



Why 'Norway Plus' Won't Work

*Foreword by David Miliband
and Jo Johnson MP*



Demand a vote on the Brexit deal

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Foreword

After more than two years of delay, the choices at the heart of Brexit are now imminent. However, the debate continues to be characterised by sloganeering and confusion. That is why this paper seeks to bring into focus a new option that is being proposed, the so called ‘Norway Plus’ option, which would mean remaining in the EU’s single market the European Free Trade Association (EFTA) and forming a new customs union with the EU.

Norway Plus would represent a long-term commitment to pay to benefit from the European Union’s regulatory structures while choosing to be outside it. The first question to ask about it therefore is a simple one: why would anyone who supports Brexit want a deal that merely magnifies the chief drawback of the current proposal? Instead of a temporary backstop, which Jacob Rees-Mogg stated would be tantamount to ‘taxation without representation,’ Britain would be in a full customs union and single market without any formal decision-making powers or vote. We would be subject to laws over which we had no democratic oversight. It would represent a severe loss of control when compared to the deal we have got in the European Union and clearly is not what was promised in the referendum of 2016.

For those of us who would prefer to stay in the EU, an arrangement where Britain re-joined EFTA would at least avoid much of the immediate economic damage associated with Brexit. However, it would represent a significant loss of power – throwing away a key advantage of membership in the form of our vote, voice and veto around the table.

Both sides would be entitled to ask, if the past two-and-a-half-years of upheaval and tortuous negotiation culminated in a Norway Plus deal, what was the point of all that?

Even then, it would not be the end of the story. We would need to pay handsomely to join the customs union and the single market. After all, non-member Norway currently pays more per head for no voice at the table than we do as full members of the EU. And, as for the idea that we could free ourselves from the supposed yoke of the Common Agricultural and Common Fisheries Policies, this paper demonstrates that we would need to stay closely aligned or de facto members of both.

When trust in politics is in such short supply, Norway Plus would not deliver the mandate of 2016 and it could hardly unite the country. Worse, still, some of the claims made for ‘Norway Plus’ are in danger of repeating the deeply misleading promises made for Brexit two years ago. As this paper shows, contrary to some of the claims made for a Norway Plus deal, it would not be easy to negotiate, would not mean reduced payments to the EU and would not allow the UK government to end freedom of movement for migrants from the EU.

At this crucial and fragile time for democracy, the solution to the gathering crisis around Brexit is to face squarely the economic and political trade offs facing the country, and let the people come to a conclusion. In that context, to embrace Norway Plus is to avoid the core choice, not make it.

David Miliband
Jo Johnson MP

Executive Summary

- **Norway Plus is politically unrealistic – the ship has sailed.** The Government and official Opposition have repeatedly rejected EEA membership because of, among other things, the rules on free movement and state aid, and the inevitable loss of UK influence.
- **It wouldn't eliminate the need for the backstop.** Even if the political declaration could be renegotiated, the withdrawal agreement would remain intact – and with it, the universally unpopular backstop. The divorce settlement would be similarly unaffected.
- **It would take years to negotiate and would prolong the Brexit uncertainty.** Even if the UK, EU and EFTA agreed to aim for Norway Plus, there is no guarantee the negotiations would be successful, given the changing political context in the EU and UK.
- **It would leave the UK with no formal voice, vote or veto.** The UK would have no formal oversight of new laws handed down by the ECJ, via the EFTA Court. Because of the size of the British economy and fears of 'cherry-picking', the EU would likely compel us to follow EEA rules more strictly than Norway or other members of EFTA.
- **It would give us less control, not more, over free movement rules.** EEA membership would mean complying in full with EU rules around free movement. Claims about how readily the UK could apply an 'emergency brake' are misleading. And by giving up our seat in the EU, the UK would be sacrificing our ability to shape and reform the rules around how free movement operates.
- **It would mean sending money to the EU but lose our seat at the table.*** This would amount to taxation without representation – and, based on Norway's current contributions per capita, we could end up paying roughly as much as we do now.
- **It would likely lead to us replicating the Common Fisheries Common Agricultural Policies, whilst giving us less say over the rules.** The EU would insist we agreed not to subsidise our farmers any more than EU members subsidise theirs. It would also insist on a fisheries agreement that builds on "existing reciprocal access and quota shares" to get a long-term deal. The only difference would be that we would lose our say over the rules.
- **The UK would lose our influence over our trade policy, whilst also not gaining an independent trade policy.** We would have to reduce our tariffs in line with the EU's new trade deals but would be unable to participate or vote in negotiations. We would have no guarantee of reciprocal access when the EU strikes new trade deals, and no leverage over that third country to secure the same terms.
- **Far from uniting the country or helping us 'move on' from Brexit, Norway Plus would likely do the opposite.** The misleading claims being made about it today are already reminiscent of the undeliverable promises that were made for Brexit two years ago. The reality is that Norway Plus would mean the arguments over Brexit would continue for many years to come.

* This is corrected from the original version, published on 7 December 2018, where we incorrectly stated "the UK would send money to the EU but have no influence over how that money is spent".

Introduction

Norway Plus

Norway Plus is described by its advocates as offering a ‘better Brexit’.¹ The proposal is being developed by MPs from the Conservative and Labour parties as a ‘plan B’ if, as expected, Theresa May’s Brexit package (the withdrawal deal and political declaration on the future relationship) fails to win support in the House of Commons on 11 December.

‘Norway for Now’ was a proposal to swap the transition period for immediate EFTA and EEA membership, with a customs union, in 2019, followed by a trade deal a few years later which would supersede that EEA and customs union membership. The plan was unworkable for numerous technical reasons relating to our withdrawal.² Crucially, it was also explicitly rejected by the Norwegian prime minister,³ who was understandably wary of any temporary solution in which the UK would join a group of small nations, cause immense disruption, and then leave shortly afterwards.

Norway Plus differs from ‘Norway for Now’ in several key ways.⁴ It accepts the withdrawal agreement and transition period; it proposes a permanent membership of EFTA and the EEA to begin after 2020; and there will also be an indefinite customs union (although the Norway Plus website suggests that attempts should be made to find alternative solutions to the customs union in the longer term).

Norway Plus is not the only ‘alternative Brexit’ proposal to have been mooted. Since the Brexit referendum, various ideas have circulated about joining either the single market or the customs union, or aspects of one or other of them. A number of related proposals are still being pushed. Some in Parliament advocate joining the EEA without entering into a customs union. Labour, meanwhile, advocates a new customs union the EU ‘with a UK say’ over EU trade policy, along with a ‘strong relationship with the single market’. Many of the conclusions in this paper also apply to those proposals. But it is important to note that membership of *only* the EEA, or *only* the customs union, would not be sufficient to deliver frictionless trade between the UK and EU. Crucially, membership of both is required to guarantee an invisible border on the island of Ireland and in the Irish Sea.

EFTA and the EEA

EFTA was established in 1960 and initially featured the UK as a member state. Its current members are Norway, Iceland, Liechtenstein and Switzerland. These countries enjoy tariff-free trade with one another and also enter into trade deals both collectively and individually.

The EEA is an extension of the EU’s single market. It was established in the EEA Agreement of 1993, and grants membership of the single market to three EFTA states: Norway, Iceland and Liechtenstein. This comes with the obligation to apply the single market’s four freedoms of movement: those of goods, services, capital and people. (Liechtenstein’s opt-out is discussed in Chapter 2.) Switzerland’s economic relationship with the EU is governed not by the EEA

¹ ‘Norway Plus’ website: <http://betterbrexit.org.uk/>

² See Jonathan Lis, ‘Why the ‘Norway for Now’ Proposal Won’t Work’, People’s Vote, 30 October 2018

³ Chris Morris, BBC News, 30 October 2018: <https://www.bbc.co.uk/news/uk-46024649>

⁴ Norway Plus: <http://betterbrexit.org.uk/>

but a series of bilateral agreements which are negotiated on an ongoing basis. The specific drawbacks of EEA membership are outlined in Chapter 2.

Customs union

Members of the EU's customs union apply a common external tariff. No EFTA states are also members of the customs union. The backstop in the withdrawal agreement necessitates an indefinite customs union (or 'single customs territory')⁵ between the UK and EU to prevent a customs border either on the island of Ireland or between Great Britain and Northern Ireland. The drawbacks of membership of the customs union are discussed in Chapter 3.

⁵ UK Government, Proposed Withdrawal Agreement, 25 November 2018: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/759019/25_November_Agreement_on_the_withdrawal_of_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_from_the_European_Union_and_the_European_Atomic_Energy_Community.pdf

Chapter 1

Political and practical problems with negotiating Norway Plus

The EU has insisted that there is no other withdrawal agreement available to the UK. Michel Barnier has said: “Given the difficult circumstances of this negotiation and given the extreme complexity of all the issues of the British withdrawal, the deal that is on the table ... this deal is the only one and the best possible.”⁶ This will remain the case with a Norway Plus Brexit. But even if the EU were to agree to look again at the non-binding political declaration, there are a number of serious, and possibly insurmountable, political and practical problems with getting there.

Lack of government or frontbench Labour support

A fundamental problem with Norway Plus is that both the Government and the official Opposition have repeatedly ruled out membership of the EEA, making the prospect of there ever being a parliamentary majority for it highly unlikely.

There are a number of reasons for their opposition. A key reason is that membership of the EEA requires the free movement of people. Theresa May has made it clear since she became prime minister that ending free movement of people is the *sine qua non* of her Brexit strategy. On 26 November 2018 she told Parliament: “It is important that we deliver on what people voted for in the referendum. They voted for an end to free movement.” After being asked specifically about the Norway Plus proposal more recently, she replied: “That option does not deliver on the vote of the British people.”⁷

Meanwhile Jeremy Corbyn has proved similarly unenthusiastic. He has for a long time insisted that free movement must end with Brexit. In May 2017 he said: “Clearly the free movement ends when we leave the European Union.”⁸ He has also insisted that a key Brexit priority for Labour is to “seek to negotiate protections, clarifications or exemptions where necessary in relation to privatisation and public service competition directives state aid and procurement rules”.⁹ This is not compatible with EEA rules. Given this, it is unsurprising that Labour has declined a number of opportunities to vote in favour of EEA membership. It would be a remarkable reversal if this position were to change. Indeed, on 28 November 2018 Jeremy Corbyn’s spokesman said: “We’ve said in relation to the Norway option that we just don’t think it works for Britain and we’ve said that all along.”¹⁰

⁶ Gabriela Baczynska, Reuters, 29 November 2018: <https://www.reuters.com/article/uk-britain-eu-barnier/its-the-only-deal-possible-eus-barnier-tells-brexiteers-britain-idUSKCN1NY0TV>

⁷ Hansard, 26 November 2018: <https://hansard.parliament.uk/Commons/2018-11-26/debates/F334A05A-1975-4F80-95F4-3E07423AA960/LeavingTheEU>

⁸ Ashley Cowburn, Independent, 15 May 2017: <https://www.independent.co.uk/news/uk/politics/jeremy-corbyn-free-movement-people-brexiteers-general-election-itv-a7735471.html>

⁹ Jeremy Corbyn, 26 February 2018: <https://labour.org.uk/press/jeremy-corbyn-full-speech-britain-brexiteers/>

¹⁰ Heather Stewart, Guardian, 28 November 2018: <https://www.theguardian.com/politics/live/2018/nov/28/brexiteers-pmqs-may-corbyn-hammond-economic-analysis-confirms-that-leaving-eu-will-make-uk-poorer-politics-live?page=with:block-5bfec823e4b04e8ca091ec89#liveblog-navigation>

Objections to EEA membership do not only concern freedom of movement and state aid. Inside EFTA there would also be a compulsory judicial requirement in the EFTA Court, which simply replaces (for Brexiters) the ‘problem’ of the European Court of Justice. And although Norway Plus could potentially exclude membership of EU agencies, foreign policy, and agriculture and fisheries instruments, in economic and trade terms Norway Plus is emphatically ‘BRINO’: Brexit in name only. It offers the least popular elements of the current withdrawal deal – deep integration with the EU without any meaningful say over the resulting new laws – and magnifies them. One might have to ask, from a political perspective, what would be the point.

Would EFTA want it?

Although some have argued over whether we might stay in the EEA without joining EFTA, both the proponents of Norway Plus and EU sources affirm that to do so we would have to join EFTA. This accordingly raises the question of whether EFTA would agree. The UK would have to apply like any state, and that would require a process of detailed negotiation. The UK, after all, has a population almost five times greater than the other four states combined, and its entry would cause a significant change – and disruption – to EFTA’s infrastructure and decision-making bodies. One Norwegian MP from the governing party said: “I don't want the European Free Trade Association to be the rebound partner that the UK comes to after breaking up with the EU.”¹¹

It is not clear whether EFTA states would welcome a UK accession bid, but if they were to agree they would almost certainly seek comprehensive assurances from the British government that it would not seek to hamper the effective transfer of legislation. The EEA EFTA states require unanimity for legislation to be effectively applied cross-border, and the expectation is that members do not reject major EU legislation. If the UK were to do so, it could greatly hinder the organisation’s efficiency and utility. One EFTA official raised concerns about the potential need for EFTA states to negotiate new opt-outs and devote multiple resources to individual new laws, which would cause considerable inconvenience, and potentially inhibit Norway and Iceland’s market access to relevant areas of the single market.

Would the EU want it?

There is an argument that the EU might relish the opportunity to keep Britain close while denying it a vote or veto. However, there are deeply-held concerns in European capitals that an off-the-shelf EEA model offers the UK too many perks and freedoms. At the moment the agreement works because, as one official put it, Norway and Iceland are enthusiastically pro-European and actively want to apply the rules of the single market. They are also small economies relative to the EU, and even delays to implementing EU legislation do not cause the EU significant damage or inconvenience. The UK, however, would be different. According to some officials there might have to be less flexibility than is currently offered to Norway and Iceland, because any British intransigence could compromise the EU’s single market and place EU businesses at a relative disadvantage to UK counterparts.

Some EU figures fear in particular that the UK could seek to use emergency clauses that the other states do not, leading to the scenario of British ‘cherry-picking’ or ‘cakeism’ which the

¹¹ Faisal Islam, Sky News, 3 December 2018: <https://news.sky.com/story/why-norway-doesnt-want-to-be-uks-rebound-relationship-after-brex-it-11570549>

EU has been so keen to avoid.¹² Officials suggest that the EU might have to introduce its own safeguards to more tightly police the UK and prevent it from refusing legislation, even when it might demonstrably be in British interests to do so. Put simply: the EU is not going to let the UK dictate the rules or exploit lenient implementation frameworks.

There is further suspicion that the UK could use the EEA to engineer its unilateral exit from the backstop.¹³ Under Article 127 of the EEA Agreement, any EEA member state can withdraw from the treaty with twelve months' notice. After the last two years of difficult negotiations, some in Brussels may fear that the UK government (or a future one) could join the EEA, thus terminating the backstop, and then trigger Article 127, thus ultimately circumventing it. The EU may demand comprehensive assurances from the UK which would eliminate any such risk. This would naturally require detailed negotiation, and potentially ensure that the UK was 'locked in' to the EEA much as it would be locked in to the backstop.

On a technical level, there simply is not time or capacity to renegotiate the political declaration to establish Norway Plus before Brexit day. When asked about the proposal as a Plan B if the government's vote failed in the Commons, a senior EU diplomat said: "This is a very hypothetical question and I don't see how we could get it together in the time available."¹⁴

How would we add a customs union to the EEA?

Although European Commission negotiator Michel Barnier has in the past discussed the possibility of a 'Norway plus customs union' option, this is currently impossible under the existing legal framework. EFTA is not a customs union, but its members operate trade deals both individually and collectively. Specifically, the EFTA Convention requires any acceding state to "apply to become a party to [its] free trade agreements".¹⁵ Consequently, if the UK were to accept an off-the-shelf EFTA/EEA solution, it would have to apply to join EFTA's trade deals. That means the UK would have to change its tariffs, thus violating the needs of the backstop (as well as severely compromising just-in-time supply chains). Put simply, then, EFTA would have to agree to waive the trade-deal requirement – which would require negotiation and potentially quid-pro-quo. This de-facto permanent customs union with the EU would also prove deeply unpopular, with the UK neither gaining an independent trade policy nor continuing to have influence over EU trade policy.

The backstop and withdrawal agreement do not change

A key reason cited by MPs – including the frontbench of the Labour Party, the DUP and Conservative backbenchers – for rejecting the withdrawal agreement is the backstop, which potentially locks the UK into the customs union indefinitely, and produces regulatory divergence between Northern Ireland and the rest of the UK. A commitment to negotiate Norway Plus does not change that. The backstop can only be over-ridden if everything is resolved. The Norway Plus proposal requires detailed negotiation to work, and there is no guarantee that the two sides would reach agreement. If they did not, the backstop would

¹² Alex Barker, Financial Times, 30 November 2018: <https://www.ft.com/content/17e3993c-f32e-11e8-9623-d7f9881e729f>

¹³ Ibid.

¹⁴ Jessica Elgot and Jennifer Rankin, Guardian, 30 November 2018: <https://www.theguardian.com/politics/2018/nov/30/brexit-eu-dismisses-mays-claim-that-deal-might-be-renegotiated>

¹⁵ EFTA Convention, Article 56(3): <http://www.efta.int/sites/default/files/documents/legal-texts/efta-convention/Vaduz%20Convention%20Agreement.pdf>

necessarily be activated. Even if the UK joined the EEA and then triggered Article 127 to begin a process of departure from it (see section above), the EU would ensure that no trade deal could follow without a new backstop.

Needless to say, the unpopular divorce settlement would also remain, and would be treated separately from any future financial contributions.

It has never been done before, so could take years to negotiate

Even if advocates of Norway Plus were to change their view again and seek an ‘off-the-shelf’ EEA solution, that would require negotiating membership of EFTA and the composition of the EFTA Court. The EU would then have to agree to amend the EEA Agreement and let the UK join. Specifically, our EEA membership would have to be ratified by each EU member state. That could take years – not least because all national parliaments in the EU would likely have a veto. In Belgium, for example, that would also include the Walloon parliament, which almost blocked the EU’s trade deal with Canada in 2016.

But for Norway Plus, we would not simply be negotiating off-the-shelf EFTA or EEA membership. The EFTA Convention would need to be changed to exempt us from its trade deals requirement (see above), and we would then need to separately negotiate add-ons for agriculture and fisheries, which are excluded from the EEA Agreement. (See Chapter 2.) In particular, no country outside the EU is a member of both its single market and customs union, let alone closely aligned on agriculture and fisheries. Such a bespoke arrangement would not only leave us with unprecedented integration without a formal say, but would also require a great deal of time and intensive negotiations, at a time when the UK would have ceded all leverage having left the EU and signed the divorce bill. Some experts have even suggested that the UK might need its own EEA ‘pillar’ to complement those of the EU and EFTA,¹⁶ which would necessitate brand-new administrative instruments, and needless to say, even more time. Brussels is not renowned for devising such tools quickly. Norway and the EU spent two years just negotiating a bespoke agriculture deal.¹⁷

It still requires a blindfold Brexit and leap of faith

Even if there were a commitment from both the UK and EU to Norway Plus, this would by no means guarantee it would actually be delivered. Only the withdrawal agreement is binding, and while the UK and EU could perhaps renegotiate the political declaration to signal mutual intentions, nothing would guarantee that outcome. Negotiations are unpredictable, and the EU of 2019 and 2020 will feature a new Commission, new European Parliament and potentially a new German Chancellor – any of whom could have different priorities from their predecessors, and who might be more hostile towards the UK and wary of Britain gaining special privileges. Norway Plus is therefore not an idealised Norway ‘in abstract’, but set firmly in the context of the withdrawal agreement and a changing EU. At the same time, there is no certainty about the political circumstances in the UK during that period or the priorities of any future government.

The upshot of this is years of uncertainty, which would necessitate an extraordinary leap of faith. We would be unable to start negotiating before we left, and could find that Norway Plus

¹⁶ Peter Foster, Telegraph, 29 November 2018: <https://www.telegraph.co.uk/politics/2018/11/29/norway-plus-plan-not-simple-brexiteers-believe/>

¹⁷ European Commission, 7 April 2017: https://ec.europa.eu/info/news/eu-and-norway-conclude-negotiations-enhance-trade-agricultural-products-2017-apr-07_en

does not materialise – by which time it would be too late to turn back. In any event, it seems likely that committed Brexiters would attempt to frustrate the process and engineer a Canada-style arrangement, while some Remainers might not be satisfied with the permanent status of lobbyist and accordingly attempt to block it.

This negotiating period would also mean prolonged uncertainty for business. Although a commitment to Norway Plus would grant business the expectation of a landing zone, there would be no guarantees of either timing or a successful conclusion – particularly with regards to agriculture and fisheries. Long-term planning might become extremely difficult.

We simply cannot be certain of where we are going. Even if the EU were to agree in principle, the Norway Plus proposal requires us to simply trust the government to get the trade negotiations right – with the danger of falling into the deeply unpopular backstop if things go wrong.

Chapter 2

Problems with EEA membership

We would lose control over our laws

The most central problem of EEA membership is that EFTA members do not have any formal supervision over legislation – still less a vote or veto. Officials quite openly admit that Norway and Iceland are professional lobbyists in Brussels, petitioning the institutions to consider their interests when drafting new legislation. One figure said that the system “works well for lobbyists and for citizens, who gain the rights of [for example] free movement, but politically the system doesn’t work because you can’t fully participate”. Crucially, the system depends on goodwill. If the EFTA states, as one official said, “do their homework and show willing”, the EU is more inclined to accommodate them, informally, into decision-making processes. Needless to say, such informal influence might not suit the UK, which would be unaccustomed to merely being ‘permitted’ an occasional seat at the table if it behaved itself.

The EEA’s fundamental engine is legal homogeneity: when the EU passes a new law, EEA EFTA states are required to mirror it. This takes place via the EEA Joint Committee, and if necessary in domestic laws – even if they override existing ones.¹⁸ Some commentators point to statistics revealing that Norway, for example, does not implement all the single market legislation, but officials note that market access is restricted if it does not. Importantly, Norway and Iceland do not ‘block’ legislation, but merely ‘postpone’ it. Because these countries are small, the EU is normally prepared to give them leeway, as such delays do not significantly impact upon the single market. Officials emphasise that the EEA is a ‘consensus’ machine. One figure said that it works because Norway, Iceland and Liechtenstein “want to be in their EEA and the EEA’s entire purpose is to accept EU legislation”. Tellingly, the clause which enables EFTA member states to suspend implementation of new laws – Article 102 – has never been activated in the EEA’s 25 years.

This might all prove problematic for the UK. Peter Foster notes that we would need to align on “competition and state aid rules ... consumer protection, company law, environment, social policy, statistics”,¹⁹ and the EU would likely take pre-emptive measures to prevent the UK from blocking new laws or even from postponing them indefinitely. Certainly, Brussels would take a much firmer line on the UK than on Norway, because the UK would have so much more power to unbalance the single market. The EU would likely also ensure that the UK was strongly tied to the ECJ – and devise sanctions for significant breaches of EU law to keep Britain from unduly shaping or distorting the bloc from outside it. As former EU diplomat Lotta Nymann-Lindegren put it: “There is a large grey zone, where even with minor issues you

¹⁸ Dominic Webb, Arabella Lang, Matt Keep, Vaughne Miller, Melanie Gower, House of Commons Library, Number 8129, 6 June 2018, p15: <http://researchbriefings.files.parliament.uk/documents/CBP-8129/CBP-8129.pdf>

¹⁹ Peter Foster, Telegraph, 29 November 2018: <https://www.telegraph.co.uk/politics/2018/11/29/norway-plus-plan-not-simple-brexiteers-believe/>

can all of a sudden create a competitive advantage, so I think the balance of rights and obligations would be a very important thing.”²⁰

Under Norway Plus, the UK would not only be subject to EU pressure, but from vetoes inside the EFTA pillar. While EEA EFTA states are free to apply any laws domestically, they must agree unanimously in order to implement new legislation across borders. If the UK wanted to implement a new EU law, or had to in order to guarantee continued market access, it would be at the mercy of an effective veto from Liechtenstein. Where new laws were not in Britain’s interests, matters could prove even more problematic. One Brexit negotiator referred to the impossibility of applying rules during a ‘serious financial crisis’, and remarked that “for a big political beast like the UK, it is just not sustainable over time.”²¹ As journalist Alex Barker puts it: “Because of the size of the UK financial sector as a proportion of the overall economy, British taxpayers are the world’s most exposed to financial risk. But they would have no democratic control over the EU policymakers in charge of the risk dial.”²²

The principal fact remains that the EEA’s consultation mechanisms are almost non-existent. The UK might be content with current rules, but would have no meaningful ability to stop new ones, even if they contravened the national interest.

Free movement would continue

EFTA officials are extremely clear that free movement of people is an essential element of EEA membership. They express deep alarm at the possibility that the UK might seek to trigger Article 112 of the EEA Agreement, the so-called ‘safeguard’ clause which permits a unilateral (and temporary) brake of one of the freedoms in the event of a member state’s “serious economic, societal or environmental difficulties”.²³

The proponents of Norway Plus often mention Article 112, but it is not a plausible remedial measure. For a start, the difficulties would have to appear after a member state’s EEA accession; in Britain’s case, the issues related to free movement would long pre-date it. The EEA Agreement also makes clear that “safeguard measures shall be restricted with regard to their scope and duration to what is strictly necessary in order to remedy the situation”.²⁴ In other words, it could not be a permanent suspension. Articles 113 and 114 also make clear that other contracting parties to the EEA can pursue ‘rebalancing’ measures. Officials privately suggest that retaliation or even suspension of the other freedoms would be likely outcomes – thus rendering our membership pointless. Moreover, the EU might seek to introduce clauses into the UK’s agreement explicitly restricting such unilateral action. One figure described the talk of Article 112 as “passive aggressive”, and suggested that its triggering would “negatively transform the relationship”. As former diplomat Lotta Nymann-Lindgren has made clear, the

²⁰ Jennifer Rankin, Guardian, 4 December 2018:

<https://www.theguardian.com/politics/2018/dec/04/norway-option-is-worst-of-all-brexite-outcomes-for-uk-say-eu-sources-rules>

²¹ Alex Barker, Financial Times, 30 November 2018: <https://www.ft.com/content/17e3993c-f32e-11e8-9623-d7f9881e729f>

²² Ibid.

²³ EEA Agreement, Article 112: <http://www.efta.int/media/documents/legal-texts/eea/the-eea-agreement/Main%20Text%20of%20the%20Agreement/EEAagreement.pdf>

²⁴ Ibid.

safeguard clause “is not designed for migration management on a regular basis, it is designed for extreme situations”.²⁵

There is one EEA member with an opt-out: Liechtenstein, with a population of 38,000. The opt-out takes place under Protocol 15 of the EEA Agreement and specifically covers freedom of residence. At the end of 1997, Liechtenstein also briefly triggered Article 112 in order to suspend free movement of people while negotiating that opt-out.²⁶ The differences between the UK (population 66 million) probably do not need to be spelled out, but even a replica of Liechtenstein’s model would cause unforeseen difficulties. Liechtenstein issues 56 residence permits and 300 short-term permits for EEA citizens each year. That equates to 147 residence permits and 790 short-term permits per 100,000 people. For a country of the UK’s size that would necessitate 97,000 residence permits and 521,000 short-term permits for EEA nationals each year. Currently net migration from the EU stands at just 74,000.²⁷ So, ironically, following Liechtenstein’s example could well result in an increase in numbers.

Crucially, by giving up our seat in the EU, the UK would be sacrificing our ability to shape and reform the rules around how free movement operates.

It would mean taxation without representation – and almost as much money as now

Any notion that Norway Plus would significantly reduce the UK’s financial contributions is mistaken. Not only would the UK be almost certain to lose its current rebate, but it could find itself paying almost as much money as it does at the moment. EEA EFTA states do not pay directly into the EU budget, but instead contribute to a compulsory instrument known as the EEA Financial Mechanism, which seeks to redress social inequalities in the EU – principally via grants to poorer countries inside the bloc. EEA EFTA states are responsible for where the money goes, but the amount is determined in negotiations (described by one official as ‘tough’) every five to seven years.

Norway currently pays €391 million per year to the Financial Mechanism, which equates to around €74 per person. Norway also pays for access to various other EU instruments, which brings its net total to around €115 per person.²⁸ According to the latest EU figures, the UK’s average annual net contribution to the EU budget is around €8.06 billion per year, once all EU money paid back to the UK government and private sector is taken into account.²⁹ And that doesn’t take into account the roughly half a billion of our EU contributions that the government

²⁵ Jennifer Rankin, Guardian, 4 December 2018:

<https://www.theguardian.com/politics/2018/dec/04/norway-option-is-worst-of-all-brex-it-outcomes-for-uk-say-eu-sources-rules>

²⁶ Carl Baudenbacher (ed.), *The Handbook of EEA Law* (Springer, 2015), p. 75

²⁷ Office for National Statistics, November 2018:

<https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/bulletins/migrationstatisticsquarterlyreport/november2018>

²⁸ Dominic Webb, Arabella Lang, Matt Keep, Vaughne Miller, Melanie Gower, House of Commons Library, Number 8129, 6 June 2018, p14: <http://researchbriefings.files.parliament.uk/documents/CBP-8129/CBP-8129.pdf>

²⁹ European Union Finances 2017: statement on the 2017 EU Budget and measures to counter fraud and financial mismanagement, HM Treasury, Cm 9576, March 2018

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691017/EU_finances_2017_Cm9576_web.pdf

counts towards our foreign aid budget.³⁰ All in, that's also about €115 per person. In other words, Norwegians already pay much the same as Brits do whilst the UK is a full member.

And given that the UK might want to participate more than Norway does, and is in an increasingly poor negotiating position, the cost could go up. It is not inconceivable that we could end up paying around the same amount as we do at the moment.

Crucially, the money that we pay towards EU agencies and instruments will equate to taxation without representation: we will contribute to the EU's functioning but be permitted no formal oversight over its decision-making.

Norway Plus on its own is inadequate

Norway Plus does not include fishing, agriculture, security, science, justice and home affairs or foreign policy. The UK is currently involved in all of these sectors, and may wish to continue its participation to varying degrees. This will require detailed negotiating time and significant sums of money (see above), and demonstrates that the proposal cannot represent the sum total of our future relationship. It is not a panacea.

Fisheries and agriculture: difficult negotiations for little gain

The Norway Plus advocates point out that Norway isn't in either the CFP or CAP. That's true. But Norway is only in the single market, not the customs union. It's not in the "plus" part of Norway Plus. Once you put the single market and customs union together, you have totally open borders between the UK and the EU. But then our farming produce is free to go to the rest of the EU without any controls at all (which Norway's produce can't). The EU will not allow this unless we agree not to subsidise our farmers any more than it subsidises theirs.

We could, of course, cut subsidies to agriculture. But with totally open borders, our farming industry would then face unfair competition from EU farmers. The only sensible approach would be to mimic the CAP's subsidy regime without a vote on it. Given that we've played a noble role in reforming the CAP over the past four decades – getting rid of those wine lakes and butter mountains – that would not be in the national interest.

Meanwhile, the EU will insist on a fisheries agreement that builds on "existing reciprocal access and quota shares" to get a long-term deal, according to an [EU declaration](#) published at the same time as the withdrawal agreement and the political declaration. This would be tantamount to staying in the EU's Common Fisheries Policy – but without a seat round the table. That would apply to Norway Plus as much as the prime minister's plan. So we'd be in a form of the CFP but without a vote. How would that be in the national interest? People seem to forget that we've helped reform the CFP so fish stocks are more sustainable and dead fish aren't thrown back in the sea if quotas are exceeded.

³⁰ Statistics on international development 2017: Final 2016 UK ODA spend statistics, Department for International Development, November 2017
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/660062/SID-2017b.pdf

Chapter 3

Problems with Customs Union membership

No independent trade policy

A customs union, at its most basic level, involves all members applying a common external tariff on third-country imports. This means that a product from, say, Australia can arrive in any EU port, incur the requisite tariff, and then continue its journey unimpeded. Outside a customs union, two countries can have a full trade deal but still impose customs checks, thanks to rules-of-origin requirements. Under a Canada-style UK/EU free trade agreement, there would still need to be customs checks in Calais to ensure that Australian goods passing through the Channel were paying the required EU tariff.

The upshot of this is that, in a customs union, the UK would be unable to enter into tariff-based trade deals. The problem is that most free trade agreements prioritise the reduction of tariffs, particularly on agricultural and manufactured goods. The UK could still enter into agreements based on services or investment, or non-tariff barriers for goods (such as labelling), but without the central prize of tariff reductions, few countries would be likely to engage. Moreover, in the single market the UK would also be heavily aligned on services, which would make comprehensive deals with third countries even harder.

Ultimately, the prize of an ‘independent trade policy’ would likely prove another broken promise.

No say over future EU trade deals, or reciprocal access

Not only would we not have an independent trade policy, but under Norway Plus we would in fact be in a one-sided customs union. The EU would continue to sign trade deals with third countries, and after each new deal the UK would be forced to liberalise its markets for the new partner – despite a lack of participation or voting rights in any negotiations. Worse still, the trade deals would only apply to the EU. And so if the signed a deal with Australia, Australian goods would enjoy full access to the UK (with its shared EU tariff), but UK goods would enjoy no automatic reciprocal rights in Australia. Indeed, Australia – having already secured its advantage – would not be compelled to sign any reciprocal trade deal with the UK. If it did choose to do so, it would likely offer far inferior terms to the UK than to the EU. The UK would, after all, have little additional to offer, and consequently little leverage.

Indeed, the leverage would all go to the EU: while negotiating the Australia deal in the UK government’s absence, Brussels would have the additional attraction of 66 million UK consumers with which to secure favourable terms. While those UK consumers might subsequently benefit from cheaper Australian goods, UK manufacturers and exporters would see no benefits at all – and may suffer considerably from the asymmetrical deal and unfair competition.

As if this is not bad enough, the EU is likely to insist that the UK follows its “trade defence policy” - again without a vote on it. This is already set out in the “backstop” (see Article 4 of Annex 2 to the Northern Ireland Protocol of the Withdrawal Agreement) - and would likely

find its way into any Norway Plus agreement. This means that if the EU was in dispute with a third country, such as China or the US, the UK would be bound to follow the EU's policies. The EU has an active trade defence policy. It seeks to protect European businesses and consumers from unfair trade practices by other countries. The EU can adopt measures, such as imposing penal tariffs on imports of goods that are being dumped at unfairly low prices or subsidised.

As a member of the EU, the UK has benefited from trade defence measures. Most of the EU's anti-dumping and anti-subsidy measures are directed against China. But it is also in an important dispute with the US about Donald Trump's decision to slap extra import tariffs on metals on the grounds of "national security". At the moment the UK has a vote over such EU interventions. But under a Norway Plus arrangement, we could find ourselves compelled to put anti-dumping tariffs on foreign goods when we didn't want to - and unable to put duties on dumped goods when we wanted to.

The Labour Party advocates a full customs union with 'a say' in the EU's common commercial policy which negotiates trade deals – but it is almost inconceivable that the EU would offer it a formal vote on those deals, let alone a veto. A customs union without full participation could cause grave damage to British producers.

The customs union would almost certainly be permanent

The proponents of Norway Plus indicate that the customs union will be temporary. The website refers to the possibility of "a longer-term deal securing greater control" and suggests that the UK and EU will eventually "agree new systems and procedures which remove the need for customs checks at the Irish border".³¹ As it stands, there is no such technology available, and little will on the EU part to search for any. If the UK leaves the customs union there will either have to be rules-of-origin checks and tariff collections on the Irish border (unacceptable to both the UK and Irish governments, and in violation of the backstop) or across the Irish Sea (unacceptable to the UK government). Nick Boles and others must be honest: the customs union would be permanent.

³¹ Norway Plus: <http://betterbrexit.org.uk/>

Conclusion

Advocates of a Norway Plus Brexit have many questions to answer. As this paper has shown, the flaws in the proposal are manifold. The political and practical impediments to securing such an agreement with the EU within the timeframe available make it all but impossible. Even if Norway Plus could be negotiated, few would see it as desirable. It would leave the UK following EU rules without a voice, vote or veto, whilst paying large sums of money without a say over how it is spent, and blindly following the EU's policies on immigration, agriculture, fisheries and trade.

Far from 'taking back control', a Norway Plus Brexit would be a historic abdication of power and influence. It would leave us with far less control over rules we would continue to abide by. And far from uniting the country or helping us 'move on' from Brexit, Norway Plus would likely do the opposite. The misleading claims being made about it today are already reminiscent of the undeliverable promises that were made for Brexit two years ago. The reality is that Norway Plus would mean the arguments over Brexit would continue for many years to come.