

## Brexit and the compatibility paradigm A Guide for the Mutual Recognition Perplexed

Do we finally have a plan for the future trade relations between the UK and the EU? In her Mansion House speech of 2 March, Theresa May set out her vision in more detail than ever before: “the broadest and deepest” comprehensive trade deal “anywhere in the world today,” where she invokes “mutual recognition” repeatedly. In doing so she has managed to temporarily unite Remainers and Brexiteers in her Cabinet. Michel Barnier’s initial reply implied that the main quality of the speech was to squarely put the Brexit deal in one of two boxes: a Free Trade Area rather than the single market, Canada not Norway. The deal can be broader and deeper than Canada, is the message, but we now know that the UK understands the trade-off between access and control, and has chosen to emphasize the later. The [draft guidelines](#) prepared for the upcoming European Council on 23 March reemphasize this message. Fair enough. But is this good enough?

“It is important to tell the truth about Brexit,” Michel Barnier, the EU chief negotiator never tires of repeating. Up to now, the Brexit saga has been shaped by the White Queen’s six impossible things before breakfast. Try controlling free movement of people *and* staying in the single market. Ask for no border on land *and* at sea for Ireland. Design a way to leave the customs union *and* avoid border checks. Go strike your own trade deals with the rest of the world *and* retain frictionless trade with the EU. Try leaving the EU *and* keeping the bits you like. Get both control *and* cooperation.

‘Wake up to the world *after* breakfast!’ was the message laboriously spelled out in the 118 page draft withdrawal agreement presented to the British Government just before the Theresa May’s speech. The Prime Minister certainly failed to address many of the unavoidable contradictions in the Brexiteers’ stand on future UK-EU trading relations. The EU customs union remains unique in the world because it is defined by a common external border which allows its members to do away with the complex ‘rules of origin’ which plague other free trade areas. There is no technological magic wand against this logic, although a ‘smart border’ approach can go a long way in [mitigating it](#). In concluding that without some kind of customs union with the EU the Irish border conundrum will remain the [Labour leader](#) is joined by [business](#) and trade unions. But of course the devil in the detail does not lie with the customs union’s tariffs anyway.

The crux of the problem remains the complex web of regulations and interactions that make up the EU single market. This is the matrix that transforms the vague idea of ‘frictionless trade’, dear to the Prime minister, into borderlessness on the ground. The British Government seem to recognise that much. But has the Prime Minister offered a clear way to navigate the matrix? Not according to Donald Tusk, president of the European Council, who dismissed the UK’s plan in advance as “based on pure illusion”, a new exemplar of the kind of “cherry picking” Brussels abhors.

If the two sides are to reach an agreement, both sides will need to move. The British side needs to see their aspiration through EU eyes and do justice to the EU’s concern for the integrity of the single market. And on their side, EU negotiators need to recognise the margins of freedom offered by the history of the single market which provides subtle guidelines rather than fixed rules for interpreting the contours of such integrity. Not all their proclaimed truths are born equal. In his *Guide for the Perplexed* Maimonides argued that it was important to offer truths that were at the same time apparent and concealed. This may be what history offers.

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The history of the single market has two lessons for Mrs May and Mr Barnier. Lesson One is that single market is built on mutual recognition underpinned by rigorous adjudication of disputes where they arise. Lesson Two is that the EU has been seeking to export the single market model to the rest of the world for decades. Let me say more.

First, in the three decades since Margaret Thatcher's signing the 1987 Single European Act, the EU has dealt with so called non-tariff or regulatory barriers to trade in a piecemeal and pragmatic way (leaving aside the movement of people for the moment). Even when it sets up regulatory agencies, the EU tends to rely on national regulators. So if goods and services are to move freely across borders, their country of destination must trust the 'home state' regulator with providing the right stamp, certification, license, supervision and the like. Nevertheless, and this is the crucial point, there is no such thing in the EU as *pure* mutual recognition, blindly recognizing each other's rules and standards for the rest of time. Instead, the EU single market has become complex and layered system, which we ought to refer to as '[managed mutual recognition](#).'

This is a messy story. How mutual recognition is managed varies with each specific area, whether we are talking about agricultural products, toys, the recognition of professional licenses or banking services, and beyond the single market, court decisions and arrest warrants. But in each of these areas, we find a variant of the same overall managed mutual recognition approach, namely that the host state of the consumers extends as much *deference* to the home state of the producer as possible, and exercises as much *interference* as necessary. The balance is determined by a power play between politicians, regulators, judges and interest groups.

Managed mutual recognition in the EU thus injects a healthy dose of mistrust management among member states that have formally pledged to trust each other. As a result it can be partial (insurers, say, can ask to sell corporate risk but not all mass risk on the basis of their home state rules), or conditional and non-automatic (lawyers may still have to satisfy host country requirements, like entry exams or training periods). And states are allowed to reassert their own control, if the exporting state downgrades its regulations.

But there are ways of forging trust: by preliminary agreement on 'minimal' standards and, crucially, the inclusion of safeguards against change through partial or total reversibility of recognition. Even 'EU standards', so dreaded in some UK quarters, are more often than not about a floor (of say safety and consumer protection), they need to be interpreted by the home country, and there is still mutual recognition involved in accepting each other's certification procedures. The mutual recognition game is an ingenious dynamic process, involving trade-offs that may change over time.

In light of the EU's considerable track-record it is fair to say that the machine works because it is constantly tweaked by judges and regulators. Ironically, it was devised by Brits-in-Brussels precisely to avoid one size fits all standards and supervision, allowing for a high degree of national regulatory autonomy throughout the EU. Is this what Mrs. May means when she declares that "we will need a comprehensive system of mutual recognition". By constantly invoking mutual recognition out of its historical context, Brexiteers fail to acknowledge that they have set out to reinvent the EU wheel, but without the gears and spokes that make it work, otherwise known as institutions.

But managed mutual recognition also relies on a kind of magic trick: accelerating trade liberalization thanks to a shift from *ex ante* agreement to *ex post* conflict management, from agreeing upfront on common standards to intense adjudication on whether the conditions for recognition continue to be met. Contrary to what many believe, this kind of recognition dynamic is not deregulatory – it is what governments, regulators and indeed the ECJ make of it. Brexiteers

often fail to realise that the ECJ does not set some EU law to which they must obey, but instead adjudicates conflicts over recognition, often siding with the UK. And they fail to acknowledge that managed mutual recognition is a complex eco-system involving intense coordination over time.

The second lesson from history is that the EU has a long record of seeking to export this approach to its economic relations with the rest of the world – to regions like Mercosur, or countries like Australia, Canada and the United States. In the late 1980s, the EU set out to ‘complete’ its single market, passing hundreds of mutual recognition-based directives by the end of 1992. Completion was an overstatement of course but the managed mutual recognition was set in motion. We tend to forget that as soon as it had done so, it turned to the task of negotiating mutual recognition deals with the outside world, conveniently keeping its scores of internal market experts busy. Think new kind of regulatory civilising mission.

It is fair to say that this ambition has worked better as an asymmetric than symmetric exercise. Most ambitiously, the 1994 EEA agreement allowed Norway, Iceland and Liechtenstein to partake in the EU’s system of managed mutual recognition, but only by giving these countries a marginal say in shaping it. Beyond the EEA, the EU encountered staunch resistance not only in the developing world, but in the US where powerful regulatory agencies like the FDA and the FCC have never been socialised in taking into account trade imperatives that would lead them to surrender some authority to foreign counterparts. As a result, while the EU did manage to strike some so-called mutual recognition deals with outside partners, these were but pale imitations of the original, with parties committing to recognise each other’s certification stamps, while continuing to demand that the standards applied be that of the ‘host country’ where the goods and services end up – when in Rome do as Romans do, with a little help from Athens.

By the dawn of the new millennium and the 9/11 cataclysm, even this small momentum was lost. And crisis management in the last decade has left little energy for external trade diplomacy. Even if some aspects of (defunct) TTIP with the US and (adopted) CETA with Canada have been criticised as privileging corporate interests, both agreements contain aspirations to regulatory cooperation. In fact, CETA is the most ambitious of all EU free trade agreements today, with eleven sectors where mutual recognition is applied, but again, not beyond the authority to certify to the other side’s standards. Even the World Trade Organisation includes mutual recognition as an aspirational horizon in texts related to non-tariff barriers (NTBs), phytosanitary measures and trade in services (GATS, art 7). But putting them in practice has been all but parked. Outside the EU, only Australia and New Zealand have agreed to something remotely resembling the EU approach. In short, the EU’s ambition to export its managed mutual recognition approach outside its own boundaries has stalled in part because it is much harder to do the deed in a reciprocal manner than simply asking the Norways of this world to dock into the EU system.

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Enter Brexit. What do these two stories on the internal and external fronts imply for the UK’s future trade relationship with the EU?

Well, one can be tempted to argue that they demonstrate how irrational Brexit appears to be since membership of the single market is already about retaining as much regulatory autonomy as possible in an interdependent world. Oh the irony of a UK pleading for the kind of mutual recognition it already has as an EU member. But we are where we are.

Which brings us to the core implication. After March 2019, the UK-EU relationship will be a variant of *both* stories. And if all parties could rise to the occasion, it could be a bridge between the

two. The UK will of course have become a third country. But it will not simply be a new exemplar of story number two because it will have been an integral part of story number one. If there is no precedent for such a state of affairs, we should not start with the pros and cons of Norway-*vs.*-Canada but instead invent a new paradigm or model consistent with the EU's own history and principles.

I suggest we call it the 'Compatibility Model' and consider its implications for both sides.

On the EU side, member states and the Commission need to find ways of remaining consistent with the EU's ethos. If the UK pledges to remain EU-compatible, the EU cannot turn around and withdraw market access which has until now been predicated on such compatibility. The UK therefore needs not exit the EU managed mutual recognition system.

Let's face it, the UK should not be treated like any old third country. The European Council meant as much when it pledged in its negotiating mandate to recognise "the need, in the international context, to take into account the specificities of the United Kingdom as a withdrawing member state." In other words, if these negotiations are taking place with the unprecedented figure of a "withdrawing state", they will lead to an unprecedented outcome, the birth of a new animal in the international landscape: the 'former EU member state'.

As a matter of fact, the UK's former member-statehood will remain imprinted in its DNA for the foreseeable future. This is all the more true because it has – ironically – been among member states the most compliant with EU law, often 'gold-plating' EU regulations in areas like financial services or medicines. Moreover, while withdrawing, the UK will have internalised all of the EU *acquis* to a more entrenched degree than any other member state, let alone third country, through the laborious implementation of the Withdrawal Bill. In short, the UK will be the most "EU-compatible" member state on exit day minus one and the most EU-compatible third country on exit day plus one. My own belief is that not only will UK civil servants and judges continue to operate within the sphere of EU compatibility, but so will a majority of UK legislators – if only through the web of enhanced bilateral relations with EU member states. More on this point later.

Can the EU grant this? In its most recent position-through [slides](#), Mr. Barnier has held on to a strict alternative between a single market and an FTA scenario. Could he instead contemplate a UK both on the outer fringe of its mutual recognition system – story one – and as the new frontier of its external mutual recognition ambition – story two?

On the British side, the compatibility paradigm not only provides the underlying rationale for so-called regulatory alignment, but it makes clear that alignment is not sameness when translated in legal EU terms. David Davis' "not a mad-Max world" speech, and Theresa May's assurances that this was "not a vote for a distant relationship with our neighbours" sound like commitments to sustained fundamental EU-compatibility. But unfortunately, this message sounds like window-dressing when ministers continue to explain that the main goal of the deal ought to 'manage divergence' with the EU. While the Prime Minister did not use this language in her latest Brexit speech, we know that this is was its selling point at her preparatory cabinet meeting at Chequers. 'Divergence won!' was the immediate verdict. Can the British government stop emphasizing divergence over compatibility as a way to hold the Conservative party together?

Instead, the compatibility model involves acknowledging on both sides that access to the EU's single market should neither be about 'managing convergence', as is necessary in the enlargement model, nor about 'managing divergence'. Instead it ought to be about 'managing differences'. It suggests that it is wrong to decide *a priori* that potential future differences in regulatory approaches

will necessarily overshoot the bounds of *legitimate* differences. The EU can acknowledge that UK becoming a third country does not cancel out this logic materially, even if legally Brexit involves a grand exercise in translation from EU law to third country law. And the British government ought to acknowledge that the recognition in question is not simply about standards and rules.

It would be rather strange for either the UK or the EU to veer away from this model. The post-Brexit relationship will start with a huge head start: all standards and rules across the EU as well as their implementation and enforcement in the UK have *already* been mutually recognised as being equivalent to that of their EU counterparts with all the variations called for by the managed character of mutual recognition in the EU. We simply need to invent a way for the UK to continue to practice ‘managed mutual recognition’ as a third country rather than a member state.

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What does compatibility over time imply? What of Brexiteers’ cherished option to diverge – which, after all, they see as the point of Brexit in the first place?

The Compatibility Model does ask the British government to adopt sustained compatibility between the UK and the EU across the board as its starting assumption. It calls for reassuring EU counterparts that UK regulators have no intention of becoming ‘incompatible’ with them, nor therefore to designate candidates for divergence.

Conversely, can the EU not also share in this assumption? Can it not assume that UK regulations in the future will remain ‘functionally equivalent’ with the minimal standards or expectations underpinning managed recognition, at least as much as say Greece, Romania, France or Bulgaria? What would be a UK approach to testing robots, new medicines or to aviation safety that is incompatible with the EU? Different perhaps, as a system of managed mutual recognition allows, incompatible unlikely.

But because there will always be doubt, Brexit needs a good dose of contingent contracting, whereby alternative options are laid out to be taken by parties if and when unforeseen developments occur – such as technological innovations that parties understand differently. Boris Johnson assumes that EU regulations will stifle digital innovation. But who knows whether this is true or will be in the future? The beauty of contingent contracts is that they can accommodate different predictions about the future, with each party able to believe that her preferred future will be served by the contract. And of course they work both ways. If UK authorities truly believe that they will not engage in a race to the bottom, they ought to be prepared to enter a contingent contract under which the EU may radically reinforce safeguards against divergence. If the EU truly believes that the UK will be tempted by the Singapore-on-Thames scenario, it should still refrain *today* from withdrawing rights from the UK as long as its rules and regulatory practices are compatible with the EU. It should embrace what the Institute of Directors calls ‘[a living agreement](#)’.

A huge amount of brain-power has already been expended on the double exercise of translation from EU law to domestic and third country law in Whitehall [and in the think tank world](#). Albeit disguised under different labels, the building blocs that make such contingent contracting work are similar inside or outside the EU. The question now is how to bridge story one and two when adapting the Holy Trinity of managed mutual recognition to the Brexit context.

First, this means mutually checking up on each other when trust is not enough, monitoring how the other sides upholds the deal. How will oversight by the Commission and sectoral agencies, as well as the horizontal mutual oversight among regulatory administrations themselves, operate effectively after Brexit? This bit may have to be very intrusive for a UK which is no longer part of the intense and on-going ecosystem of cooperation which manages mutual recognition month-after-month, year-after-year in the EU. If the UK has nothing to hide, isn't this a fair price to pay?

The second building block has to do with conflict management and the perennial political question of who decides. Who decides who is right when the two sides disagree on whether national rules and procedures are still compatible? Mutual recognition needs to be managed precisely because it is conflict-prone. When a state decides that another state's regulation fails to protect its citizens as consumers or investors, who decides whether this is acceptable protection of the public interest or unacceptable protectionism? If it has been up to the ECJ to decide whether a given action is kosher or not, it is not so hard to devise a system of adjudication *à la* EFTA, court which does the same for third countries. But the UK will need to accept that this will still be done under the shadow of the ECJ. If the ECJ found two measures not to be equivalent the EU would withdraw its recognition. But since the Court could not compel the UK to change its non-kosher rule, formal autonomy for the UK would be preserved. Brexit is about the theatre of sovereignty whereby control is taken back only to be shared again, one way or another.

Third, come the remedies. It may be that sometime in the future, 'taking back control' will prove incompatible with a given presumption of compatibility. The situation will look very different depending on whether or not the parties agree on the diagnosis of 'incompatibility'. But either way, each side will need to protect itself through stringent safeguards and provisions for reversibility of access rights. And in the light of these remedies, either side might decide to back off and converge back or loose market access. The latter has been the chosen route for the EU when it elects not to follow WTO rulings on so called [SPS](#) measures, concerning hormone-enhanced beef from the US and the like. Crucially, however, how much access is denied would be proportionate to the extent of regulatory [incompatibility](#) and subject to review.

All this is familiar terrain surely. There is no such thing as pure trust between states (is there between people?!). Instead states have always devised all sorts of ways of hedging their bets through opt out and sunset clauses. Some of us will dare to bet that trust will be sustained between the UK and the EU so that no need arises to exercise safeguards. If this turns out to be a naïve assumption, so be it. Lawyers will have provided us with brilliant contingency plans.

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Does the Compatibility Model address the EU's own proclaimed red lines?

I have tried to argue that the 'integrity of the single market' could be preserved provided the parties were able to adapt the mutual recognition eco-system to the circumstances of Brexit.

However, one core element of the integrity of the single market not yet discussed is of course the *indivisibility of the four freedoms*. There is little doubt that the UK will (wrongly in my view) embark on some version of managed migration and that this is at odds with this indivisibility. Leaving aside the fact that such indivisibility is a recent and rickety [construct](#), can the compatibility model allow a country to take part in the EU's managed mutual recognition system and nevertheless opt out of free movement of people? This is of course a political decision. It may be that the EU's current revisiting of the latter under the impulse of French President Macron (and ECJ jurisprudence which clearly states that the exercise of free movement of persons is [conditional](#)) will go a long

way to accommodate UK concerns. But it does not look as though the UK will get its act together in implementing migration management measures already allowed by the EU. But even if it goes a step further, it is not clear why the EU must depart from its own compatibility paradigm and deny access rights to economic actors who are EU-compatible in the name of an obligation that is only an obligation for member states. From EEA to FTAs, free movement is not always part of the package or can be subject to emergency brakes and other qualifications. This requires however that the UK would not discriminate between different EU nationalities. The difference between 'being part of the single market' and 'being part of the managed mutual recognition system' is that the latter ought to involve less obligations (eg free movement) because it involves less rights.

Which brings us to the EU's absolutely legitimate concern with ensuring 'a balance of rights and obligations'. If it is truly fair minded, the EU should not overlook one crucial part of the ledger on the 'rights' side: that the UK is losing its place around the table. Whatever clever ways are found for Britain to have a say in the design of the future EU regulatory system through joint committees or observer status, such a say will never be as good as an equal voice and an equal vote. The UK is losing a colossal right with Brexit, that right which makes membership special and valuable in the first place. Why should it lose market access rights too if it remains compatible?

Which brings us to the EU concern for 'autonomy,' not only of its legal order but of its decision making. This is an EU way of saying that its legal and institutional set-up is complicated enough as it is without requests from outsiders to take part. Agreeing at 28 member states, reconciling Council, Parliament and Commission, respecting ECJ injunctions, surviving national electoral earthquakes, *etc.* – one wonders whether the machinery could withstand any more complexity! Sure, outsiders get it: there must indeed be a cost of not being a member. But the overwhelming question of the negotiations remains: Who manages managed mutual recognition? Above all, the EU of course. But alone? Can the EU insist on overly unequal treaties, unilaterally setting its mode of recognition on the back of its overwhelming market power without raising issues of legitimacy? There are already grumblings in the enlargement and neighbourhood contexts, or dealings with Mercosur and other regions, leading to a welcome rethink of the EU's propensity for unidirectional rule making. Norway can countenance what it calls 'fax diplomacy' because it is super rich and super cool. But as the EU never tires of reminding Britain, you've got to give up some control in the name of cooperation.

Turning from politics to policy, the compatibility paradigm clearly serves the kind of 'orderly withdrawal,' 'reduced uncertainty', and 'minimal disruption' that the EU seeks in its negotiating mandate. For instance, the EU proposes to shrink financial services access rights from managed mutual recognition to 'third country equivalence', in other words the standard market access arrangements for non-EU countries involving a limited scope of activities. And yes, the bit of the equivalence regime that allows for unilateral reversibility makes sense: if the UK were to stop enforcing, say, global prudential standards, the whole apparatus of contingent contracting discussed earlier can be brought to bear. But doesn't the EU's Single Rule book on banking supervision provide leeway to national regulators? To the extent that we have decentralised enforcement, this will always be the case. More broadly, should the EU not ask under what condition reduced access rights will be least disruptive instead of turning finance into the payback for say free movement of persons? Is cutting off from the continent parts of an industry that is EU-compatible a way to minimise disruption?

What of 'cherry picking' and the EU's commitment to 'exclude participation based on a sector-by-sector approach' reiterated in the new March 2018 guidelines? Leaving aside the fact that all external trade deals do in fact adopt sectoral approaches, we can assume that the compatibility model does mean leaving every sector under the managed mutual recognition umbrella for the

time being. It means giving up carving out certain sectors as *a priori* as candidates for various baskets or buckets according to whether they fall under complete regulatory alignment, rough regulatory alignment or autonomy (as laid out in a recent [report](#) from the Institute for Government which inspires the government's approach). Such proposed triage misses the essence of managed mutual recognition and the compatibility paradigm. Because Brexit bridges stories one and two, it will need to respect the spirit of internal EU law which is not about accommodating *ad hoc* and idiosyncratic exceptions but about refining over time an overall principled approach. But of course, sectoral specificity is recovered because how you interpret this broad norm depends on context. The EU does know how to have cake and eat it too – it calls that jurisprudence. And this is a good thing.

This is also where the EU's concerns for maintaining a 'level playing field' come in. This issue is tricky because what is at stake is not the compatibility between rules that pertain to specific goods or services. Instead, this concerns horizontal matters or the compatibility between national systems themselves, notably in terms of competition and state aid, as well as tax, social, and environmental practices, at least those that are touched by EU law. In the spirit of the compatibility model these measure should be kept separate from the more stringent sphere of regulatory cooperation discussed here, and instead be based on trust and broad shared commitment to international standards. EU countries, perhaps rightly, see the British government's promise to issue a "public commitment that British standards will remain as high as those of the EU" as insufficient. And yet, EU rules provide significant leeway and might yet be revised given the current disenchantment with certain market practices. In the end, the UK's EU partners will need to decide whether it is plausible to imagine Britain loosening its environmental or employment rules simply to gain 'competitive advantage' as stated in the guidelines, given UK politics (if anything public attitudes against lax renewable energy targets, consumer protection or banker bonuses have hardened after Brexit). Even the most extreme incarnation of a Corbyn government is unlikely to start subsidising industries in ways allowed by the WTO and forbidden by the EU. In any case, if the worst came to the worst, the EU could resort to contingent contracting here to include so called 'non-regression clauses' and penalties to mitigate such concerns.

In short, the EU does not have to give up its red lines – only to reframe them. It can do so provided the UK is able to convince its friends in the EU that it will still be committed to what is known in EU jargon as 'loyal cooperation', whereby countries do put continued adherence to EU concerns over their short - term interests, thus warranting enough trust to continue to work together under the umbrella of managed mutual recognition.

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Last but not least, EU decision makers rightly worry about precedent. Might some existing member states be tempted by too exceptional a Brexit deal and threaten to leave as a result? And how about other EU partners? Will they be tempted to demand similar deals in their own dealings with the EU?

These concerns are generally misplaced under the compatibility paradigm.

For one, there should be a 'British model' just as there is a 'Canada', 'Norway', 'Iceland', 'Turkey' or 'Ukraine' model. Relationships are all exceptional. They can inspire each other but not reproduce each other. This is even more true for a country that is uniquely becoming a former member state. To use other 'models' is an understandably reassuring yet strange attempt to bring the whole affair back into normality, the familiar terrain of precedents.



Of course, these various models are relevant to the conversation, and the compatibility paradigm is itself compatible with many variants even if it does call for an *ad hoc* relationship to the single market. It could imply that the UK should stay in the EEA as argued last week by *The Economist*, by amending its provisions to allow for the Lichtenstein clause on free movement and greater reciprocity in the regulatory relationship. Or it could imply a more ambitious FTA than Canada whereby the chapter on regulatory cooperation is not a long-term aspiration but a fact. Or it could imply some kind of association agreement *à la* Ukraine, but again with greater reciprocity. And unlike the Swiss model, it would be dynamic. Whichever one of these serves as legal anchor, the UK will have its own model – ‘self-evidently’, as Emmanuel Macron opined to Andrew Marr when visiting London in January 2018.

Which legal path is followed will depend in turn on the extent to which both parties are able to lift, or at least fudge their pre-commitments to red lines, or better even, heed the French President’s philosophy not to commit to red lines but to horizons. If the UK insists on designating *ex ante* the sectors where it plans to diverge, or if the EU insists on a strict interpretation of free movement, or it is hard to imagine using the EEA anchor.

The adoption of an approach akin to the compatibility paradigm will depend on mindsets as much as it will depend on hard bargaining over interests. Can negotiators on both sides shift from a negative sum game mindset (‘damage limitation mode’) or zerosum mindset (‘the worse for the other side, the better for us’) to a positive sum mindset (‘we are on the same side of the table, facing a problem called Brexit together’)? ‘*Fait contre mauvaise fortune bon coeur*’, ‘do not cut your own nose to spite your face’, ‘if you dig one grave, better dig two’ – popular wisdom says it all.

Can member states and institutions alike resist the demons of legalism and represent the EU at its best, an admirable machinery capable of transforming destructive tensions into productive solutions?

If so, the compatibility paradigm can turn on its head the narrative that Brexit is a bad precedent. Under such a guiding principle, Brexit will not lead to an ever-shrinking Union unless other states are discouraged to follow suit. Instead, Britain can serve as a guinea pig, or the *avant garde*, for trading partners which, recalling story two, can cautiously and progressively be brought in the ambit of the EU’s managed mutual recognition system. If every external trade deal negotiated between the EU and third countries in the last two decades has included a chapter on regulatory ‘cooperation,’ or ‘coherence’, these have remained just long-term horizons. With Brexit, the EU can now experiment with a country that is resilient enough to live on this horizon.

Paradoxically, the most unprecedented of events could come to serve as a precedent which may one day inspire a broader circle of countries, starting with its neighbours. The compatibility paradigm not only brings us back to the Continental partnership as advocated by [Bruegel](#) after the referendum, but to a global partnership for economic governance.

In the meanwhile, third countries with free trade agreements with the EU will understand that the UK-EU arrangement is an exception and thus cannot immediately be subject to the most-favoured nation principle included in their own deal.

However much many of us dislike the prospect of UK withdrawal, turning Brexit into an ambitious precedent for EU external relations will be a more appealing narrative than framing it as a disastrous precedent for EU internal dynamics. The way the EU negotiates with the UK ought to make us proud and help us convince the rest of the world of the EU’s avowed commitment to free trade, cooperation and openness. The UK can draw on the reservoir of flexibility in the EU, if only the government can demonstrate that it understands

The compatibility model answers Gideon Rachman's call to refrain from endorsing one-sided narratives that simply confirm our preexisting [biases](#). We owe this much to our children on both sides of the Channel, whose projects and networks are deeply intertwined. In order not to let the dead tie the hand of the living a decade or two from now, those in charge today must imagine and negotiate a relationship between the EU and the UK which leaves open many different future worlds, including eventually rejoining a transformed and differentiated EU. 'Different but compatible' is a motto fit for this purpose.

**By Kalyпсо Nicolaïdis, Professor of International Relations, University of Oxford.**