

Article 127 and the Single Market ^[1]



What is the Single Market?

In 1994, the EU extended membership of the Single Market to three non-EU states: Norway, Lichtenstein and Iceland. This was enshrined into law through the 1994 European Economic Area (EEA) Agreement, giving these countries access to free movement of goods, people, services and capital across all EEA members. The UK, like all other member states, is a signatory of this agreement, meaning that the UK is a member of the European Union and the EEA.

What is Article 127 and why does it matter?

Article 127 of the EEA Agreement states that “Each Contracting Party may withdraw from this Agreement provided it gives at least twelve months' notice in writing to the other Contracting Parties. Immediately after the notification of the intended withdrawal, the other Contracting Parties shall convene a diplomatic conference in order to envisage the necessary modifications to bring to the Agreement.”

The disagreement is over whether the UK needs to trigger article 127 to terminate its membership of the EEA.

The [Single Market Justice](#) ^[2] (SMJ) campaign, led by Adrian Yalland and Peter Wilding, argues that because the UK is a separate contracting party to the EEA Agreement in its own right, it will not leave the Single Market even after it leaves the EU. To exit the Single Market, the Government will have to trigger a separate exit process, as set out in Article 127 of the EEA agreement. SMJ argue that since the UK's EEA membership is part of UK law under Parliament's 1993 EEA Agreement Act, triggering Article 127 would require parliamentary approval. From this angle, Article 127 can be understood as the Single Market equivalent of Article 50.

However there is an opposing view. Jean Claude Piris, former head of the European Commission's legal service, has said: “The UK's withdrawal from EU will mean an automatic cessation of its membership of EEA as an EEA-EU member”. This position derives from Article 126 (1) of the EEA agreement:

“The Agreement shall apply to the territories to which the Treaty establishing the European Economic Community is applied and under the conditions laid down in that Treaty, and to the territories of Iceland, the Principality of Liechtenstein and the Kingdom of Norway.”

In this case, the UK is a member of the EEA only in its capacity as an EU member. Therefore leaving the EU means an automatic exit from the EEA, and the UK will not need to trigger Article 127.

What is the Government's position?

In the Prime Minister's letter to EU President Tusk triggering Article 50, she emphasised that the UK “does not seek membership of the Single Market”. This means that the UK plans to leave the EEA. To achieve this, the Government previously appeared to adopt the automatic exit position based on Article 126, as seen in a [December statement](#) ^[3] by DExEU's Parliamentary Under-Secretary Robin Walker.

The Government appears to have shifted away from this automatic exit position since then. In February as part of their SMJ campaign, Yalland and Wilding brought a judicial review application to the Divisional Court challenging the Government on leaving the Single Market without triggering Article 127 and passing an Act of Parliament. According to [SMJ's report](#) ^[4] on the court proceedings, the Government accepted that Article 126 did not “give rise to termination of the EEA Agreement ipso jure [in law]”.

In answering questions on his statement on the Great Repeal Bill on 30th March, David Davis appeared to concede that the government's EEA exit mechanism would require parliamentary approval. However later that day DExEU clarified their secretary of state's position with the following press statement:

“Once we leave the EU, the EEA Agreement will no longer be relevant for the UK. It will have no practical effect. We therefore do not envisage a vote. We are considering what steps, if any, might need to be taken to formally terminate the EEA Agreement as a matter of international law”

The Government’s latest position appears to be that even if our EU exit does not automatically terminate the EEA agreement in law, any continued signature to the EEA Agreement would not equate to functional Single Market membership and they do not anticipate the need to trigger Article 127 with parliamentary approval.

Kenneth Armstrong, Professor of European Law and Director of the European Legal Studies at the University of Cambridge, took a similar view in December. He argued that whilst some of the EEA agreement obligations fall to the UK, the vast majority of those obligations that we think of as making up the Single Market- such as customs and regulations- fall to the EU. This means that even if the UK did retain its current legal obligations under the EEA agreement, these would not amount to Single Market membership.

Is this all settled now?

No. Yalland and Willing’s judicial review application in February was denied, on the grounds that it was premature since the Government had not yet made a final decision on its EEA withdrawal mechanism. This leaves the door open for future legal challenges against the government on this issue.

According to SMJ’s legal case, even if the Government relies on its current position to avoid triggering Article 127 and gaining parliamentary approval, the extent of the UK’s obligations under the EEA agreement is ultimately a question of interpretation. An interpretation question which the European Court of Justice could be best-placed to resolve.

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