

EU agencies ^[1]



What are EU agencies and why do they matter? ^[2]

The EU has a regulatory structure that includes over [40 agencies](#) ^[3] in addition to the core institutions like the European Commission and the European Parliament.

These agencies are tasked with assisting the EU institutions and member states, and are forums through which regulators and important stakeholders from across the EU can co-operate.

All EU agencies have one or more of the following four functions:

- **shaping EU policies** either directly or through advice to EU institutions
- **implementing EU policies**
- **monitoring compliance**
- **administering EU co-operation programmes.**

Agencies operate under the jurisdiction of the European Court of Justice (ECJ) and are legal entities in their own right. Some are permanent – known in EU law as ‘decentralised agencies’ (like the European Chemicals Agency or the European Environment Agency); others are set up on a time-limited basis to oversee specific initiatives and are known as ‘executive agencies’.

What has the UK said about agencies after Brexit? ^[4]

In her [Mansion House Speech](#) ^[5], the Prime Minister stated that the UK is seeking to “explore with the EU the terms on which the UK could remain part of EU agencies”, singling out:

- European Chemicals Agency (ECHA)
- European Medicines Agency (EMA)
- European Aviation Safety Agency (EASA)

The Prime Minister has proposed that the UK becoming “associate members” of these agencies is “the only way to meet [the UK’s] objective of ensuring that these products only need to undergo one series of approvals”. The UK would “abide by their rules” and contribute to their budgets; in return it would want to continue to provide technical expertise to the agencies and settle certain challenges through UK courts rather than the ECJ.

The [UK has also indicated](#) ^[6] it is seeking “broad co-operation” and “continuity of services” in a number of areas where agencies play a role in EU policy, such as energy, transport, [security](#) ^[7], [law enforcement](#) ^[7], science and culture. In the Prime Minister’s Mansion House speech and the [future partnership papers](#) ^[8], the UK Government signalled its readiness to explore options of, for example, continued participation (in the EU’s Internal Energy Market) and programme-based co-operation – the so-called “pay-for-play” (such as the Education, Culture and Audiovisual Executive Agency’s Erasmus+).

On [data](#) ^[9], the [UK has asked](#) ^[10] for the Information Commissioner’s Office to maintain an [appropriate ongoing role](#) ^[11] on the European Data Protection Board.

For financial services, the UK also wants to see [new forms of co-operation](#) ^[12] between the UK regulators and their EU counterparts (the European Banking Authority, the European Insurance and Occupational Pensions Authority, and the European Securities and Markets Authority).

One important European agency the UK is definitely planning to leave is the Euratom Supply Agency. It is part of the [Euratom](#) ^[13] (the European Atomic Energy Community) Treaty, which is legally separate from the EU but is governed by EU institutions. The Government is already legislating to delegate legal responsibility for the UK’s nuclear safeguards regime to the Office for Nuclear Regulation (through the [Nuclear Safeguards Bill](#) ^[14]).

What does UK business want? ^[15]

The UK business sector has welcomed potential continued participation in EU agencies, but called for certainty regarding the UK’s future relationship with agencies in key sectors for trade.

CBI wants participation beyond the agencies identified by Theresa May, and has [stressed](#) ^[16] that in the areas where the UK will continue to be part of the EU regulatory frameworks, involvement in the related agencies is a priority for industry.

What would be the benefits of staying involved in EU agencies? ^[17]

Depending on the level of integration in the sector, as well as its strategic and economic importance for the UK, the potential benefits for continued participation include:

- reducing regulatory burdens and barriers to trade with EU member states
- removing duplication
- avoiding the need to establish new UK bodies at extra costs
- ensuring access to EU expertise and resources
- influencing European and global standards through continued co-operation.

But there are some disadvantages – the UK would have less influence in the agencies than now, the potential for future divergence would be limited, and the agencies will remain under the jurisdiction of the ECJ.

What would happen during the Brexit transition? [18]

According to the current draft Withdrawal Agreement [19], the UK would still be able to participate in the EU agencies to ensure alignment during transition, but would lose its voting rights and have no say over policies extending beyond 31 December 2020.

Since the UK has already agreed to limit its involvement in agencies to an observer status during transition, industry representatives have questioned whether the UK will be able to negotiate anything beyond that for the future relationship.

Would the UK be able to participate in EU agencies after Brexit? [20]

The European Council’s March 2018 negotiating guidelines emphasise the EU’s “decision-making autonomy”, ruling out UK participation in the decision-making processes of EU bodies, offices and agencies. This, however, implies that the UK could still negotiate some form of participation in EU agencies, as long as it accepts losing its voting rights.

There is precedent for countries outside of the EU to participate in EU agencies (although some like the European Fisheries Control Agency, or the Euratom Supply Agency, are currently EU only).

Membership is usually reserved for European Economic Area (EEA) or European Free Trade Association (EFTA) member states. They have the right to appoint experts to the relevant technical committees and working groups, as well as representatives on management boards, either without or with very limited voting rights (usually for day-to-day matters, such as approval of policy papers and public positions, but not on decisions regarding proposals, methodologies, and implementing measures).

Observers (generally accession and neighbourhood countries, or EFTA states, in agencies that do not allow non-EU membership) can also participate in relevant agency groups or management board meetings, but do not have voting rights. Both are usually conditional on “signing the necessary agreements”, which require compliance with the relevant EU regulations, level playing field provisions as well as monitoring and inspection protocols.

For agencies focused on research or pooling expertise, the requirements are less stringent. Generally, participation of non-EU states also requires financial contributions and staff, as well as ensuring the adequacy of data protection rules to standards deemed equivalent by the EU.

Below we set out how non-EU members are involved in a few of the EU’s key agencies.

Agency

Non-EU participation

European Aviation Safety Agency

Non-EU participation ✓
 ✓

European Chemical Agency

Non-EU participation ✓
 x

European Medicines Agency

Non-EU participation ✓
 x

European Food Safety Authority

Non-EU participation	EEA
	√
Switzerland	
Agency for the Cooperation of Energy Regulators	
Non-EU participation	Norway joining
	x
Body of European Regulators for Electronic Communication	
Non-EU participation	√
	√
European Environment Agency	
Non-EU participation	√
	Turkey
European Railway Agency	
Non-EU participation	√
	x
European Union Intellectual Property Office	
Non-EU participation	x
	x
Euratom Supply Agency	
Non-EU participation	x
	x
European Fisheries Control Agency	
Non-EU participation	x
	x
European Banking Agency	
Non-EU participation	√
	x
European Securities and Markets Authority	
Non-EU participation	√
	x
European Insurance and Occupational Pensions Authority	

Non-EU participation ✓

x

Europol

Non-EU participation x

x

Eurojust

Non-EU participation x

x

Agency	Non-EU participation	
	EEA/EFTA	Third countries
European Aviation Safety Agency	✓	✓
European Chemical Agency	✓	x
European Medicines Agency	✓	x
European Food Safety Authority	EEA	✓
	Switzerland	
Agency for the Cooperation of Energy Regulators	Norway joining	x
Body of European Regulators for Electronic Communication	✓	✓
European Environment Agency	✓	Turkey
European Railway Agency	✓	x
European Union Intellectual Property Office	x	x
Euratom Supply Agency	x	x
European Fisheries Control Agency	x	x
European Banking Agency	✓	x
European Securities and Markets Authority	✓	x
European Insurance and Occupational Pensions Authority	✓	x
Europol	x	x

Observer status

No precedent but
theoretically possible

Non-EU countries can also work with EU agencies on the basis of administrative arrangements and memoranda of co-operation, as well as on specific projects or initiatives (not included in the table above). These types of agreements establish frameworks for agencies to co-operate with third countries that do not have permanent member or observer status, for example, to facilitate trade or research partnerships, or co-ordinate joint projects.

The agencies can invite the third countries they have cooperation agreements with to attend relevant management board or committee meetings as observers (Europol, for example, can invite the US to relevant management board meetings on the basis of their co-operation agreements). However, such agreements only allow very limited, mostly invitation-based engagement with the agency's work, in comparison with the access the UK is seeking.

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- [16] <http://www.cbi.org.uk/insight-and-analysis/the-room-where-it-happens/>
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