



SHEPHERD+ WEDDERBURN

# Broadband Stakeholders Group

Our New Relationship with the EU and the Rest of the World

or

Brexit Means Brexit - But What does Brexit Mean?

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## Introduction

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# Agenda

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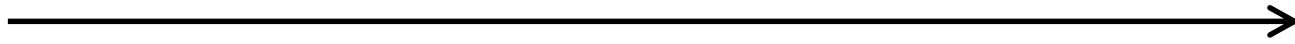
- Introduction
- Potential Models:
  - EEA
  - EFTA
  - Customs Union
  - Free Trade Agreements
  - WTO
- Telecoms Framework Post-Brexit – some observations

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## Models: Hard Brexit to Soft Brexit – Where will we land?

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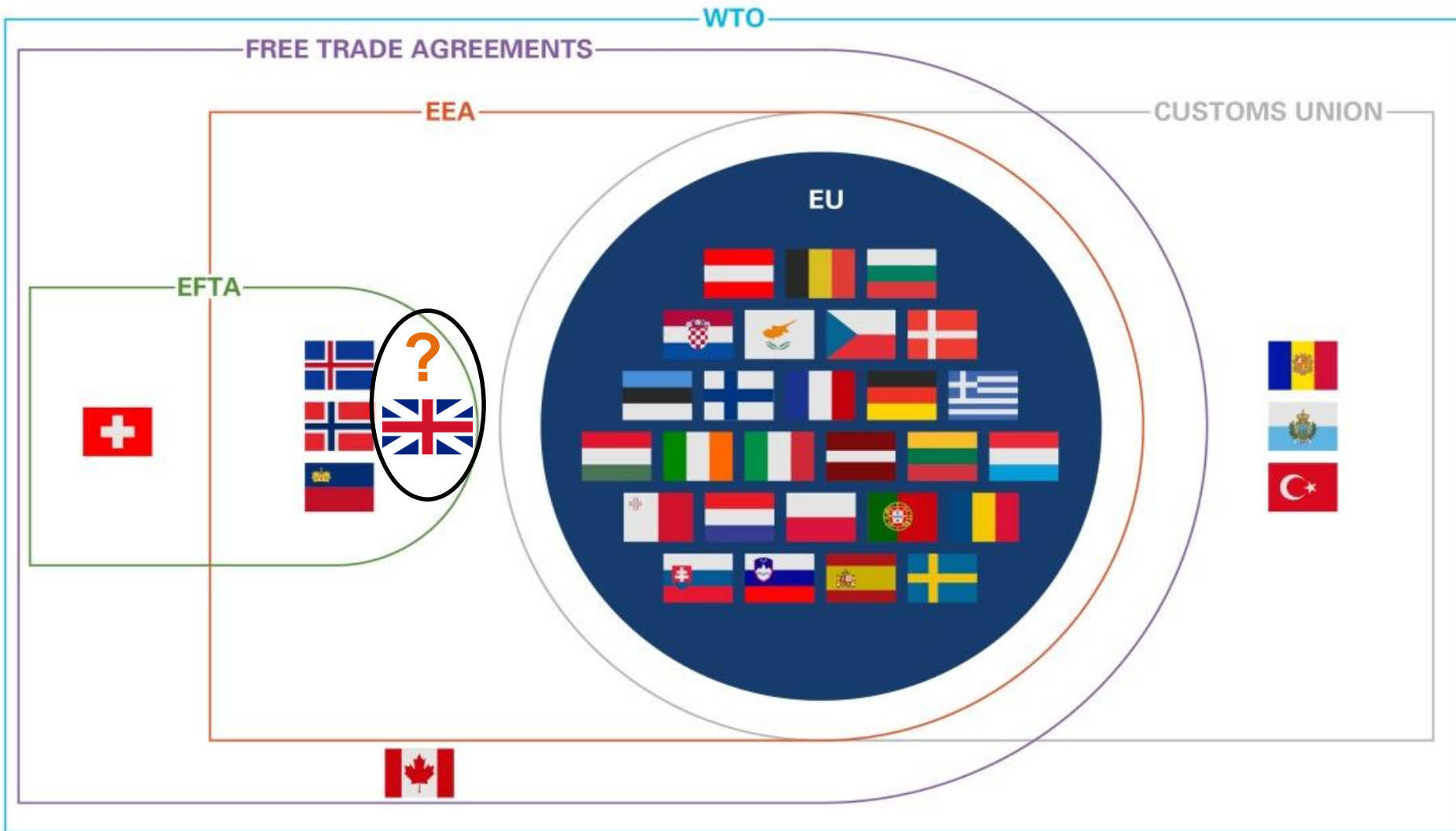
Hard



Soft



# From Soft to Hard Brexit - EEA: The Norwegian Model



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# From Soft to Hard Brexit - EEA: The Norwegian Model

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- Background:
  - EEA Agreement 1994
  - Norway, Lichtenstein and Iceland are the remaining EEA members
- Relationship with EU:
  - Not directly part of EU legislature
  - Incorporates EU legislation in all single market policy areas – including the four freedoms, competition and state aid. EU legislation takes supremacy in these areas
  - Full access to single market
  - Financial Passporting Arrangement – once authorised to do business in one member state, automatically authorised in other member states
  - Sovereignty over certain areas of importance (e.g. fisheries and agriculture)
  - Not within Economic and Monetary union, but contributes to EU budget and may apply for EU funding

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## From Soft to Hard Brexit - EEA: The Norwegian Model

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- Influence over the EU:
  - Not able to influence EU legislation directly
  - No direct influence in the negotiation of EU trade deals, even though these may impact.
- Access to International Markets:
  - Negotiates own trade deals – does not benefit from EU's FTAs
- Telecoms:
  - Common technical regulations in the field of IT, telecommunications and data processing
  - Access to market for telecommunication services
  - Technical requirements for networks and equipment are harmonised

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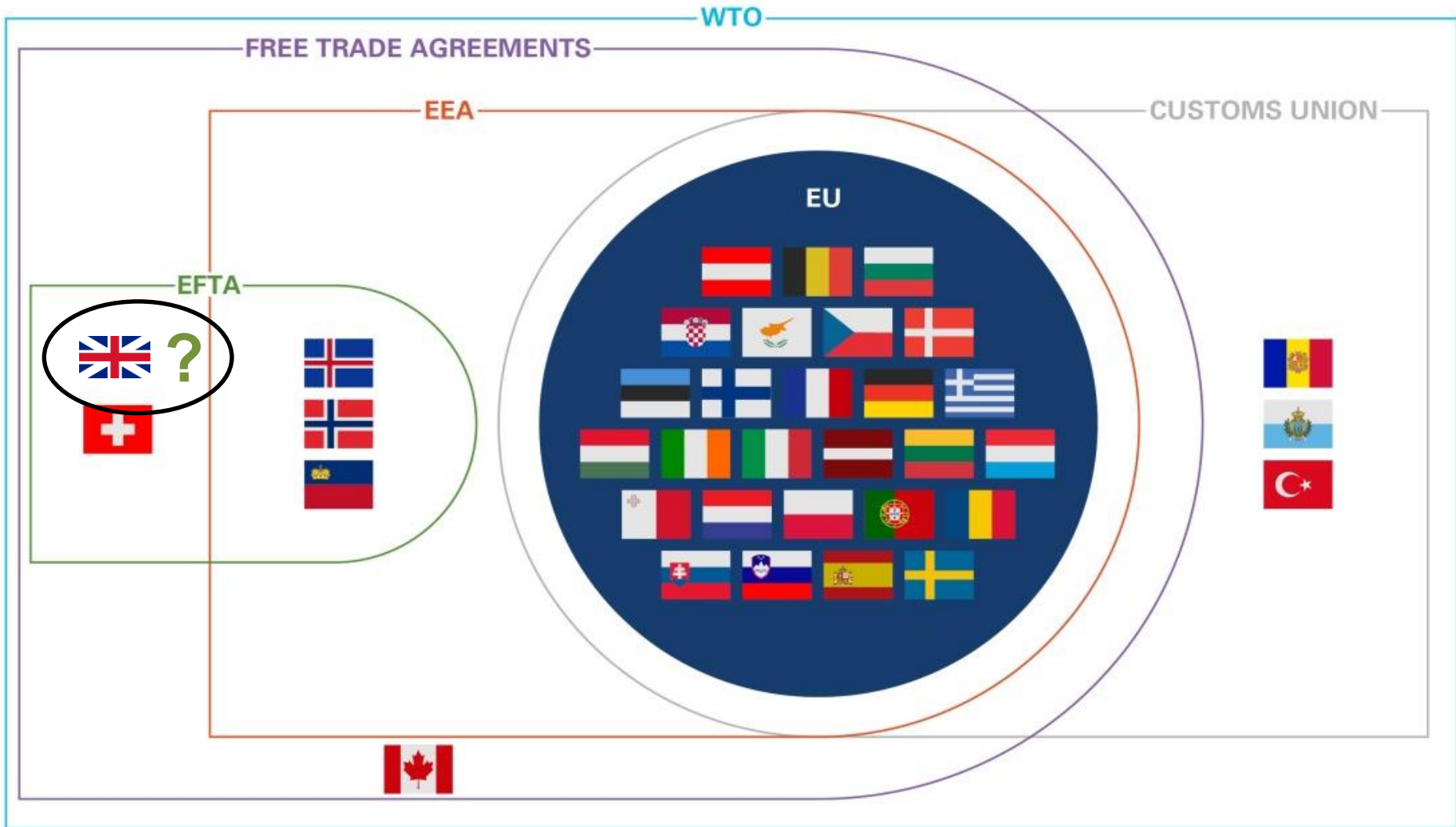
## From Soft to Hard Brexit - EEA: The Norwegian Model

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- Suitability for UK?
  - ‘Brexit-Lite’ – access to single market and financial passporting: little would visibly change
  - Would likely not alter: (i) Sovereignty in all agreed areas and (ii) Border Control – two key campaign arguments in the Brexit camp
  - All remaining EU / EEA states would have to agree to the new model.
  - Purpose of EEA was transition to EU membership: opposite for UK



# From Soft to Hard Brexit - EFTA: The Swiss Model



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## From Soft to Hard Brexit - EFTA: The Swiss Model

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- Background:
  - Founded in 1960
  - 2002 Vaduz Convention – shapes Switzerland's relationship with EU
- Relationship with EU:
  - No general right of access: over 120 individual agreements – 'quasi' single market access
  - Must accept many EU principles and rules in areas where access granted – in essence legal framework aligned to that of EU, e.g. in State Aid and Competition. Must also accept free movement of people
  - Exception: Service industries – only partial coverage and no financial passport
  - Must contribute to budget, but is eligible for certain EU funding
  - Voted in 2014 to introduce quotas on EU migrants from 2017, but EU maintaining it will lose access to single market if quotas are enforced

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## From Soft to Hard Brexit - EFTA: The Swiss Model

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- Influence over the EU:
  - No direct influence
- Access to International Markets:
  - Free to negotiate its own trade deals
- Telecoms:
  - No specific telecom provisions
  - May choose to mirror EU provisions, Switzerland, for example, participates in BEREC, but is not obliged to do so

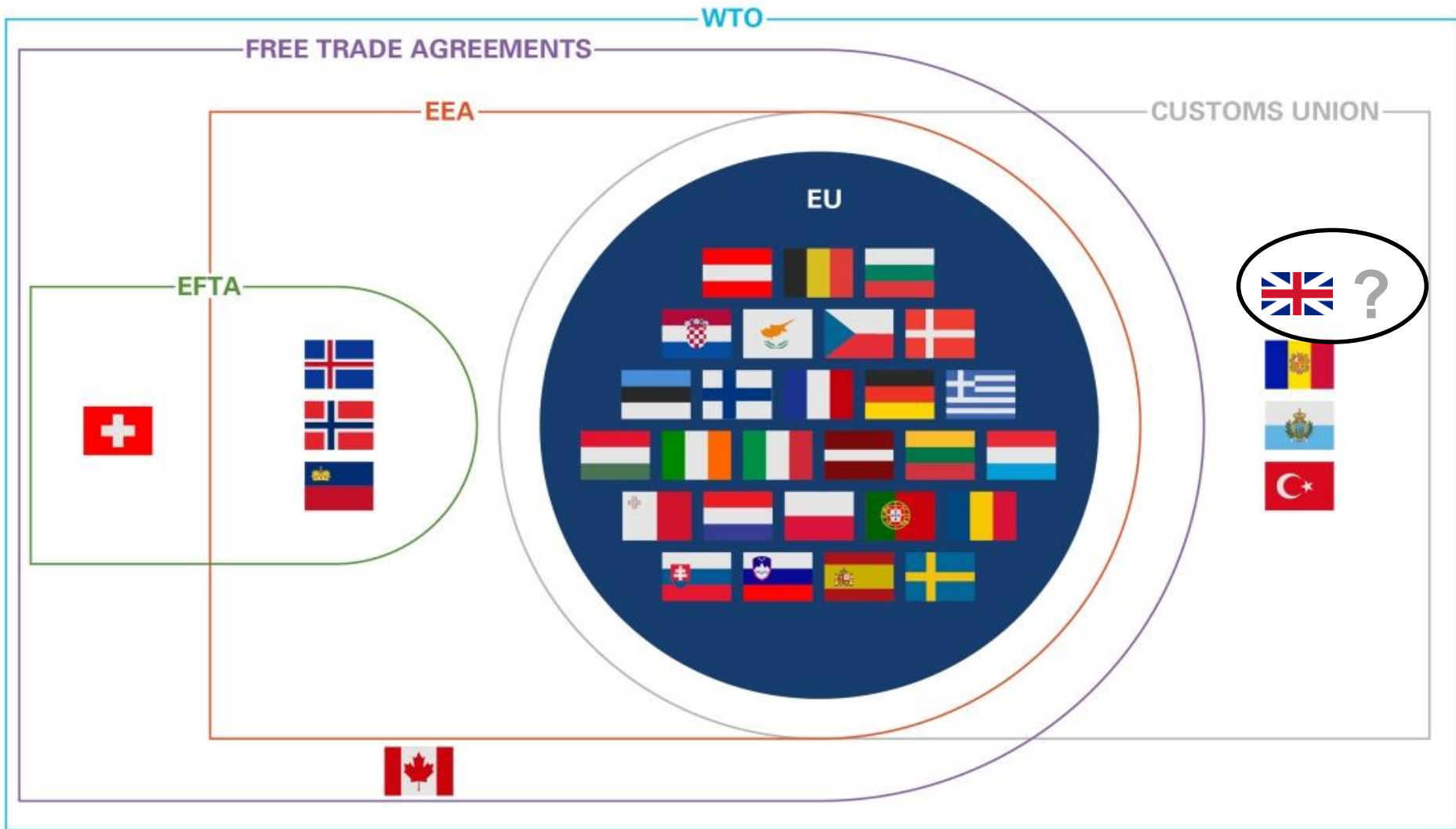
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## From Soft to Hard Brexit - EFTA: The Swiss Model

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- Suitability for the UK?
  - Would still require the development of a multitude of bilateral agreements with the EU and others
  - Would very likely require the UK to adopt a plethora of EU rules and principles (including free movement of people) without having a say over their development
  - Limited service access and not part of Financial Passporting arrangements
  - EFTA designed for transition into EU – not the case here

# From Soft to Hard Brexit - Customs Union: The Turkish Model



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# From Soft to Hard Brexit - Customs Union: The Turkish Model

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- Background:
  - Ankara Agreement 1963
  - Customs Union finalised in 1995
- Relationship with EU:
  - Covers trade in manufactured products and processed agricultural goods – no customs checks or tariffs on these
  - Raw agricultural products governed by separate preferential agreements
  - Does not include freedom of establishment or freedom to provide services
  - Turkey aligns rules and standards in areas covered by customs union, i.e. industrial standards, product design, competition rules, state aid law – must be equivalent to EU protections
  - Does not contribute to budget, but is able to claim some funding for certain projects
  - No free movement of people, but the option of visa free travel arrangements is currently under discussion

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## From Soft to Hard Brexit - Customs Union: The Turkish Model

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- Influence over EU
  - No direct influence over standards set by EU that Turkey must adopt
- Access to International Markets
  - The customs union limits Turkey's ability to freely negotiate trade deals outside the EU; Turkey / EU must provide for common external tariffs. In practice these are set by EU – Turkey has little influence
- Telecom:
  - No specific Telecom provisions
  - However the telecoms regulatory framework has been amended to largely conform to the EU's regulatory framework for communications

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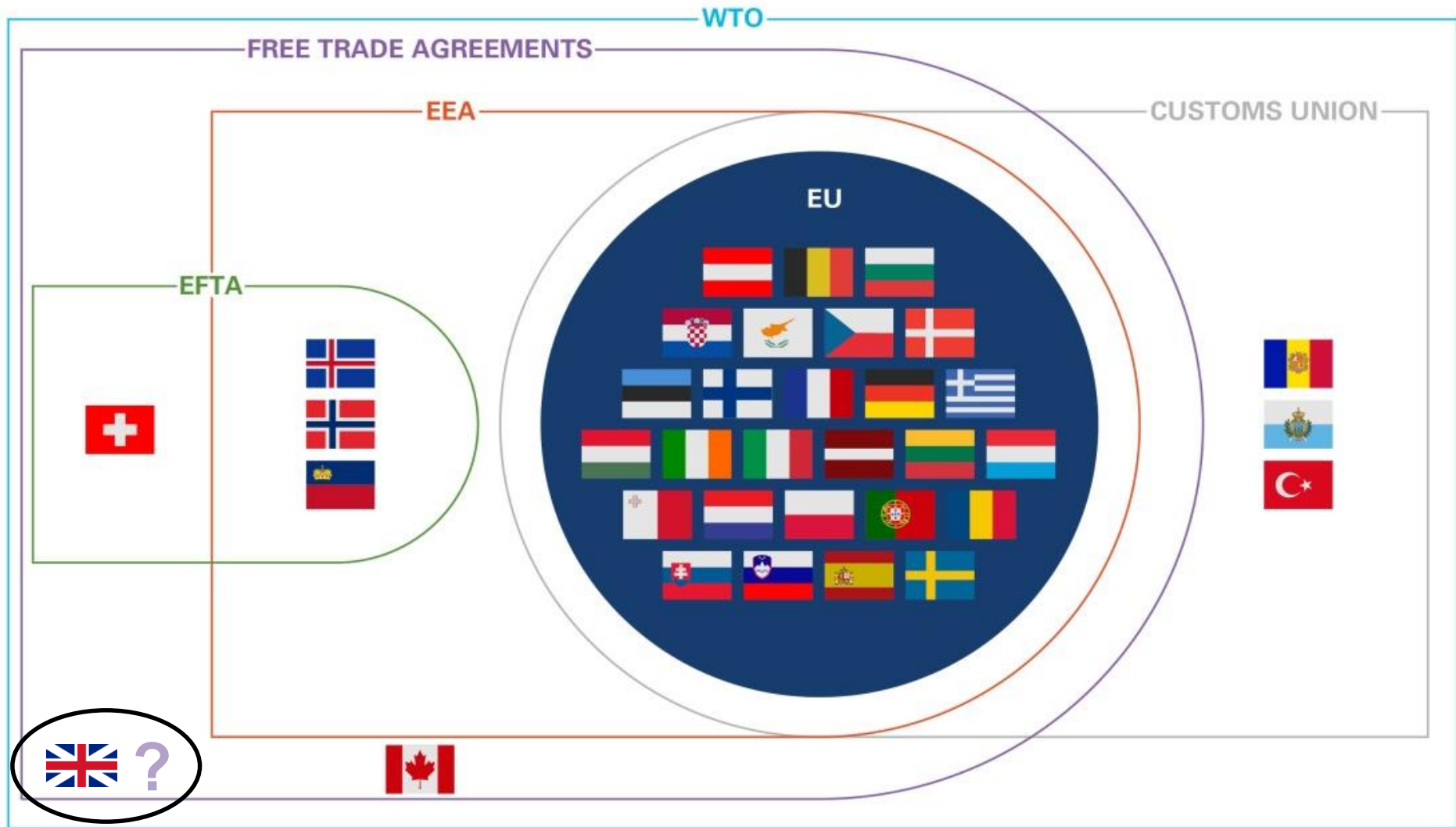
## From Soft to Hard Brexit - Customs Union: The Turkish Model

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- Suitability for UK?
  - Allows for control of borders (immigration controls) and, to extent not impacted by customs union, ability to set own laws
  - However, limited access to goods only – does not cover services which are of paramount importance to UK
  - Once agreed, inflexible – UK may end up with a customs union that does not adapt to fit new value chains or economic changes (as Turkey has found)
  - Sovereignty still restricted in certain areas – rules regarding industrial standards and product design, competition law, environment and state aid must be equivalent to EU standards
  - Could be negative implications on ability to develop FTAs due to tariff alignment (although may be possible to negotiate out of this element)



# From Soft to Hard Brexit - Free Trade Agreement: The Canadian Model



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# From Soft to Hard Brexit - Free Trade Agreement: The Canadian Model

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- Background
  - Text agreed in 2014 based on 7 years of negotiations
  - Requires the decision of the EU Council and Parliament and ratification by the Member States, including 10 regional parliaments, before in full force
  - On-going issues: Wallonia holding up deal
- Relationship with EU:
  - Provides for phasing out of tariffs on industrial and most agricultural goods and removing other discriminatory measures (e.g. quotas)
  - Some exceptions, e.g. raw agricultural products and certain manufacturing goods (e.g. cars).
  - On goods that are to be freely traded, agreed standards must be in place – these have predominantly been set by EU as larger party
  - Standards include, for example ‘Rule of Origin’ – must be able to prove a sufficient element of product originally made in Canada: administrative burden
  - Many key services excluded, e.g. air transport, and professional services only have a ‘framework’ for recognition of qualifications
  - No ‘passporting’ granted in respect of financial services
  - No wide ranging free movement – does include provisions to make it easier for firms to move staff temporarily between the EU and Canada

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# From Soft to Hard Brexit - Free Trade Agreement: The Canadian Model

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- Influence over EU
  - None
- Access to International Markets
  - Free to establish other FTAs (e.g. NAFTA)
- Telecom
  - Accords access to and use of public telecommunications transport networks or services on reasonable and non-discriminatory terms and conditions (including technical standards and specifications) and of a quality no less favourable than that accorded to any other enterprise
  - Also covers access to essential facilities, interconnection and other matters relating to the provision of telecommunication services
  - Option to restrict the supply of a service in accordance with the Reservations

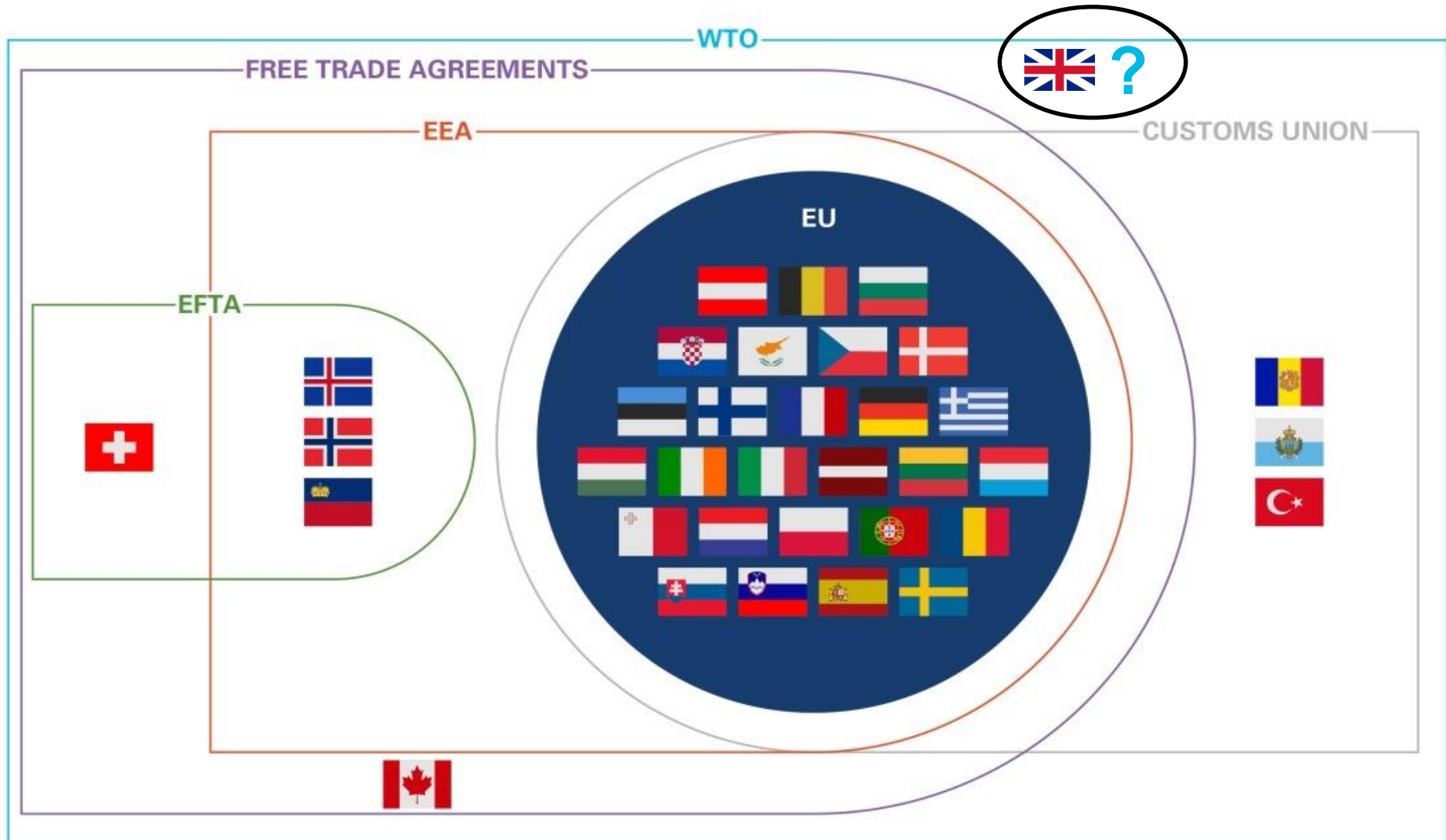
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## From Soft to Hard Brexit - Free Trade Agreement: The Canadian Model

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- Suitability for UK?
  - Would give UK almost full control over laws, legal systems and its borders.
  - No full access to the single market: limited free trade
  - However, UK would likely be obliged to comply with EU standards in respect of any goods that were subject to the FTA (as the smaller trading party) with no say on the setting of these standards
  - Whilst deal seeks to liberalise services, a wide number of exceptions, such as public services and option of imposing quantitative restrictions and economic-needs tests – may not suit the UK where services account for around 80% of economy
  - Loss of financial passporting would be bad for UK's financial and banking services
  - Stakes are different: EU only represents 10% of Canada's external trade, but for the UK it accounts for 45%
  - Took 7 years to negotiate on far less complex terms than an EU / UK deal.
  - Any deal may fall foul of similar difficulties as we are seeing in Belgium

# From Soft to Hard Brexit - World Trade Organisation: The Default Model in event of no agreement



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# From Soft to Hard Brexit - World Trade Organisation: The Default Model in event of no agreement

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- Background
  - Global framework for trade relations between 162 WTO countries
- Relationship with EU:
  - EU member states are members of the WTO but European Commission represents the member states at nearly all WTO meetings
  - WTO represents minimum threshold – no preferential access to EU single market, now wider co-operation on crime or terrorism and no guaranteed free movement as part of general terms
  - WTO countries are, to extent they are not part of another arrangement, free to develop their own laws and legal systems provided they comply with minimum WTO standards
  - Tariffs would automatically be applied: both with EU and wider world
  - UK could only offer the same market access to EU member states as it did all other countries under WTO's Common External Tariff rules. This would be so until a preferential trade agreement was in place
  - Minimal set of rights in respect of services – governed by the General Agreement on Trade and Services
  - No requirement to contribute to EU budget

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# From Soft to Hard Brexit - World Trade Organisation: The Default Model in event of no agreement

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- Influence over the EU
  - No direct influence
  - Likely that, given EU governs a quarter of the global economy and the majority of UK trade, the UK will end up applying many of the EU's core principles and rules, given these were developed in large part by the UK
- Access to International Markets
  - Free to set own tariffs, provided equal across all WTO countries, and free to negotiate its own trade deals
- Telecoms
  - Framework articles of the General Agreement on Trade in Services (GATS) and annex on Telecommunications
  - WTO reference paper provides regulatory principles for basic telecommunications services to those signed up to it, however protection is limited

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# From Soft to Hard Brexit - World Trade Organisation: The Default Model

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- Suitability for the UK
  - Freedom to develop own law and legal system and control borders. UK would be able to decide its own tariffs – allowing it to decide where it may be useful to lower these
  - However, lost access to single market and to the privileged access the UK currently has to the 53 states with which the EU has FTAs in place.
  - Given services are of great importance to the UK, the basic WTO agreement unlikely to be particularly beneficial
  - Any FTAs may take years to negotiate – meaning WTO rules would apply until then



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## A Bespoke Model for the UK (or part of it)

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- Unknown how this may look – negotiations have not even truly begun
- “Continental Partnership Agreement” – one option being discussed
  - Participation in selected common policies consistent with access to Single Market.
  - Inter-Governmental decision making
  - Contribution to budget
  - Cooperation on foreign policy, security and defence
  - Limited freedom of movement
- Deep economic integration with limited political integration
- Limited free movement of persons – ‘temporary labour mobility’ allowing companies to transfer staff to offices abroad for short periods of time
- Balance between cooperation on inter-governmental matters and matters in which EU has supranational status
- Risk of veto by other member states
- Devolution models –including the Scottish proposal, expected soon and Northern Ireland will likely follow

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## Bespoke Transitionalary Models?

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- A bespoke model could be used to manage the gap between exit and further negotiation on more permanent outcomes
- Most parties accept the need for a transitional deal, but little agreement on the format or timeline

Some options:

- The Status Quo Prolonged
- A Glide Path
- The Safety Net

Need to be cautious: a transition deal may end up being permanent / semi-permanent.

## And What About Telecoms?

- ‘Soft Brexit’: Little will change
- However – UK regime heavily influenced by the EU framework
- But compared to other sectors, possible that nothing material changes. Why?
  - EU as global standard setter
  - EU framework is largely UK influenced or viewed benignly by industry and the regulator
  - Existing sovereignty over a number of elements of the telecoms regime.
  - Network rollout – relies on local permissions
  - General authorisation regime requires compliance with local laws and regulations: already ‘national flavour’ to telecoms regulation



# Potential Impact and changes

## *To the regulatory framework?*

- Market reviews and market definitions
- The regulator, including appeal rules;
- State aid;
- Universal Service;
- Competition and merger control rules;
- OTT regulation;
- Roaming;
- Portability; and
- Spectrum policy.



## *To UK based telcos with international footprint or labour force?*

- Divergent frameworks requiring divergent policies and compliance;
- Multinational customer re-location;
- Recruitment and retention of staff;
- Uncertainty and investment impact.