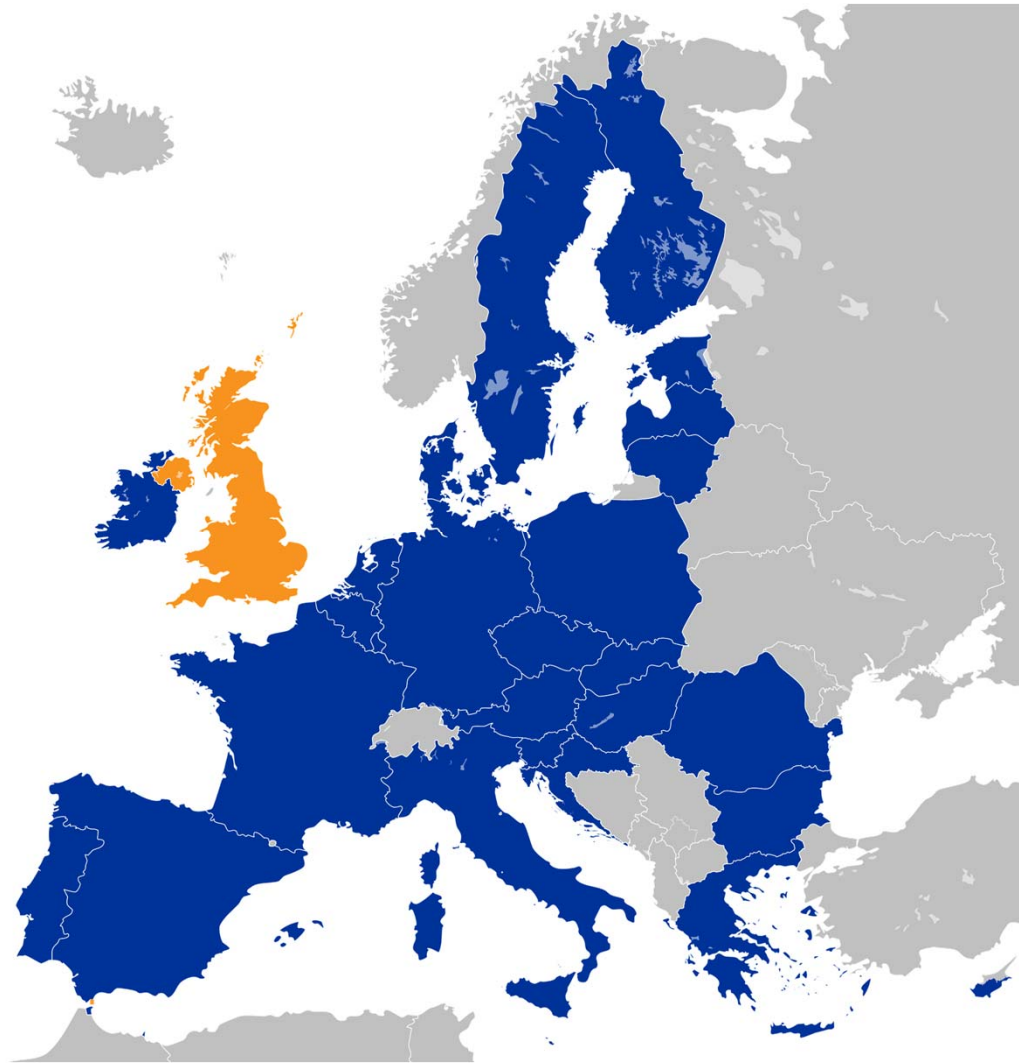
- EU Treaties
- EU fundamental (rights and principles)
  - Right – binding legal effect on all persons in EU
  - Principle – first must be given effect in EU or national law (no clarity)
- Directives legal framework, MS choice how to implement into national law
- Regulations law in MS and throughout EU (rarely MS required to make rules)
- Decisions binding (e.g. EU Commission Competition)
- Delegated & Implementing Acts in order to amend or implement rules set out in directives or regulations
- ECJ

## EU Treaties



<https://schuman.wikispaces.com/Chronology+of+european+treaties>

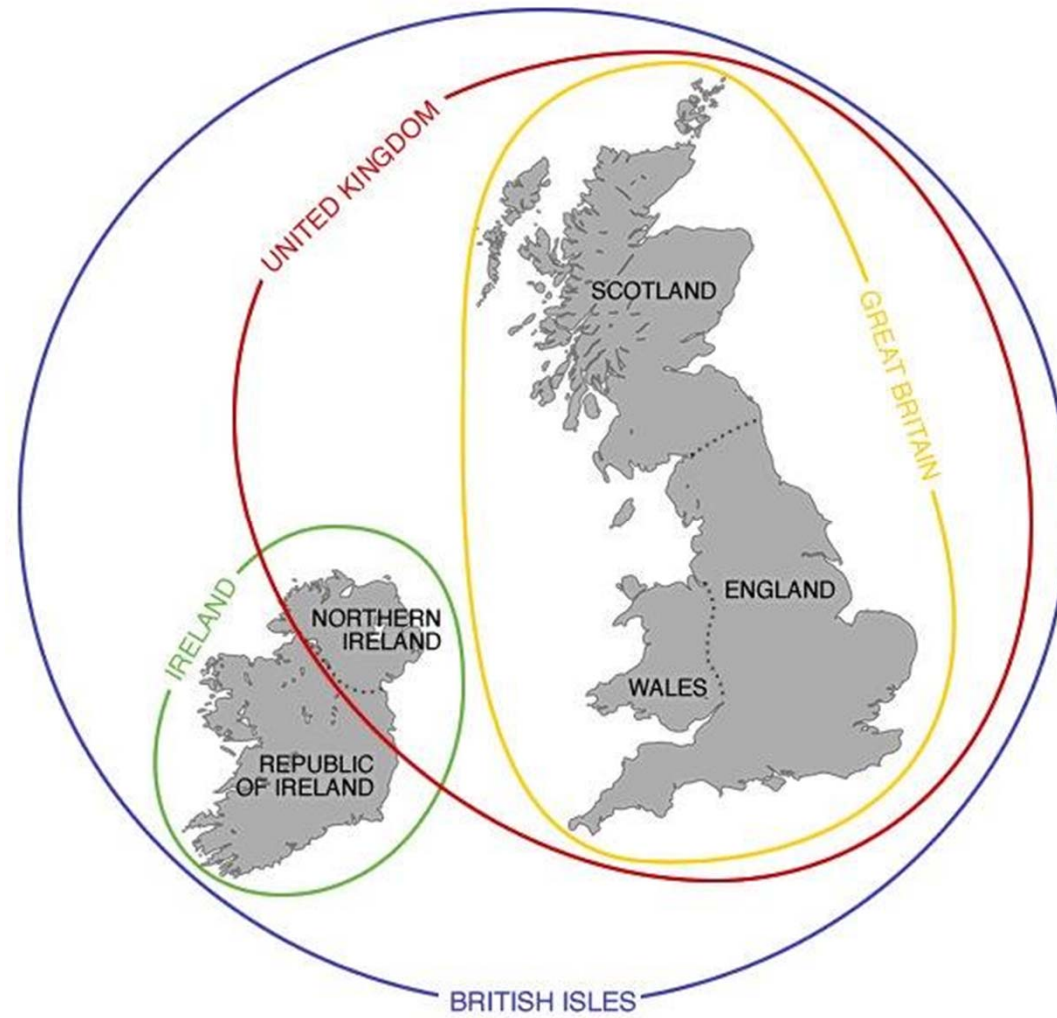
EU



[https://upload.wikimedia.org/wikipedia/commons/thumb/5/53/UK\\_location\\_in\\_the\\_EU\\_2016.svg/2000px-UK\\_location\\_in\\_the\\_EU\\_2016.svg.png](https://upload.wikimedia.org/wikipedia/commons/thumb/5/53/UK_location_in_the_EU_2016.svg/2000px-UK_location_in_the_EU_2016.svg.png)

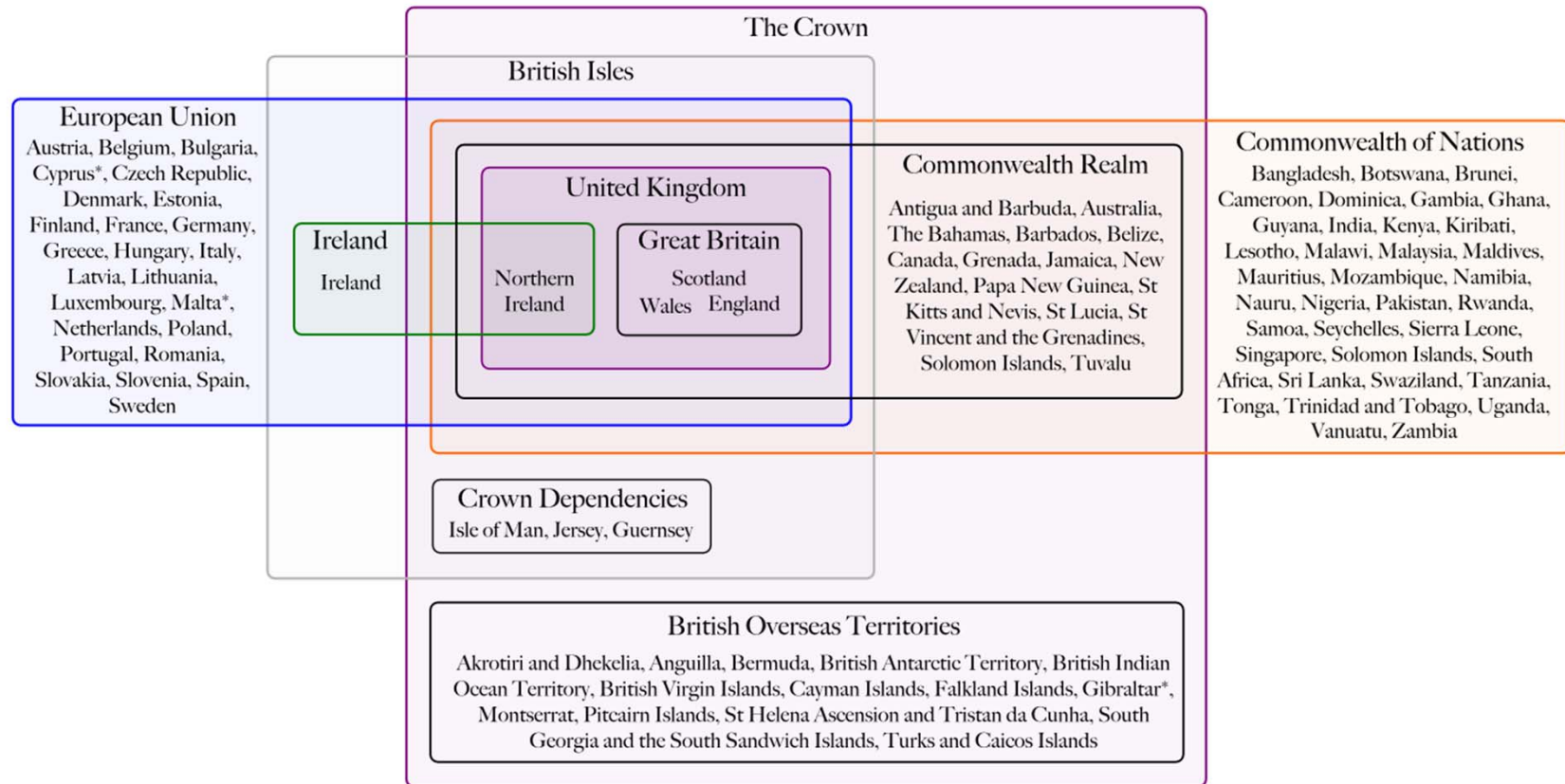


UK



<http://brilliantmaps.com/eng-gb-uk/>

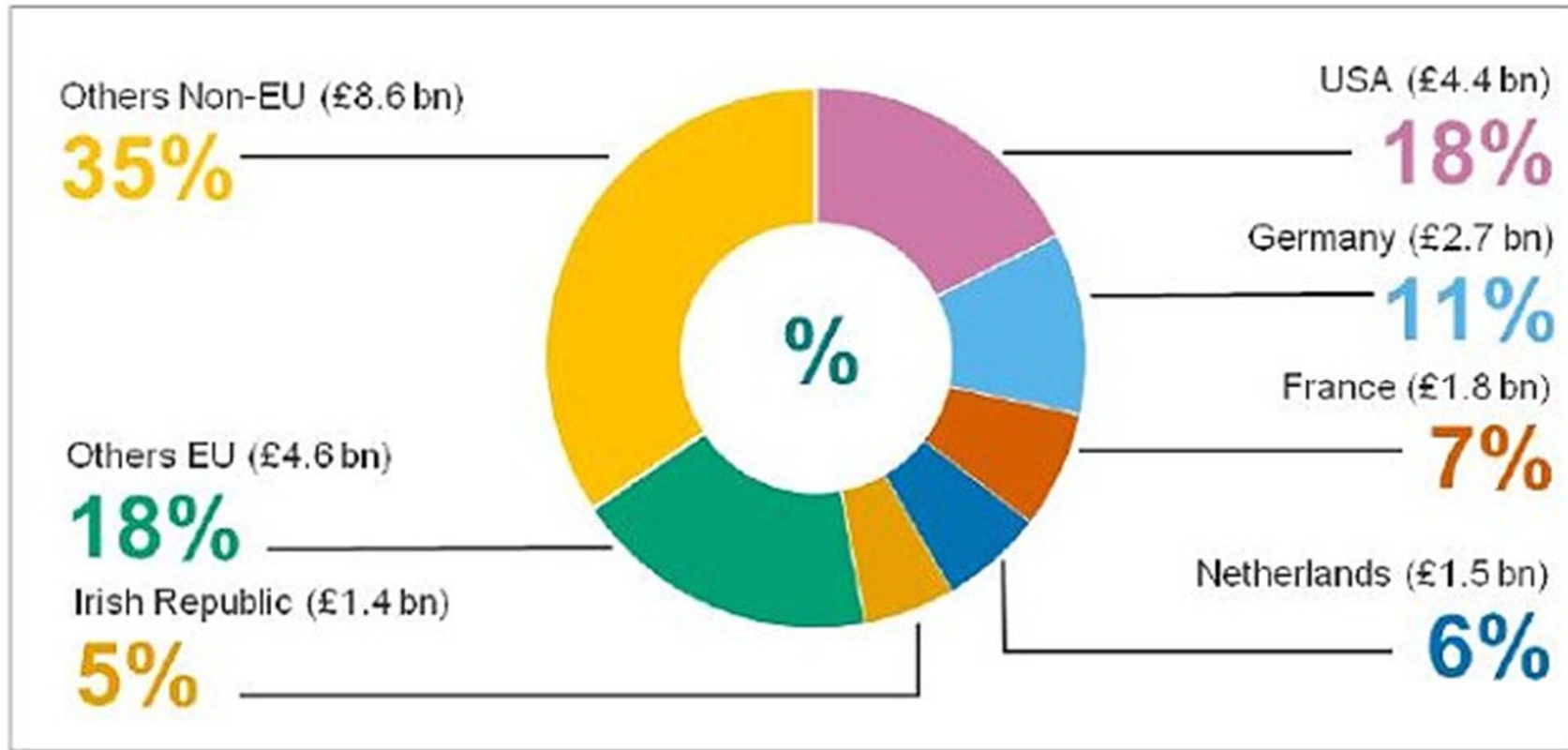
## UK



\*Cyprus and Malta are also members of the Commonwealth of Nations. Gibraltar is also part of the European Union

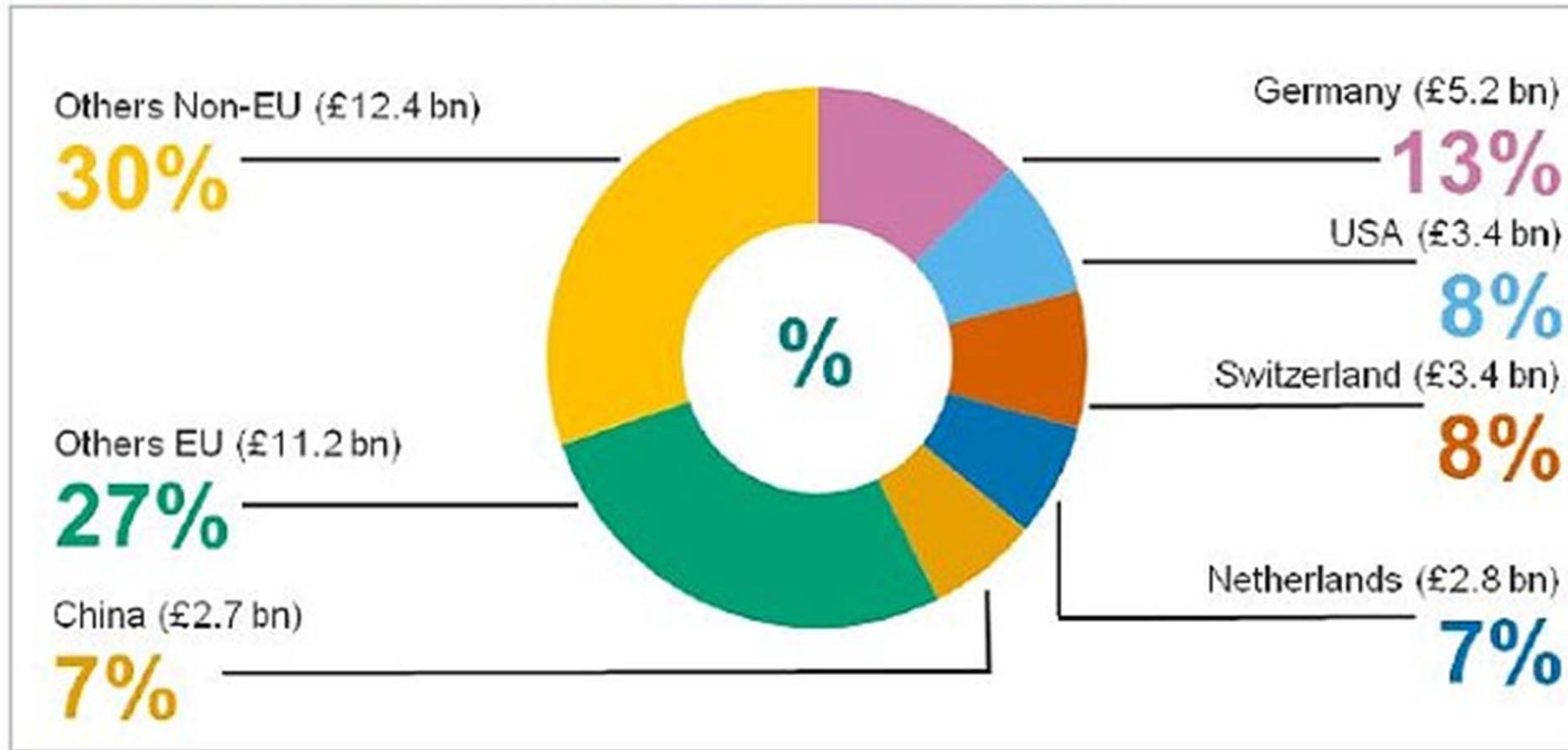
[www.CGPGrey.com](http://www.CGPGrey.com)

## UK exports to top 5 countries, April 2016



[http://www.thisismoney.co.uk/money/news/article-3662050/What-EEA-UK-join-free-trade-Brexit.html?ito=email\\_share\\_article-top](http://www.thisismoney.co.uk/money/news/article-3662050/What-EEA-UK-join-free-trade-Brexit.html?ito=email_share_article-top)

## UK imports from top 5 countries, April 2016



[http://www.thisismoney.co.uk/money/news/article-3662050/What-EEA-UK-join-free-trade-Brexit.html?ito=email\\_share\\_article-top](http://www.thisismoney.co.uk/money/news/article-3662050/What-EEA-UK-join-free-trade-Brexit.html?ito=email_share_article-top)

**UK**

65.1 million

243,610 sq km

EUR 39,598.00

€182.0 billion

UK total imports:  
€564.2 billion

UK total exports:  
€414.8 billion



**EU**

510 million

4,325,000 sq km

EUR 28,796.00

€316.7 billion

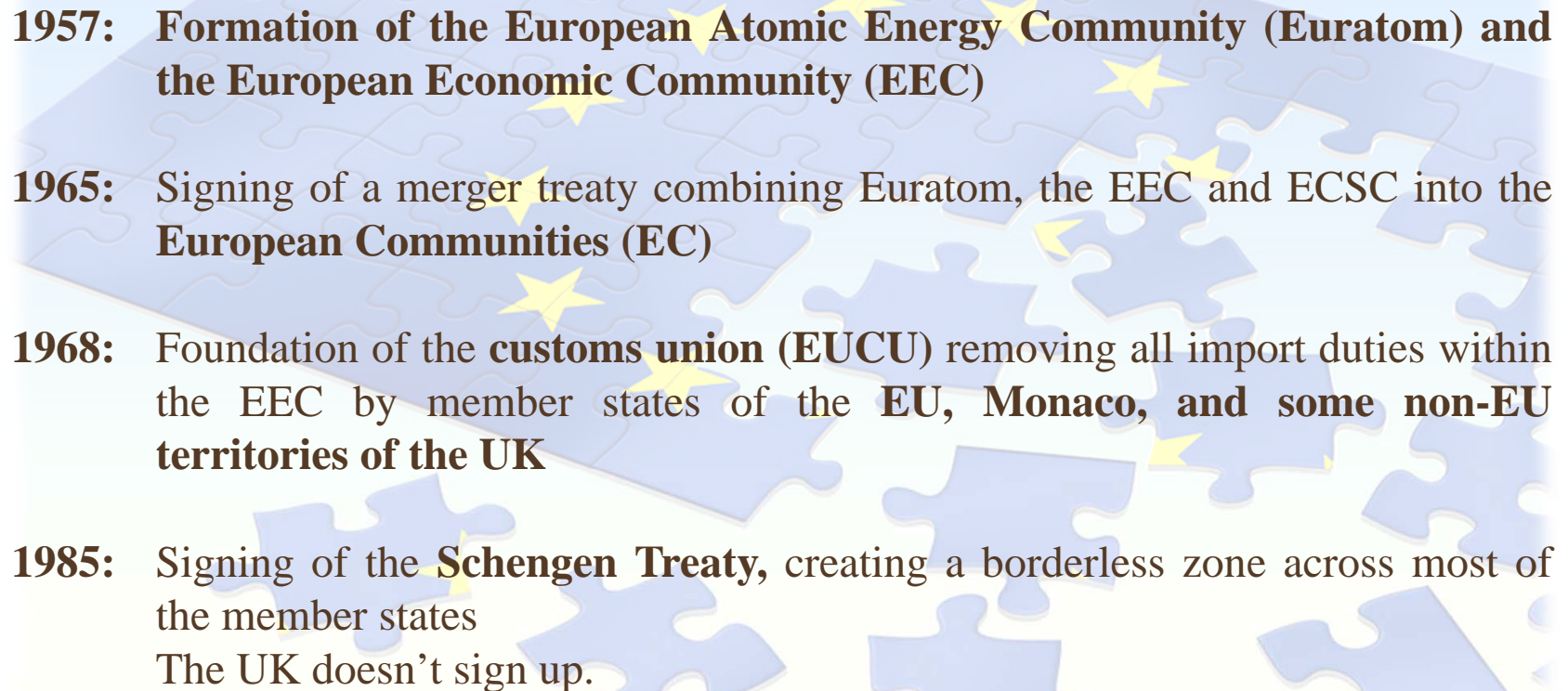
## Summary

- 1951:** Signing of the **Treaty of Paris** (foundation of European Coal and Steel Community (ECSC) by **Belgium, France, West Germany, Italy, the Netherlands and Luxembourg**); The **UK declines** an invitation to join.
- 1960:** Foundation of **European Free Trade Association** (Austria, Denmark, Norway, Portugal, Sweden, Switzerland and the **UK**)
- 1961:** **UK**: first application to join the EEC (vetoed by France in 1963)
- 1967:** **UK**: second application (vetoed by France again)
- 1973:** **UK** submits a third – and successful – application to join the EEC
- 1975:** **UK** referendum to confirm membership of the EEC → British people vote to stay in (67%)
- 1984:** **UK** Rebate (“Thatcher cheque/ *Scheck* ”)
- 1985:** **Schengen** (UK opted out)
- 2002:** **Euro** (UK opted out)

<https://s-media-cache-ak0.pinimg.com/originals/83/bb/69/83bb69c61d87d51f8fa81d954b8e86d3.jpg>



## History

- 
- 1957:** Formation of the **European Atomic Energy Community (Euratom)** and the **European Economic Community (EEC)**
  - 1965:** Signing of a merger treaty combining Euratom, the EEC and ECSC into the **European Communities (EC)**
  - 1968:** Foundation of the **customs union (EUCU)** removing all import duties within the EEC by member states of the **EU, Monaco, and some non-EU territories of the UK**
  - 1985:** Signing of the **Schengen Treaty**, creating a borderless zone across most of the member states  
The UK doesn't sign up.

<https://s-media-cache-ak0.pinimg.com/originals/83/bb/69/83bb69c61d87d51f8fa81d954b8e86d3.jpg>

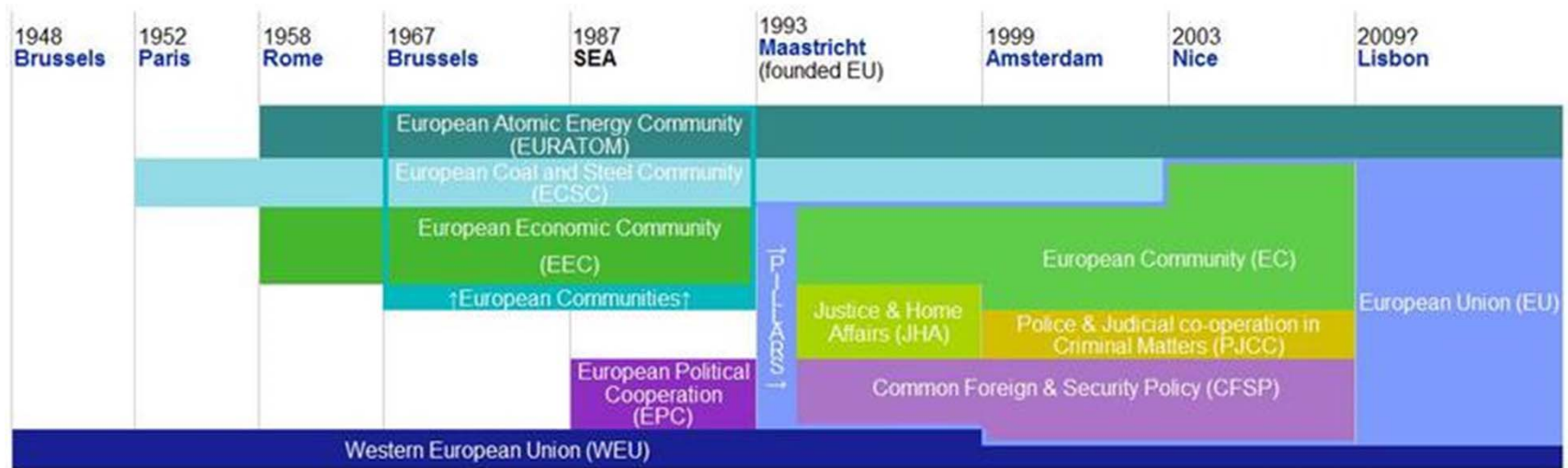
## History

- 
- 1985: Grexit:** Greenland exits the EU (after a referendum in 1982)
  - 1986:** Signing of the **Single European Act**, launching a plan to create a single market by the end of 1992
  - 1992:** Signing of the **Maastricht Treaty** establishing the European Union (EU), setting the foundations for the single currency and establishing cooperation in foreign and security policy
  - 1997:** Signing of the **Amsterdam Treaty**, further developing security policy and starting the process of developing employment and social protection policies
  - 2001:** Signing of the **Nice Treaty**, reforming EU institutions and reinforcing cooperation in defense and judicial policy
  - 2002:** Introduction of the **Euro** in Belgium, Germany, Finland, France, Greece, Ireland, Italy, Luxembourg, Netherlands, Austria, Portugal and Spain
  - 2007:** Signing of the **Lisbon Treaty**, extending the powers of the European Parliament and strengthening the European Council
  - 2016: Second UK referendum** regarding membership of the EU → **BREXIT** (52% to 48%)

<https://s-media-cache-ak0.pinimg.com/originals/83/bb/69/83bb69c61d87d51f8fa81d954b8e86d3.jpg>



## EU Treaties



<https://schuman.wikispaces.com/Chronology+of+european+treaties>

## Scenarios

- No BREXIT
- UK „remaining“ member of the EEA
- Bilateral agreement  
(e.g. Switzerland, Turkey, etc.)
- EXIT without agreement



<https://sajidmanzoor.files.wordpress.com/2013/05/scenario-new.jpg>

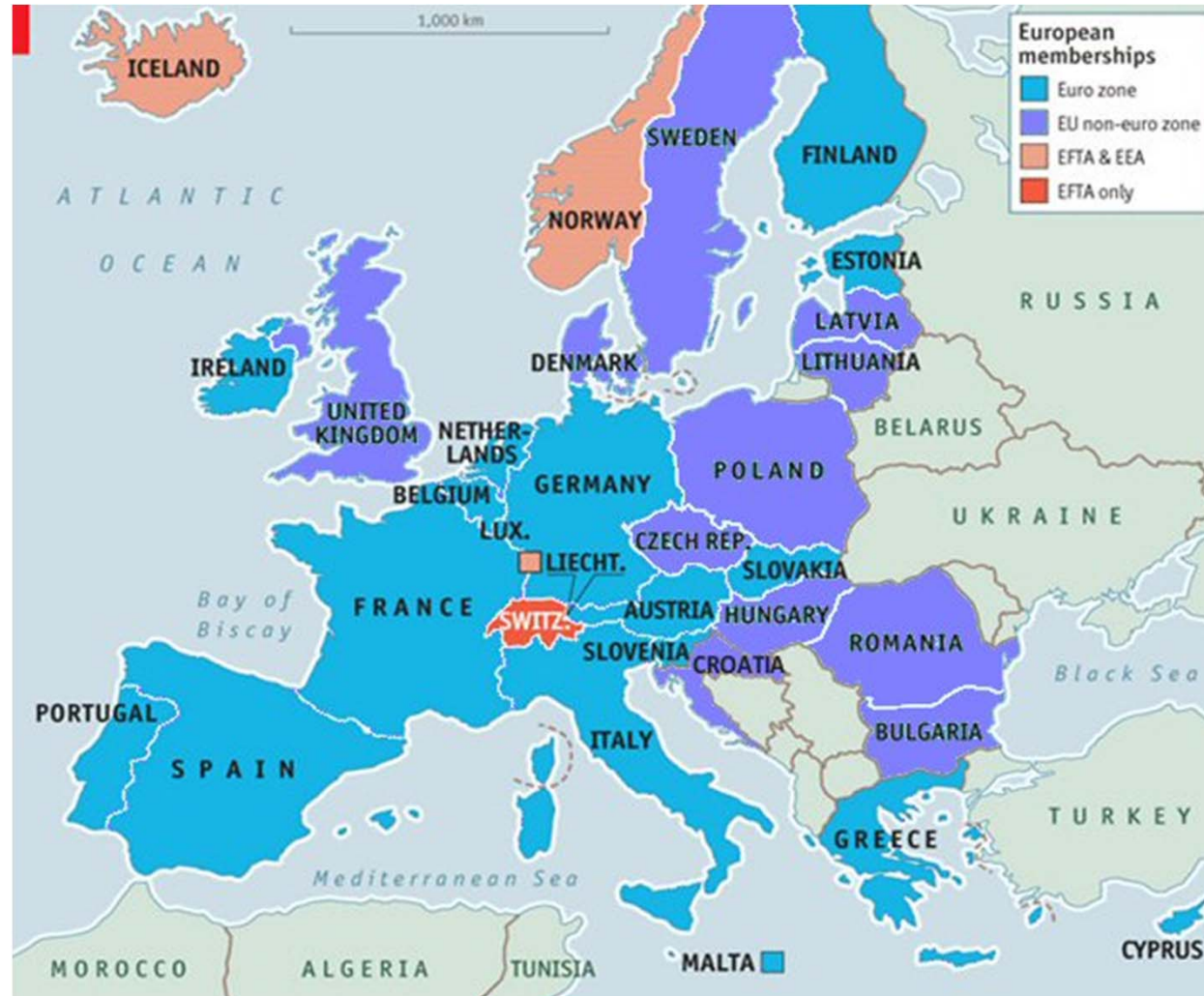
## Article 50

1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.
2. A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.
3. The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.
4. For the purposes of paragraphs 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it.

A qualified majority shall be defined in accordance with Article 238(3)(b) of the Treaty on the Functioning of the European Union.

5. If a State which has withdrawn from the Union asks to rejoin, its request shall be subject to the procedure referred to in Article 49.

EU  
EFTA  
EEA  
Eurozone



<http://campaignforanindependentbritain.org.uk/tag/european-economic-area/>

## EEA Agreement Final Act

The plenipotentiaries of:

THE EUROPEAN ECONOMIC COMMUNITY,  
THE EUROPEAN COAL AND STEEL COMMUNITY,

hereinafter referred to as "the Community", and of:

THE KINGDOM OF BELGIUM,  
THE KINGDOM OF DENMARK,  
THE FEDERAL REPUBLIC OF GERMANY,  
THE HELLENIC REPUBLIC,  
THE KINGDOM OF SPAIN,  
THE FRENCH REPUBLIC,  
IRELAND,  
THE ITALIAN REPUBLIC,  
THE GRAND DUCHY OF LUXEMBOURG,  
THE KINGDOM OF THE NETHERLANDS,  
THE PORTUGUESE REPUBLIC,

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

Contracting Parties to the Treaty establishing the EUROPEAN ECONOMIC COMMUNITY and the Treaty establishing the EUROPEAN COAL AND STEEL COMMUNITY,

hereinafter referred to as "the EC Member States",

and

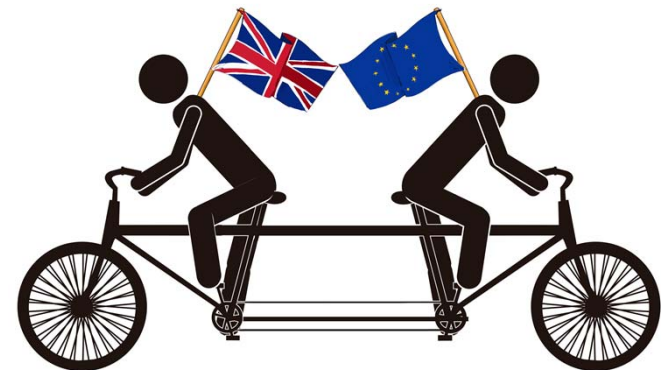
the plenipotentiaries of:

THE REPUBLIC OF AUSTRIA, <sup>{1}</sup>  
THE REPUBLIC OF FINLAND, <sup>{2}</sup>  
THE REPUBLIC OF ICELAND,  
THE PRINCIPALITY OF LIECHTENSTEIN,  
THE KINGDOM OF NORWAY,  
THE KINGDOM OF SWEDEN, <sup>{3}</sup>  
THE SWISS CONFEDERATION,

# HOW?

## Exit from:

- Market access
- Legislation
- Free movement of persons
- Financial contributions for the benefit of the EU
- Supranational court



<https://www.aur.edu/international-relations/wp-content/uploads/sites/8/2016/05/Brexit-picture.png>

## Bilateral Agreement

- Switzerland
- India
- China



## Multilateral Agreements

(?)












- Comprehensive Economic and Trade Agreement
- Transatlantic Trade and Investment Partnership

[http://www.novinite.com/media/images/2012-06/photo\\_verybig\\_140547.jpg](http://www.novinite.com/media/images/2012-06/photo_verybig_140547.jpg)



## How Could the UK's Relationship With the EU Change?

The UK already opts out from parts of the EU. If it leaves, its future could look like Norway, Switzerland, or Turkey, nonmembers with partial participation in the EU.

		 SINGLE MARKET	 FREE MOVEMENT OF PEOPLE	 CONTRIBUTE TO EU BUDGET	 VOTE ON EU LAW	 EUROZONE	 "EVER CLOSER UNION"
 STANDARD EU*		●	●	●	●	●	●
 CURRENT UK MEMBERSHIP		●	●	○	●		
<b>POTENTIAL POST-BREXIT SCENARIOS</b>							
 EUROPEAN ECONOMIC AREA (NORWAY)		○	●	○			
 BILATERAL DEAL (SWITZERLAND)		○	●				
 CUSTOMS UNION (TURKEY)		○					

\*Except for the UK Sources: UK Government, *The Economist* Credits: James McBride, David Foster

COUNCIL on  
FOREIGN  
RELATIONS

<http://www.cfr.org/united-kingdom/debate-over-brex/p37747>



## Impact on...

- Commercial Contracts
- Corporate Law
- Dispute Resolution
- Financial Services
- Other Challenges for (mainland) EU citizens



<http://portfolio.goldlilys-media.com/blog/why-does-every-short-term-decision-have-long-term-consequence>

## Commercial Contracts

- **Commercial Terms Modification**

(EU trade agreements –tariffs/barriers, customs duties, exchange rate, etc.)

- **Termination**

- Force Majeure
- Impossible and Economically Unattractive (useless)

- **Governing Law Clauses**

- Rome I Regulation

<http://www.cambridgelawstudio.co.uk/wp-content/uploads/2012/03/secondary1.jpg>

## Corporate Law

- **SE** (regulation 2157/2001)
  - Statute (?)
- **LLC** (UK Model) incorporated in UK, headquarters in another MS
  - ECJ (incorporation theory within EU)
  - BREXIT: MS private international laws apply, e.g. real seat theory applicable
  - LLC not considered as company, but as registered business partnership
  - Partners personally liable

## Dispute Resolution

- Service of Process (**Service Regulation**)
- European Order for Payment Procedure (**Payment Regulation**)
- **Jurisdiction**
  - Non – exclusive jurisdiction clause [or one sided exclusivity]
  - Non EU court first seized /Judgment enforceable in specific MS/ stay necessary for proper administrative proceedings
  - Anti-suit injunction (if assets in UK)
- **Enforcement (Brussels Regulation)**
  - MS national law (bilateral treaty)
  - Arbitration awards (NY Convention)

<http://www.wvexecutive.com/website/wp-content/uploads/2013/03/dispute-resolution.jpg>

## Financial Services

- Finance the second biggest export of UK after .....
- **Finance Hub - London:**
  - 35% of EU wholesale financial services activity
  - 59% of international insurance premiums
  - Syndication, Clearing, highest level of presence of banks and insurers, etc.
- **Single European Financial Market** (Financial Service Directives)
- **Cross Border „License“ - Passport** for services and establishment of branches in EEA
  - MS respectively Non EU financial services firms

<https://developer.ibm.com/apimanagement/wp-content/uploads/sites/23/2015/03/financial-services.png>

## Financial Services

- Difference: Lending - Investing (rules directly effective)
- **Regulation**
  - Markets in Financial Instruments Directive (MiFID)
  - Alternative Investment Fund Manager Directive (AIFMD)
  - (ESMA: UK equivalent jurisdiction ? Third country passport for managers)
  - Undertakings for Collective Investment in Transferable Securities Directive UCTIS)
- **BREXIT:**  
Tradeoff Passport for Regulation (no compliance with EU regulatory requirements)

<https://developer.ibm.com/apimanagement/wp-content/uploads/sites/23/2015/03/financial-services.png>

## Other Challenges for UK, MS and EU

- Directive 2006/123/EC on services in the internal market
- Education
- Science
- Medicine
- No UK Airlines

BA, Easyjet (Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes)

- Europol, EU arrest warrant, Eurojust
- Tariffs - WTO (125% sugar; 28% beef, milk products 35%, etc.)
- [Legal Services]

<https://developer.ibm.com/apimanagement/wp-content/uploads/sites/23/2015/03/financial-services.png>



## Unfortunate Accumulation of Events



12/2016	Italy Referendum on Constitution
2016	US Federal Reserve raising interest rates
1/2016	US Presidential Elections
2017	French Elections
2017	German Elections
4/2019	EXIT Agreement
2019	EU Elections
31.10.2019	EU Budget

<https://developer.ibm.com/apimanagement/wp-content/uploads/sites/23/2015/03/financial-services.png>



# Thank you for your attention!



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