

There's no such thing as 'associate membership' of Euratom – but there may be other solutions



With its Article 50 notification, the UK also indicated that the country would be leaving the European nuclear regulator Euratom following Brexit. However, several MPs, including some prominent Leave campaigners, have criticised this position, arguing instead for the UK to have some form of associate membership of Euratom after it leaves the EU. [David Phinmore](#) highlights that there is currently no such thing as 'associate membership', but that other routes for an association between the UK and Euratom could potentially be pursued.

The debate on whether the UK should leave Euratom as part of its withdrawal from the EU has understandably led to the question on what the alternatives are. Initial responses have included calls for the UK to pursue 'associate membership' with references being made to [Switzerland](#) supposedly enjoying such a status.

The UK government's initial [position paper](#) addressing Euratom issues provides no real indication beyond a vision of 'a close and effective relationship' of what form it wishes post-Brexit relations with Euratom to take. There is no reference to 'associate membership'. Indeed, [Andrew Duff](#) has been quick to point out, correctly, that there is in fact no such thing as 'associate membership' of Euratom or, indeed, of the EU for that matter. Non-member states can only be 'associates' of the EU.



Safeguard and Euratom Inspectors in Almelo, the Netherlands. Credits: [IAEA](#) (CC BY-NC-ND 2.0)

Moreover, to describe Switzerland's status vis-à-vis Euratom as 'associate membership' is misleading. The Swiss do participate with 'associated country status' in a number of Euratom-focused research programmes under the Horizon 2020 programme. Switzerland also has a formal '[Cooperation Agreement](#)' with Euratom dating back to 1978. Its focus is controlled thermonuclear fusion and plasma physics. These and other cooperative arrangements between Switzerland and Euratom do not amount, however, to 'associate membership'. Nor do they mean that Switzerland is an 'associate' of either Euratom or the EU.

Associate status in a strict sense is reserved for states – or international organisations – that conclude an association agreement with Euratom under Article 206 of the [Treaty establishing the European Atomic Energy Community](#) (TEAEC). No state has so far done this, although various EU association agreements cover Euratom activity and have Euratom as a contracting party. States with such agreements enjoy the status of EU 'associate'; again, it is not 'associate membership'. Notable examples are the 2014 [EU-Ukraine](#) Association Agreement and the Stabilisation and Association Agreements with the countries of the Western Balkans (e.g. [Montenegro](#)).

Since the UK government issued its position paper on nuclear materials and safeguards issues on 13 July 2017, the Minister for Exiting the EU, David Davis, has signalled that the UK could secure an 'association agreement' with the EU and that the resulting relationship could be '[quite close to what we currently have](#)'. What could this entail?

Neither Article 217 of the Treaty on the Functioning of the European Union (TFEU) – which would provide the legal basis for association with the EU – nor Article 206 TEAEK regarding Euratom provides any detail. Association would involve 'reciprocal rights and obligations, common action and special procedures'. That's it.

Established interpretations of the potential scope of association agreements is that the provisions allow for considerable flexibility, and a relationship falling only narrowly short of membership is possible. Walter Hallstein, the first President of the European Commission, declared on various occasions that association, as far as the EC was concerned, could range anywhere between membership minus one per cent and a trade and cooperation agreement plus one per cent.

In practice, in previous associations agreements, associated states have generally agreed to cooperate in an extensive range of areas of EU activity. This has been facilitated by the conclusion of most association agreements as so-called mixed agreements that enable them to include matters formally beyond the competences of the EU. With regard to atomic energy, Article 342 of the [Ukraine Association Agreement](#) provides for extensive cooperation:

to ensure high level of nuclear safety, the clean and peaceful use of nuclear energy, covering all civil nuclear energy activities and stages of the fuel cycle, including production of and trade in nuclear materials, safety and security aspects of nuclear energy, and emergency preparedness, as well as health-related and environmental issues and non-proliferation. In this context, cooperation will also include the further development of policies and legal and regulatory frameworks based on EU legislation and practices, as well as on International Atomic Energy Agency (IAEA) standards. The Parties shall promote civil scientific research in the fields of nuclear safety and security, including joint research and development activities, and training and mobility of scientists.

What then do Article 217 TFEU and Article 206 TEAEK permit? Essentially, the content is determined by the interests of the EU, and given the precedent of the planned cooperation with Ukraine, this could be at least as extensive. Following Hallstein's observation, it could also extend as far as David Davis has suggested: almost as far as the current arrangements provided for through Euratom membership.

The prominence of 'reciprocal rights and obligations' means, however, there can be no cherry-picking by the would-be associate. There has to be a balance of rights and obligations. The reference to 'common action' entails adaptation to EU norms and practices; the EU rarely, if ever, adapts to the associate. And finally, 'special procedures' means the establishment of a discrete set of institutional arrangements to manage the association. The associate remains outside the EU's institutional structures and plays no part in EU decision-making procedures. All this is in line with established principles and practice regarding EU association agreements.

One footnote, however, on Article 206 TEAEK. Its original wording was identical to that contained in Article 238 of the [Treaty establishing the European Economic Community](#) (TEEC) (1957) whose provisions have since been either amended, deleted or moved elsewhere. By contrast, the wording of Article 206 TEAEK has remained essentially unchanged. Consequently, whereas an association agreement with the EU requires the [consent of the European Parliament](#) to be adopted, in the case of an association agreement with Euratom [MEPs are only consulted](#).

Moreover, there is a final paragraph that states: 'Where such agreements call for amendments to this Treaty, these amendments shall first be adopted in accordance with the procedure laid down in Article 48(2) to (5) of the Treaty on European Union'. Known as a 'flexibility clause' when its original wording was drafted in 1957, it allows for the TEAEK to be amended in order to facilitate the development of the association. The corresponding provision in the forerunner to Article 217 TFEU no longer exists.

The provision is interesting since it contrasts with the provisions which originally governed accession to the EAEC and are now contained in those that govern accession to the EU. They only provide(d) for lesser 'adjustments'.

Somewhat ironically given where the UK government is today, the flexibility clause was included in the TEEC's provisions on association to facilitate the development of relations with the UK. Indeed, the UK government was actually consulted on its drafting and proposed its own preferred text. Those provisions were then copied across to the TEAEC as Article 206.

In including provisions on association in the TEAEC, the drafters certainly had association with the UK in mind. The Spaak Report in 1956 had already declared that Euratom should seek an '[association particulièrement étroite](#)' with the UK. More than 60 years later, the UK could be on the verge of seeking and potentially securing exactly that relationship.

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