Canada in the EU's Orbit

What Associate Membership Could Mean in EU Law

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In her State of the Union address on 16 September 2026, Commission President von der Leyen proposed opening the door to Canada as the EU's "first associate member". This Alliance for the Future would deepen cooperation in defence industries and advanced technologies, building on the existing trade partnership under CETA. Canadian Prime Minister Mark Carney welcomed the ambition, presenting closer ties as a way to protect sovereignty against economic coercion.

Since the label *associate member* itself creates no new legal status, the question remains: How could Canada gain meaningful influence within a closer partnership without joining the Union? The Council's negotiating mandate should now seek an association that gives Canada a stronger voice, while preserving the institutional distinction between association and EU membership – a difficult balancing act.

Associate Membership

First, EU primary law does not provide for such a category of "associate membership". States are either in or out. In fact, the President's announcement seems to contradict the hard stance during Brexit negotiations against "cherry-picking", although this position has softened in recent times. Nevertheless, the current legal framework (Article 217 of the Treaty on the Functioning of the European Union, or TFEU) offers enough possibilities to design a reciprocal agreement offering Canada extensive participation. Making this a clear and explicit goal in the Council's negotiating mandate will demonstrate the President's and the Member States' commitment to a stronger, tighter bond between Canada and the EU.

The distinction between well-known *association agreements* and this new type of *associate membership agreements* envisaged by President von der Leyen matters. The President aims for cooperation across defence, economic security and technology ("Alliance for the Future to create a common prosperity and economic security space"). Such a relationship could become a model for partners seeking greater security through closer ties with Europe. But its credibility will ultimately depend on identifying which decisions they can share, and which the Union must retain. The differences between an "associate membership" agreement and Stabilisation and Association Agreements preparing for full EU membership must be clear, both in their requirements and in the decision-making powers they confer.

As a simplified model to understand the situation, European integration resembles a solar system: EU membership at its centre (e.g. France and Germany), economic integration through the EEA (Norway, Iceland, Liechtenstein) and customs arrangements (e.g. the EU–Türkiye customs union) in the surrounding orbits, and trade partnerships such as CETA further out. Judging by Carney's proposals, Canada's "associate membership" would most plausibly occupy an orbit between CETA and the EEA: deeper cooperation in certain sectors – but short of the EEA's broad single-market integration. How much further Canada would be pulled inward in the solar system would depend on the *common rules* and *institutions* the parties agree to establish.

Integration Has Already Begun

The announcement *changes no legal status* by itself. Canada remains a third country, connected to the EU through several agreements with different purposes.

As of now, the Strategic Partnership Agreement (SPA) provides the overall political framework for the current EU-Canada relations – while the Compre-

hensive Economic and Trade Agreement (CETA) underpins their economic partnership. CETA has applied provisionally since September 2017. And since July 2024, Canada has also been associated to Pillar II of Horizon Europe, the collaborative research part of the EU's research and innovation programme. That enables Canadian organisations to obtain funding and lead research consortia. It makes Canada an associated country – in a particular programme.

Defence cooperation provides another example. The agreement admitting Canadian companies and products to procurement under *Security Action for Europe*, known as SAFE, entered into force on 1 August 2026. SAFE provides up to €150 billion in loans to EU Member States for defence investment. Canada also gains industrial opportunities under agreed conditions. For *specified advanced systems*, Canadian contractors must be able to control the product's design without restrictions imposed *by other third countries* according to Article 5(10), read with Article 2(c): "'third countries' means countries other than Member States, European Economic Area States that are members of the European Free Trade Association (EEA EFTA States), Ukraine, and Canada". The EU is thus distinguishing among external suppliers according to the dependence they create. European security, on this account, can require opening procurement – for one of the first times – to a non-European partner. Yet, Canada's participation gives it no vote on the EU legislation establishing the scheme.

Hence, there is little analytical value in arranging CETA, Horizon and SAFE as steps on a ladder towards *membership*, since each answers a different question about access, funding or security of supply. And none settles how Canada should participate when the rules governing a much broader relationship change.

Association Without Accession

The Treaties offer a legal basis for that broader relationship. Article 217 TFEU authorises *association agreements* built around (i) "reciprocal rights and obligations, (ii) common action and (iii) special procedure", e.g., institutional arrangements (numbering added). Unlike the accession procedure in Article 49 of the Treaty on European Union, or TEU, it does not require the partner to be a "European State".

Association is also sufficiently flexible to serve a relationship intended to remain outside the Union. The EU–UK Trade and Cooperation Agreement rests on Article 217. Its purpose was to organise relations after withdrawal. So, association need *neither* prepare accession *nor* imitate the obligations of membership. Its content depends on what the parties agree within their respective powers. But what would that mean?

In *United Kingdom v Council*, the Court of Justice explained that Article 217 allows the Union to undertake commitments towards associated countries across "all the fields" (!) covered by the TFEU (paragraph 61). That breadth could accommodate an ambitious Canadian agreement. And it does not authorise Treaty revision or dispense with the rules governing particular Union competences. However, any common foreign and security policy commitments would have to respect that policy's distinct Treaty rules.

Choosing this route would carry a political price. Under Article 218(6)(a)(i) and (8) TFEU, concluding an association agreement requires (i) unanimity in the Council and (ii) the European Parliament's consent. (iii) Whether Member States must also become parties and ratify it nationally depends on the competences the agreement engages; nevertheless, association does not automatically require a mixed agreement.

Where Membership Remains Different

An association agreement could, for instance, establish a council in which Canada and the EU jointly administer their relationship. It could give that body delimited powers to take binding decisions. This is familiar treaty practice since CETA already has a "Joint Committee", whose decisions in the areas provided for by the agreement require mutual consent (Article 26.3 CETA). Therefore, Canada already has a (quiet) voice in governing *that agreement*.

But joint authority under an international agreement differs from authority *within* the Union. The Founding Treaties constitute (i) the Council through representatives of "each Member State" (Article 16(2) TEU) and (ii) the European Parliament through repre-

sentatives of "the Union's citizens" (Article 14(2) TEU). Therefore, an external agreement cannot give Canada any vote in the Council or create seats representing Canada in Parliament (such changes would require revision of the EU Treaties). Nor does association itself confer EU citizenship on Canadians (Article 20 TFEU) or extend the mutual assistance obligation in Article 42(7) TEU to Canada.

Judicial authority marks another possible limit. However, the SAFE agreement already expressly reserves challenges to the *validity of Union acts* concerning SAFE to the Court of Justice (Article 3(2)). A broader partnership could provide independent settlement of disputes over its own obligations but could not authorise any kind of joint tribunal to invalidate EU legislation (that power would remain with the Court of Justice).

Consequently, Member States and their citizens sustain a system of unique reciprocal legal obligations, representation and judicial supervision. Programme participation alone cannot confer the same rights. Any further proposal for associate membership should say plainly how much of that system it expects Canada to join, and which rights it can lawfully offer *in return*.

Giving Canada a Meaningful Voice

The strongest objection to a new association agreement is of a practical nature. Existing agreements (SPA, CETA, SAFE, Horizon) already offer considerable flexibility. Why spend years negotiating another treaty when cooperation can deepen sector by sector?

The answer depends on what the new partnership asks Canada to accept. Where cooperation remains a series of discrete bargains, the existing approach may already be enough ("associate member" thus remains merely a new label).

Where *continued access* increasingly depends on compliance with changing EU rules, a broader institutional settlement becomes necessary. Firms investing in shared supply chains and researchers building long-term collaborations do *not* want to treat every change as an isolated transaction (plus, the costs of withdrawal rise as cooperation succeeds).

Now, Canada's consent to those arrangements matters, of course. Accepting rules made elsewhere is not inherently undemocratic. But calling the relationship membership (!) raises an expectation the institutional framework cannot yet meet fully.

As of today, a useful Canadian association would mostly strengthen the procedures that already exist because CETA makes *participation* in particular regulatory cooperation activities already voluntarily possible (Article 21.2[6]), and because SAFE provides for consultation on request within its narrower remit (Article 4[7]).

A broader association should deepen these and guarantee the following: (1) early notice and (2) consultation before either side adopts rules materially affecting the agreed cooperation (already done informally with the AI Act – CETA now also has periodic monitoring exchanges on certain ongoing or planned regulatory projects, Article 21.7[1]); (3) a reasoned response to the other party's concerns; and (4) review of breaches of those procedural duties under the agreement's dispute mechanism, without allowing that mechanism to annul domestic legislation.

Suppose, for example, that the EU proposed new eligibility rules affecting an agreed area of Canadian industrial participation. Canada would be entitled to consultation while the proposal could still change, and to reasons if its objections were rejected. And it could contest a failure to follow that procedure. But it could not veto the legislation. The same duties should apply to Canadian measures affecting European participation.

The agreement should also address disagreement before a crisis arises. If either party (5) declines a proposed change to common obligations, negotiated adjustment periods and proportionate changes to the affected benefits could preserve the rest of the relationship. Neither side should have to choose immediately between accepting every change and abandoning cooperation altogether. However, these are proposals for the agreement (not rights based on the President's speech).

Furthermore, public scrutiny must accompany those arrangements. (6) Joint bodies should publish

their decisions and reasons, subject to justified confidentiality. (7) The interparliamentary dialogue (already envisaged in Article 27[1][e] SPA) should gain a specific role in scrutinising the *new association*, with regular implementation reports and public hearings on decisions taken by its institutions. This would extend existing parliamentary contact to systematic oversight of the new agreement (cf. Franco-German Parliamentary Assembly).

Writing the Negotiating Mandate

The language of *membership* also matters to countries undertaking demanding reforms to join the Union. Offering Canada that label risks making their efforts appear dispensable, even though association cannot confer the institutional rights they seek. The agreement and subsequent communication should therefore specify both the influence Canada would gain and the rights that remain tied to accession.

Yet, von der Leyen's invitation deserves the welcome it has received. In Strasbourg, Canadian Prime Minister Carney described trade coercion and the power of technology platforms as a "ferocious storm". Article 217 TFEU has the capacity to shield both Europe and Canada from it. In Carney's words: "A single tree will come down in it. A forest will not. [...] Together, Canada and the European Union can anchor our ground to hold our values while forming a protective canopy under which our citizens can thrive."

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